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Contents

Federal Register
Vol. 61, No. 216
Wednesday, November 6, 1996

Agriculture Department
See Forest Service

Assassination Records Review Board
NOTICES
Meetings; Sunshine Act, 57383

Bonneville Power Administration
NOTICES
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
BPA/Lower Valley Transmission Project, 57400–57401

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 57436–57438
Submission for OMB review; comment request, 57438–57439
Grants and cooperative agreements; availability, etc.:
Human immunodeficiency virus (HIV)—
Public health conference support cooperative agreement prevention program, 57439–57442
Hot mix asphalt pavers; engineering control guidelines; comment request; correction, 57442
Meetings:
National Center for Infectious Diseases Scientific Counselors Board, 57442–57443

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Technology Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Hungary, 57398–57399
Ukraine, 57399–57400
Textile and apparel categories:
Correlation with U.S. Harmonized Tariff Schedule, 57400

Employment and Training Administration
NOTICES
Adjustment assistance:
Basin Resources et al., 57453–57454
Boise Cascade Corp., 57454
Dale Electronics, Inc., 57454–57455
Fashion Bed Group et al., 57455
Key Tronic Corp., 57456
Lee Apparel Co., 57456
Quantum Corp. et al., 57456–57457
Todd Uniforms, 57457
United Technologies Automotive, 57457
NAFTA transitional adjustment assistance:
Dale Electronics, Inc., 57457–57458

Energy Department
See Bonneville Power Administration
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Acquisition regulations:
Administrative changes; Federal regulatory reform, 57336–57339
Air quality implementation plans; approval and promulgation; various States:
Nevada 57331–57333
Hazardous waste:
Identification and listing—
Exclusions; correction, 57334
Water pollution; effluent guidelines for point source categories:
Pesticide chemicals; formulation, packaging and repackaging, and pretreatment standards, 57518–57566
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Virginia, 57343–57356
Pesticide programs:
Pesticides and ground water strategy; State management plan regulation, 57356
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Sodium bicarbonate, etc., 57356–57359
NOTICES
Agency information collection activities:
Proposed collection; comment request, 57411–57412
Submission for OMB review; comment request, 57412–57413
Clean Air Act:
Acid rain provisions—
State exemptions, 57414
Written exemptions, 57413–57414
Meetings:
Food Safety Advisory Committee, 57414
Pesticide Program Dialogue Committee, 57414–57415
Pesticide, food, and feed additive petitions:
Sulfentrazone, etc., 57420–57423
Pesticide programs:
Pesticide data submitters list; availability, 57415
Pesticide registration, cancellation, etc.:
D.Z.N. Diazinon Ag 500, etc., 57416–57419
Drexel LV6 Weed Killer, etc, 57419–57420
Water pollution; discharge of pollutants (NPDES):
Alaska; log transfer facilities; general permit, 57425
Water quality-based effluent limitations; incorporation into storm water permits, 57425–57429
Water pollution control:
Clean Water Act—
Class II administrative penalty assessments, 57423–57425

Executive Office of the President
See National Education Goals Panel
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 57317–57319

Beech, 57295–57296
Bell, 57323–57324
Boeing, 57291–57295, 57313–57315
Bombardier, 57319–57322
British Aerospace, 57298–57300
HB Aircraft, 57322–57323
Jetstream, 57296–57297, 57300–57301
McDonnell Douglas, 57301–57311
Pilatus, 57315–57317
Shorts, 57311–57313
Class E airspace, 57324–57325
PROPOSED RULES
Airworthiness directives:
AlliedSignal Inc., 57342–57343
NOTICES
Airport noise compatibility program:
DeKalb-Peachtree Airport, GA, 57510–57511
Explosives detection systems; certification criteria, 57511–57512
Passenger facility charges; applications, etc.:
North Bend Municipal Airport. OR, 57512–57513

Federal Communications Commission
RULES
Practice and procedure:
Public utility holding companies; entry into telecommunications industry without prior SEC approval
Correction, 57334–57335
Radio stations; table of assignments:
California et al., 57335
Colorado, 57336
Hawaii, 57335–57336
Tennessee, 57336
PROPOSED RULES
Radio stations; table of assignments:
Iowa, 57360–57361
Kansas, 57359–57360
Ohio, 57360
NOTICES
Agency information collection activities:
Proposed collection; comment request, 57429
Submission for OMB review; comment request, 57429–57431

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
Massachusetts et al., 57572–57576
NOTICES
Disaster and emergency areas:
Puerto Rico, 57431
Virginia, 57431

Federal Energy Regulatory Commission
RULES
Public Utility Holding Company Act:
Filing requirements and ministerial procedures for persons seeking exempt wholesale generator status, 57325–57328
NOTICES
Electric rate and corporate regulation filings:
PECO Energy Co., et al., 57402–57403
Hydroelectric applications, 57403–57406
Meetings:
Tennessee Gas Pipeline Co.; informal settlement conference, 57406
Natural gas certificate filings:
NorAm Gas Transmission Co., 57406–57408
Puget Sound Energy, et al., 57408–57410
Natural gas companies (Natural Gas Act):
Uniform system of accounts, forms, statements, and reporting requirements; revisions, 57410–57411
Applications, hearings, determinations, etc.:
Frontier Gas Storage Co., 57401
Koch Gateway Pipeline Co., 57401
NorAm Gas Transmission Co., 57401–57402
Northern Natural Gas Co., 57402
Texas Gas Transmission Corp., 57402
Western Area Power Administration, 57402

Federal Highway Administration
RULES
Engineering and traffic operations:
Certification acceptance streamlining and simplification; alternate procedures use by State highway agencies for non-interstate projects, 57330–57331
NOTICES
State infrastructure bank pilot program participation, 57513–57514

Federal Labor Relations Authority
NOTICES
Senior Executive Service:
Performance Review Board; membership, 57431–57432

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
Noral Cargo International, Inc. et al., 57432

Federal Railroad Administration
NOTICES
State infrastructure bank pilot program participation, 57513–57514

Federal Reserve System
RULES
Securities:
Relations with dealers in securities under section 32, 1933 Banking Act (Regulation R); and miscellaneous interpretations, 57287–57289
NOTICES
Banks and bank holding companies:
Change in bank control, 57432
Formations, acquisitions, and mergers, 57432–57433
Permissible nonbanking activities, 57433
Federal Reserve bank services:
Fedwire funds transfer service—
Operating hours, 57433–57434

Federal Trade Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 57434–57436

Federal Transit Administration
NOTICES
State infrastructure bank pilot program participation, 57513–57514

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Fish Creek No. 2 diesel fuel spill, OH et al., 57448
Meetings:
Aquatic Nuisance Species Task Force, 57448–57449

Food and Drug Administration
RULES
Biological products:
Distributor name prominence on labels, 57328–57330
NOTICES
Agency information collection activities:
Proposed collection; comment request, 574430–57444
Compliance policy guide:
Certification for Exports; revised, 57444–57445
Export certificates:
FDA Export Reform and Enhancement Act of 1996—
Drugs, animal drugs, and devices; certification fees, 57445–57446
Medical devices; premarket approval:
Direct Access Diagnostics; Confide HIV Testing Service Using Dried Blood Spots, 57446–57447
Epitope, Inc.; OraSure HIV-1 Western Blot Kit, 57447–57448

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
New Hampshire, 57383
South Carolina, 57383–57384

Forest Service
NOTICES
Appealable decisions; legal notice:
Pacific Northwest region, 57383

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
NOTICES
Scientific misconduct findings; administrative actions:
Yuan, Gang, 57436

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Antidumping:
Heavy forged hand tools, finished or unfinished, with or without handles, from—
China, 57384–57387
Mechanical transfer presses from—
Japan, 57387–57389
Natural bristle paintbrushes and brush heads from—
China, 57389–57391
Tapered roller bearings, four inches or less in outside diameter, and components, from—
Japan, 57391–57397
Countervailing duties:
Welded carbon steel pipe and tube products from—
Turkey, 57398
Applications, hearings, determinations, etc.:
University of—
California et al., 57397
Connecticut et al., 57397–57398

International Trade Commission
NOTICES
Import investigations:
Brake drums and rotors from—
China, 57449–57451
Cattle and beef—
Impact of NAFTA and Uruguay Round Agreements on U.S. trade, 57451
Steel concrete reinforcing bars from—
Turkey, 57451–57453

Justice Department
See Prisons Bureau

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
See Pension and Welfare Benefits Administration
RULES
Conflict of interests, 57281–57287
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 57453

Land Management Bureau
NOTICES
Closure of public lands:
Utah, 57449

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Sidney Coal Co., Inc., et al., 57458–57461

National Credit Union Administration
RULES
Credit unions:
Civil monetary penalty inflation adjustment, 57290–57291

National Education Goals Panel
NOTICES
Meetings, 57479

National Highway Traffic Safety Administration
NOTICES
Motor vehicle defect proceedings; petitions, etc.:
Ciano, Frank J., 57514–57515

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Alaska scallop, 57340–57341
Tuna, Atlantic bluefin fisheries, 57340
PROPOSED RULES
Fishery conservation and management:
Atlantic highly migratory species, 57361–57382

National Park Service
NOTICES
Meetings:
Cape Cod National Seashore Advisory Commission, 57449

National Science Foundation
NOTICES
Meetings:
Astronomical Sciences Special Emphasis Panel, 57479
Design, Manufacture and Industrial Innovation Special Emphasis Panel, 57479–57480
Information, Robotics and Intelligent Systems Special Emphasis Panel, 57480
Polar Programs Special Emphasis Panel, 57480

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 57480–57481
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 57481–57497

Office of United States Trade Representative
See Trade Representative, Office of United States

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Pikeville National Bank, 57461–57479

Prisons Bureau
RULES
Institutional management:
Incoming publications; nudity or sexually explicit material or information; distribution to inmates, 57568–57569

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 57503–57504
Delta Clearing Corp., 57504–57505
Depository Trust Co., 57505–57506
National Securities Clearing Corp., 57506–57507
Pacific Stock Exchange, Inc., 57507–57508
Applications, hearings, determinations, etc.:
Alpine Group, Inc., 57497
ILI Endeavor Variable Annuity Account, 57497–57498
Osmanli Bankasi A.S. et al., 57498–57499
Pittway Corp., 57499–57500
Strong Advantage Fund, Inc., et al., 57500–57502
Voyageur Arizona Municipal Income Fund II, Inc., 57502–57503
Voyageur Colorado Municipal Income Fund II, 57503

Small Business Administration
NOTICES
Disaster loan areas:
North Carolina, 57509
Virginia, 57509
Applications, hearings, determinations, etc.:
Canaan S.B.I.C., L.P., 57508
Commerce Capital, L.P., 57509
Retail & Restaurant Growth Capital, L.P., 57509

State Department
NOTICES
Meetings:
Shipping Coordinating Committee, 57509

Surface Transportation Board
RULES
Rate procedures:
Rail rate reasonableness, exemption and revocation proceedings; expedited procedures
Effective date delayed, 57339–57340

Technology Administration
NOTICES
Meetings:
National Medal of Technology Nomination Evaluation Committee, 57398

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

Trade Representative, Office of United States
NOTICES
Meetings:
Industry Functional Advisory Committee, 57510
Industry Sector Advisory Committee, 57510

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Federal Transit Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Separate Parts In This Issue

Part II
Environmental Protection Agency, 57518–57566

Part III
Department of Justice, Bureau of Prisons, 57568–57569

Part IV
Federal Emergency Management Agency, 57572–57576

Reader Aids
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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.

5 CFR
Ch. XLII.....57281

12 CFR
218.....57287
250.....57287
747.....57290

14 CFR
39 (15 documents) 57291, 57295, 57296, 57298, 57299, 57300, 57301, 57304, 57311, 57313, 57315, 57317, 57319, 57322, 57323
71.....57324

Proposed Rules:
39.....57342

18 CFR
365.....57325
375.....57325

21 CFR
610.....57328

23 CFR
640.....57330

28 CFR
540.....57568

29 CFR
0.....57281

40 CFR
52.....57331
261.....57334
455.....57518

Proposed Rules:
52.....57343
152.....57356
156.....57356
180.....57356

44 CFR
64.....57572

47 CFR
1.....57334
73 (4 documents) 57335, 57336

Proposed Rules:
73 (3 documents) 57359, 57360

48 CFR
1501.....57336
1503.....57336
1509.....57336
1510.....57336
1511.....57336
1512.....57336
1513.....57336
1516.....57336
1519.....57336
1527.....57336
1532.....57336
1533.....57336
1535.....57336
1542.....57336
1552.....57336

49 CFR
1011.....57339
1104.....57339
1111.....57339
1112.....57339
1113.....57339
1114.....57339
1115.....57339
1121.....57339

50 CFR
285.....57340
679 (2 documents) 57340, 57341

Proposed Rules:
285.....57361
630.....57361
644.....57361
678.....57361

Rules and Regulations

Federal Register
Vol. 61, No. 216
Wednesday, November 6, 1996

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 LABOR

Office of the Secretary

5 CFR Chapter XLII

29 CFR Part 0

RINs 1290–AA15, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Labor

AGENCY: Office of the Secretary, DOL.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of Labor, with the concurrence of the Office of Government Ethics (OGE), is issuing an interim rule for employees of the Department that supplements the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The interim rule designates certain components of the Department as separate agencies for the purposes of provisions in the executive branch-wide Standards regarding gifts from outside sources, the receipt of compensation for teaching, speaking or writing, and fundraising in a personal capacity; restricts the outside employment and the holding of certain financial interests by employees of the Mine Safety and Health Administration and by their spouses and minor children; and requires employees in the Department's Office of the Inspector General to obtain prior approval for outside employment. The interim rule also repeals existing Departmental regulations governing outside employment and financial interests of agency employees, except for a regulatory waivers provision, and inserts in their place a cross-reference to the executive branch-wide Standards and financial disclosure regulations, and this interim rule.

DATES: This interim rule is effective November 6, 1996. Comments are invited and are due by January 6, 1997.

ADDRESSES: Send comments to Robert Shapiro, Department of Labor, Room N–2428, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: David Apol, Office of the Solicitor, Department of Labor, telephone 202–219–8065, FAX 202–219–6896.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published a final rule entitled ''Standards of Ethical Conduct for Employees of the Executive Branch'' (Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, with additional grace period extensions at 59 FR 4779–4780, 60 FR 6390–6391, 60 FR 66857–66858, and 61 FR 40950–40952. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct that apply to all executive branch personnel.

On June 23, 1994, the Department issued a final rule which removed all of the provisions of its Ethics and Conduct Regulations at 29 CFR Part 0 that had been superseded by 5 CFR part 2635 or by OGE's executive branch financial disclosure regulations at 5 CFR part 2634. See 59 FR 32611. The Department preserved those provisions of its Ethics and Conduct Regulations containing regulatory waivers issued under 18 U.S.C. 208(b)(2), restricting the acquisition or holding of certain financial interests, and requiring prior approval of outside employment or activities. These provisions were permitted to continue in effect until superseded, as provided respectively in 5 CFR 2635.402(d)(1) and the notes following 5 CFR 2635.403(a) and 2635.803, as extended by 59 FR 4779–4780, 60 FR 6390–6391, and 60 FR 66857–66858.

5 CFR 2635.105 authorizes executive branch agencies, with the concurrence of OGE, to publish agency-specific supplemental regulations necessary to implement their ethics programs. The Department, with OGE's concurrence, has determined that the following supplemental regulations, to be codified in part 5201 of new chapter XLII of 5 CFR, are necessary to the successful implementation of the Department's ethics program. The Department is simultaneously repealing those provisions of the residual subpart C of its old Ethics and Conduct Regulations at 29 CFR part 0, which are superseded upon issuance of the Department's supplemental regulations, and is adding a single section that provides cross-references to 5 CFR parts 2634 and 2635, as well as to the Department's new supplemental regulations.

II. Analysis of the Regulations

Section 5201.101 General

Section 5201.101 explains that the regulations contained in the interim rule apply to employees of the Department of Labor and are supplemental to the executive branch-wide Standards.

Section 5201.102 Designation of Separate Agency Components

Section 5201.102 designates several of the Department's components as separate agencies for the purposes of certain ethics provisions. The Department has determined that those components exercise district and separate functions. The separate agency designations will affect the substantive ethics rules within the Department of Labor involving the acceptance of gifts, the receipt of compensation for teaching, speaking and writing, and the restrictions on fundraising for nonprofit organizations in a personal capacity.

Section 2635.202(a) of the Standards prohibits an employee from soliciting or accepting a gift from a ''prohibited source'' unless permitted under one of the exceptions in the Standards. The separate agency designations will affect, first, the definition of ''prohibited source.'' The Standards of Ethical Conduct define a ''prohibited source'' by the relationship of the source to both the responsibilities of the employee and those of his or her employing agency. For the purpose of identifying an employee's agency, 5 CFR 2635.203(a) authorizes an executive department, by supplemental regulation, to designate as a separate agency any component that exercises a distinct and separate function. The agency designations contained in § 5201.102 are made pursuant to 5 CFR 2635.203(a).

In addition to its effect on the gift-acceptance rules, the designation of separate agencies will affect the definition of ''agency'' for the purposes

of the rules governing compensation for outside teaching, speaking, and writing. Section 2635.807 of the Standards restricts an employee's acceptance of compensation for outside teaching, speaking, and writing that relates to the employee's official duties, including teaching, speaking, or writing the subject of which deals in significant part with any ongoing or announced policy, program, or operation of the employee's agency. See 5 CFR 2635.807(a)(2)(I)(E)(*2*). Under 5 CFR 2635.807(a)(2)(I)(E)(*3*), more restrictive rules apply to certain noncareer employees. The separate agency designations contained in § 5201.102 mean that the compensation restrictions in 5 CFR 2635.807 apply when the subject of an employee's speech, appearance, or article deals in significant part with any ongoing or announced policy program, or operation of his or her own designated agency component rather than to the Department as a whole.

Finally, § 5201.102 further supplements the Standards to change the way the restrictions on fundraising in a personal capacity apply within the Department. Section 2635.808(c) of the Standards restricts employees' fundraising in a personal capacity with respect to persons who are ''prohibited sources''. Section 5201.102 provides that the separate agency designations used to determine when a person is a ''prohibited source'' for purposes of the Standards governing direct and indirect gifts to employees from outside sources will also be used to determine when a person is a prohibited source for the purpose of the Standard at 5 CFR 2635.808(c) governing fundraising in a personal capacity.

The definition of ''prohibited source'' for employees outside the designated agency components will not be affected by the designations. Any source which is prohibited from any Department component will be treated as a prohibited source for any employee who is not in one of the designated agency components.

Because of the very distinct and diverse functions of the Employment Standards Administration (ESA), each designated component within ESA is treated as a separate agency for the purposes of determining ''prohibited sources'' and the other specified provisions of the Standards. For the remaining ESA employees, a source is prohibited if it is a prohibited source for any component of ESA.

Section 5201.103 Fundraising Activities

Section 5201.103 of the interim rule supplements the executive branch-wide Standard at 5 CFR 2635.808(c) regarding fundraising in a personal capacity. That standard bars employees from engaging in such fundraising from those persons known by the employee to be ''prohibited sources,'' as defined in 5 CFR 2635.203(d). In § 5201.102 of this interim rule, the Department has designated certain of its components as separate agencies for the purposes of identifying prohibited sources.

The employees of certain of these designated agencies have very large numbers of prohibited sources because their components exercise very broad regulatory responsibilities. These agency components are: the Occupational Safety and Health Administration, which regulates safety and health in most of the nation's workplaces; the Veterans' Employment and Training Service, which is responsible, among its other functions, for regulating the nation's employers to assure that they comply with their obligations under the veterans reemployment statutes; the Pension and Welfare Benefits Administration, which regulates private pension and welfare benefit plans under the Employee Retirement Income Security Act; the Wage and Hour Division of the ESA, which is responsible, among its other functions, for assuring that non-exempt private and public sector employees are paid the Federal minimum wage; and the Office of Federal Contract Compliance Programs in the ESA, which assures that the very broad and diverse category of employers performing work under Federal contracts and those who perform federally assisted construction work meet Federal affirmative action requirements. Officials in the ''Remainder of ESA'' participate in regulatory activities under both the Wage and Hour and Contract Compliance Programs, as well as certain workers' compensation programs. Officials in the ''Remainder of the Department of Labor'' also exercise broad regulatory responsibilities, as they participate in all of the Department's regulatory efforts.

The Department has determined that, in light of the very broad regulatory responsibilities of these components, barring personal fundraising from every category of prohibited source listed in 5 CFR 2635.203(d) is not necessary to avoid the appearance of using public office for private gain. Accordingly, in order that the personal fundraising activities of employees in these components not be unduly restricted, § 5201.103 provides that it shall be permissible for employees in these designated separate agency components to solicit funds or other support from a person who is a prohibited source for them only under 5 CFR 2635.203(d)(3), because the person is regulated by the component. Employees of these separate agency components will not be allowed to solicit contributions from a person known to be a ''prohibited source'' for the other reasons listed in 5 CFR 2635.203(d). Thus, they cannot engage in charitable fundraising from any person (including an organization, a majority of whose members are such persons) seeking official action by the employee's agency component; doing business or seeking to do business with the employee's agency component; or having interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

Section 5201.104 Additional Rules for Office of the Inspector General Employees

The Standards, at 5 CFR 2635.803, specifically recognize that individual agencies may find it necessary or desirable to supplement the executive branch-wide regulations with a requirement for their employees to obtain approval before engaging in outside employment or activities. The Department's Office of the Inspector General (OIG) has long imposed requirements for advance approval of its employees' outside business or professional activities. Because of the wide range of OIG responsibilities and the sensitivity of its mission, the Department has determined, in accordance with 5 CFR 2635.803, that it is necessary to the administration of the ethics program to continue to require OIG employees to get prior approval for outside employment.

Section 5201.104(a)(1) of this interim rule continues, with minor substantive modification, the OIG's past requirement for prior approval of outside employment. Section 5201.104(a)(2) specifies the content of approval requests. Section 5201.104(a)(3) specifies the standards to be used in evaluating approval requests. Section 5201.104(a)(4) provides a definition of ''employment'' to be used in the application of § 5201.104.

Section 5201.105 Additional Rules for Mine Safety and Health Administration Employees

5 CFR 2635.403(a) authorizes agencies, by supplemental regulation, to

prohibit or restrict the acquisition or holding of a financial interest or a class of financial interests by agency employees, based on a determination that the acquisition or holding of such interests would cause reasonable persons to question the impartiality and objectivity with which agency programs are administered. Where it is necessary to the efficiency of the service, such prohibitions or restrictions may be extended to employees' spouses and minor children.

Section 5201.105(a) of the interim rule generally bars employees of the Department's Mine Safety and Health Administration (MSHA), and their spouses and minor children, from having outside employment with any company or other person engaged in mining activities regulated by the MSHA under the Federal Mine Safety and Health Act of 1977 (Mine Safety and Health Act), 30 U.S.C. 801 et seq., and from holding other financial interests in such companies or other persons. The MSHA has restricted the holding of mining interests by its employees since the mine safety and health programs were transferred from the Department of the Interior to the Department of Labor by the Federal Mine Safety and Health Amendments Act of 1977, Pub. L. 95–164. Section 301(c)(2) of that Act, codified at 30 U.S.C. 961(c)(2), provided that existing rules of the Department of the Interior regarding the transferred mine safety and health program were to continue in effect until modified, terminated, superseded, set aside, revoked, or repealed by the Secretary of Labor, the Federal Mine Safety and Health Review Commission or other authorized officials, by any court of competent jurisdiction, or by operation of law. Prior to the transfer, the Department of the Interior's regulations in 1976 (43 CFR 20.735–13) broadly prohibited employees of the Mining Enforcement and Safety Administration (MESA) from holding mining interests and engaging in certain forms of outside employment. The substantive restrictions have not been changed since the transfer and are in effect until this interim rule takes effect, in accordance with 59 FR 32611.

These regulations prohibited MESA (and later MSHA) employees from having any direct or indirect interests in any mine or the products of any mine under investigation. They also prohibited certain private employment in relation to mines or mineral property. The Department has determined that in light of the sensitive mission of the MSHA involving the application of safety and health standards to the entities that it regulates, restrictions on outside employment and on employee ownership of financial interests in mining entities are necessary in order to maintain public confidence in the impartiality and objectivity with which the MSHA executes its various functions and to avoid widespread disqualification of employees from their duties which could result in MSHA having difficulty carrying out its mission. With respect to the spouses and minor children of these MSHA employees, the Department has made an additional determination that there is a direct and appropriate nexus between the restrictions on the holding of certain employment and financial interests as applied to spouses and minor children, and the ability of MSHA employees to carry out their official duties and the ability of MSHA to fulfill its mission.

The prohibitions in § 5201.105(a) apply to employment or other financial interests in a company not primarily engaged in mining activities, if it conducts some mining activities regulated by the MSHA under the Mine Safety and Health Act. Consistent with the definition of ''person'' in the Standards at 5 CFR 2635.102(k), § 5201.105(a) specifies that a non-mining company which owns 50 percent or more of the voting securities of another company or other person engaged in covered mining activities is itself treated as a company engaged in such mining activities. This prevents the employee from avoiding these restrictions by having an interest in a company that conducts its mining operations through a separate corporation. On the other hand, this section supplements the definition of ''person'' in the Standards at 5 CFR 2635.102(k), by allowing employees to hold interests in a non-mining corporation that is controlled by a mining corporation. The Department has determined that the provisions of the conflict of interest laws and the Standards are sufficient to protect the public interest in such a case.

Section 5201.105(b) includes two exceptions to the prohibition of 5201.105(a). The exceptions are intended to permit ownership of interests of a character that are less likely to raise questions regarding the objective and impartial performance of an employee's official duties or the possible misuse of their positions.

The interim rule contains an exception at § 5201.105(b)(1) permitting covered persons to hold interests in publicly traded or publicly available investment funds, unless the fund holds more than 30 percent of its investments in the prohibited holdings.

The exception at § 5201.105(b)(2) permits the holding of pension interest. Disqualifications due to conflicts of interest from pension interest are rare; moreover, when there is a disqualifying conflict of interest due to a pension interest, nonparticipation in a particular matter affecting the interest will sufficiently address the conflict issue. It is expected that such disqualifications will be infrequent and, therefore, will not disturb the Department's ability to carry out its mission.

Finally, requiring divestiture of pension interests could adversely affect MSHA's ability to carry out its statutory responsibilities. The Federal Mine Safety and Health Act requires that those hired to perform various MSHA functions must be qualified by practical experience or education. For this reason, it is likely that both current employees and applicants will have a prior work history in the mining industry and may have interests in the pension plans of their former employers. Many of these interests are difficult to divest. Requiring divestiture, even in the absence of a conflict of interest, would discourage the hiring and retention of persons possessing the qualifications that the Mine Safety and Health Act requires.

Under § 5201.105(c), the Assistant Secretary of Labor for Mine Safety and Health, or the Assistant Secretary's designee, may grant a waiver covering an outside employment or other financial interest when the Assistant Secretary or the designee determines that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, or to ensure confidence in the impartiality and objectivity with which Mine Safety and Health Administration programs are administered. The Assistant Secretary or the designee shall grant a waiver from prohibitions in this section regarding spouses and minor children unless the Assistant Secretary or the designee determines that having the covered relationship or interest is likely to be inconsistent with 5 CFR part 2635 or is otherwise prohibited by law.

Section § 5201.105(d) provides that existing waivers, issued under the Department's old regulations and procedures implementing the mining interest prohibition applicable to MSHA employees, remain in effect but may be withdrawn subject to the standards applicable to the withdrawal of waivers under paragraph (c).

III. Repeal of Department of Labor Standards of Conduct

On June 23, 1994, The Department of Labor, at 59 FR 36210–36211, removed and reserved subparts A, B, D, and E and portions of subpart C of 29 CFR part 0, Ethics and Conduct Department of Labor Employees. The Department retained in subpart C § 0.735–12(d) (now being redesignated as § 0.735–2), which contains a regulatory waiver issued under the prior version of 18 U.S.C. 208(b)(2) (1988) and which has remained in effect pending OGE's issuance of superseding executive branch-wide regulatory waivers. It also amended and retained in subpart C grandfathered § 0.735–13, regarding prohibited financial interests and clearance of outside activities. The interim rule repeals § 0.735.13, which is superseded upon issuance of this interim rule.

The interim rule adds a new provision to ensure that employees are on notice of the ethical standards and other ethics provisions to which they are subject. The provision cross-references 5 CFR parts 2634, 2635, and 5201. It is included along with the regulatory waiver provision in a revised subpart A.

The provisions dealing with post employment conflicts of interest which are now in subpart F are transferred to the currently reserved subpart B. These provisions establish administrative procedures to sanction former Department of Labor employees who have violated 18 U.S.C. 207. While the authority to impose the administrative sanctions was repealed prospectively by the Ethics Reform Act of 1989, the procedures continue to apply to persons whose government service terminated while they were still in effect. For this reason the administrative sanction provisions are being retained for the present.

To simplify the structure of part 0, the remaining vacant or currently reserved subparts are being deleted.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

As Secretary of Labor, I have found good cause pursuant to 5 U.S.C. 553 (a)(2), (b), and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 60-day delay in effectiveness as to these interim rules and repeals. The reason for this determination is that it is important to a smooth transition from the Department of Labor's prior ethics rules to the new executive branch-wide Standards that these rulemaking actions become effective as soon as possible. Furthermore, this rulemaking is related to the Department's organization, procedure and practice. Nonetheless, this is an interim rulemaking, with provision for a 60 day public comment period. The Department will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as final, with the concurrence of the Office of Government Ethics.

Executive Order 12866, Regulatory Planning and Review

As Secretary of Labor, I have determined that this regulation is not a ''regulatory action'' under section 3 of Executive Order 12866. Because the rule is limited to agency organization, management and personnel, it falls within the exclusion set forth in section 3(d)(3) of the Executive order. In promulgating this rule, the Department has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of the Executive order.

Small Business Regulatory Fairness Act of 1996

This rule is not classified as a ''rule'' under the Small Business Regulatory Fairness Act of 1996, because it is a rule pertaining to agency organization, procedure, or practice that does not substantially affect the right of non-agency parties. See 5 U.S.C. 804(3)(C). Moreover, as Secretary of Labor, I have found for the good cause set forth above, that notice and public procedure thereon are unnecessary and contrary to the public interest. See 5 U.S.C. 808(2). Accordingly, this interim regulation will take effect on November 6, 1996.

Regulatory Flexibility Act

As Secretary of Labor, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have significant economic impact on a substantial number of small entities because it imposes ethics standards only on Federal employees and their immediate families. The Secretary of Labor has provided this certification to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act

As Secretary of Labor, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget thereunder.

List of Subjects in 5 CFR Part 5201 and 29 CFR Part 0

Conflict of interests, Government employees.

Dated: October 31, 1996.

Robert B. Reich,

Secretary of Labor.

Approved: November 4, 1996.

Steven D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Department of Labor, with the concurrence of the Office of Government Ethics, is amending title 5 and title 29, subtitle A, of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

1. A new chapter XLII, consisting of part 5201, is added to 5 CFR to read as follows:

CHAPTER XLII—DEPARTMENT OF LABOR

PART 5201—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF LABOR

Sec.
5201.101 General.
5201.102 Designation of separate agency components.
5201.103 Fundraising activities.
5201.104 Additional rules for Office of the Inspector General employees.
5201.105 Additional rules for Mine Safety and Health Administration employees.

Authority: 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803.

§ 5201.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Labor (Department) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

§ 5201.102 Designation of separate agency components.

(a) *Separate agency components of the Department of Labor.* Pursuant to 5 CFR 2635.203(a), each of the ten components of the Department listed below is designated as an agency separate from each of the other nine listed components and, for employees of that component, as an agency distinct from the remainder of the Department. However, the components listed below are not deemed to be separate agencies for purposes of applying any provision of 5 CFR part 2635 or this part to

employees of the remainder of the Department:

(1) Benefits Review Board;

(2) Employees Compensation Appeals Board;

(3) Mine Safety and Health Administration (MSHA);

(4) Veterans' Employment and Training Service;

(5) Occupational Safety and Health Administration (OSHA);

(6) Pension and Welfare Benefits Administration (PWBA);

(7) Bureau of International Labor Affairs;

(8) Bureau of Labor Statistics;

(9) Employment and Training Administration (ETA); and

(10) Employment Standards Administration (ESA).

(b) *Separate agency subcomponents of ESA.* Pursuant to 5 CFR 2635.203(a), each of the four subcomponents of the Employment Standards Administration (ESA) listed in this paragraph is designated as an agency separate from each of the other three listed components and, for employees of that subcomponent, as an agency distinct from the remainder of ESA. However, the components listed in this paragraph are not deemed to be separate agencies for purposes of applying any provision of 5 CFR part 2635 or this part to employees of the remainder of ESA:

(1) Wage and Hour Division;

(2) Office of Federal Contract Compliance Programs;

(3) Office of Workers Compensation Programs; and

(4) Office of Labor-Management Standards.

(c) *Definitions.* (1) *Remainder of the Department* means employees in the Office of the Secretary and any other employee of the Department not in one of the 10 components designated as separate agencies in paragraph (a) of this section.

(2) *Remainder of ESA* means employees in the Office of the Assistant Secretary for Employment Standards and any other ESA employee not in one of the four subcomponents designated as separate agencies in paragraph (b) of this section.

(d) *Applicability of separate agency designations.* The designations in paragraphs (a) and (b) of this section identify an employee's ''agency'' for purposes of:

(1) Determining when a person is a prohibited source within the meaning of 5 CFR 2635.203(d) for purposes of applying the regulations at subpart B of 5 CFR part 2635 governing gifts from outside sources;

(2) Determining whether teaching, speaking or writing relates to the employee's official duties within the meaning of 5 CFR 2635.807(a)(2)(i); and

(3) Determining when a person is a prohibited source for purposes of applying the regulations at 5 CFR 2635.808(c) governing fundraising in a personal capacity.

Example 1: An employee of the Mine Safety and Health Administration attends a Saturday football game together with an employee of the Office of the Solicitor. By coincidence, they are seated next to a contract consultant to the Employment and Training Administration. They talk about the game and describe their jobs and personal interests to their new seat-mate. The consultant states that he and his wife will not be able to attend next week's game and would like to give their very expensive tickets to people who will really enjoy them. The MSHA employee may accept the ticket. MSHA is designated as a separate agency under § 5201.102, and the ETA contractor is not a prohibited source of gifts for MSHA employees. The contractor is not regulated by and has no business dealings with MSHA. The Solicitor's Office employee may not accept the gift. The ETA contractor is a prohibited source for Solicitor's Office employees because the Solicitor's Office is a part of the ''Remainder of the Department of Labor.'' Any source which is prohibited for any component of the Department of Labor is a prohibited source for employees in the ''Remainder.''

§ 5201.103 Fundraising activities.

Notwithstanding 5 CFR 2635.808(c)(1)(i), an employee of any separate agency component listed in this section may, in a personal capacity, personally solicit funds from a person who is a prohibited source if person is a prohibited source for employees of the component only under 5 CFR 2635.203(d)(3) because the person conducts activities regulated by the component:

(a) The Wage and Hour Division;

(b) The Office of Federal Contract Compliance Programs;

(c) The Remainder of the Employment Standards Administration, as defined in § 5201.102(c);

(d) Occupational Safety and Health Administration;

(e) Pension and Welfare Benefits Administration;

(f) Veterans' Employment and Training Service; and

(g) The Remainder of the Department of Labor, as defined in § 5201.102(c).

Example 1: A training official in the Mine Safety and Health Administration is president of the local branch of her college alumni association. The association is seeking used computers from local businesses to upgrade the college's language lab. The employee may not seek a contribution from the vice president of a mining company which is regulated by MSHA. Even though the mining company is not currently under investigation, it is a prohibited source for the employment because it is subject to MSHA regulation and MSHA is not one of the agency components designated as separate for the purpose of fundraising in a personal capacity.

Example 2: A typist in the Pension and Welfare Benefits Administration raises money for a local homeless shelter during his off-duty hours. He may seek a contribution from a firm that is regulated by PWBA under the Employee Retirement Income Security Act but may not seek contributions from one that he knows is currently under investigation for a violation of the Act. While firms regulated by an agency would ordinarily be prohibited sources for purposes of an employee's fundraising in a personal capacity, § 5201.103 provides that employees of PWBA and the other separate agency components listed in that section may seek charitable contributions from an entity that is a prohibited source only because its activities are subject to regulation by that separate agency component. On the other hand, the employee may not engage in fundraising from a person who he knows is a prohibited source for any other reason, such as an ongoing enforcement action.

Example 3: An employee of the Employment and Training Administration may seek charitable contributions from a firm currently under investigation by the Occupational Safety and Health Administration (OSHA). ETA does not regulate this firm and has had no dealings or business with it of any kind. Since ETA has been designated as a separate agency under § 5201.102, ETA employees need only consider their own official duties and activities and those of ETA in determining whether a person is a prohibited source for purposes of their fundraising in a personal capacity. The fact that a person may be a prohibited source of direct and indirect gifts for OSHA employees is not relevant in this instance.

§ 5201.104 Additional rules for Office of the Inspector General employees.

The rules in this section apply to employees of the Office of the Inspector General (OIG) and are in addition to §§ 5201.101, 5201.102, and 5201.103.

(a) *Prior approval for outside employment.* (1) Before engaging in any

outside employment, an OIG employee must obtain the written approval of the Inspector General or the Inspector General's designee.

(2) *Submission of requests for approval.* (i) Requests for approval shall be submitted in writing to the Inspector General or the Inspector General's designee. Such requests shall include, at a minimum, the following:

(A) The employee's name and position title;

(B) The name and address of the person, group, or organization for whom the employee proposes to engage in outside employment; and

(C) A description of the proposed outside employment, including the duties and services to be performed while engaged in the outside employment, and the approximate dates of the outside employment.

(ii) Together with the employee's request for approval, the employee shall provide a certification that:

(A) The outside employment will not depend in any way on nonpublic information, as defined at 5 CFR 2635.703(b);

(B) No official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment; and

(C) The employee has read and is familiar with the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635), including subpart H. (''Outside Activities''), and the Department's supplemental standards of ethical conduct set forth in this part.

(iii) Upon a significant change in the nature or scope of the outside employment or in the employee's official position, the employee shall submit a revised request for approval.

(3) *Standard for approval.* Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(4) *Definitions.* For purposes of this section, ''employment'' means any form of non-Federal employment or any business relationship involving the provision of personal services by the employee. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee.

§ 5201.105 Additional rules for Mine Safety and Health Administration employees.

The rules in this section apply to employees of the Mine Safety and Health Administration (MSHA) and are in addition to §§ 5201.101, 5201.102, and 5201.103.

(a) *Prohibited financial interests.* Employees in the MSHA and their spouses and minor children are prohibited from having any financial interests (including compensated employment) in any company or other person engaged in mining activities subject to the Federal Mine Safety and Health Act of 1977 (Mine Safety and Health Act), 30 U.S.C. 801 *et seq.* A company or other person shall be deemed to be engaged in such mining activities if it owns 50 percent or more of the voting securities of another company or other person engaged in such mining activities. A company or other person shall not be deemed to be engaged in such mining activities solely because it is controlled by a company or other person which does engage in such activities.

(b) *Exceptions.* (1) Nothing in this section prohibits an employee or the spouse or minor child of an employee from acquiring, owning or controlling an interest in a publicly traded or publicly available investment fund provided that, upon initial or subsequent investment by the employee (excluding ordinary dividend reinvestment), the fund does not have invested, or does not indicate in its prospectus the intent to invest, more than 30 percent of its assets in the securities of a company or other person engaged in mining activities subject to the Mine Safety and Health Act, and the employee, spouse, or minor child neither exercises control nor has the ability to exercise control over the financial interests held in the fund.

(2) Nothing in this section prohibits an employee or the spouse or minor child of an employee from having a financial interest in a pension administered by, or which invests in, a company or other person engaged in mining activities subject to the Mine Safety and Health Act.

Example: A mine inspector who was a former employee of mining company X could continue to participate in mine company X's pension plan without violating this section. However, he would have to disclose the interest on his financial disclosure report. Additionally, the inspector should not inspect or otherwise take official action on a matter affecting mine company X without checking with his ethics advisor to ensure that performance of his official duties would not violate the conflict of interest statute (18 U.S.C. 208) or any other ethics provisions.

(c) *Waiver.* (1) The Assistant Secretary of labor for Mine Safety and Health or the Assistant Secretary's designee may grant an employee a written waiver from the prohibitions contained in paragraph (a) of this section, based on a determination that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, or to ensure confidence in the impartiality and objectivity with which Mine Safety and Health Administration programs are administered.

(2) The Assistant Secretary or the designee shall grant a waiver from the prohibitions in paragraph (a) of this section regarding spouses and minor children unless the Assistant Secretary or the designee determines that the covered relationship or interest is likely to be inconsistent with 5 CFR part 2635 or is otherwise prohibited by law.

(3) A waiver under this section may be accompanied by appropriate conditions, such as requiring execution of a written statement of disqualification. A waiver may be withdrawn if it is later determined that such waiver does not meet the requirements for the granting of waivers under this paragraph. Notwithstanding the grant of any waiver, a covered employee remains subject to the disqualification requirements of 5 CFR 2635.402 and 2635.502.

(4) Factors which may be considered in connection with the granting or denial of waivers include the nature and extent of the financial interest, and the official position and duties of the employee.

(d) *Pre-existing interests.* Notwithstanding paragraph (a) of this section, an employee of the Mine Safety and Health Administration, and a spouse or minor child of such an employee, may retain financial interests otherwise prohibited by paragraph (a) of this section which were approved in writing under procedures in effect before the effective date of this section, unless the approval is withdrawn, subject to the standards applicable to the withdrawal of waivers under paragraph (c) of this section.

TITLE 29—[AMENDED]

Subtitle A—Office of the Secretary of Labor

PART 0—[AMENDED]

2. The authority citation for part 0 is revised to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. App. (Ethics in Government Act of 1978); sec. 501, Pub. L. 95–521, 92 Stat. 1866–1867; 18 U.S.C.

208; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR part 2634, part 2635.

3. Part 0 is amended by removing subparts A, B, D, and E, by removing § 0.735–13, and by redesignating subpart F as subpart B and removing its authority citation.

4. Part 0 is further amended by redesignating subpart C as subpart A and by revising its heading to read ''Subpart A—Standards of Conduct for Current Department of Labor Employees.''

5. Part 0 is further amended by redesignating § 0.735–12 as § 0.735–2 and adding § 0.735–1 to read as follows:

§ 0.735–1 Cross-references to employee ethical conduct standards and financial disclosure regulations.

Employees of the Department of Labor (Department) are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635, the Department's regulations at 5 CFR part 5201 which supplement the executive branch-wide standards, and the executive branch financial disclosure regulations at 5 CFR part 2634.

[FR Doc. 96–28666 Filed 11–5–96; 8:45 am]

BILLING CODE 4510–23–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 218 and 250

[Regulation R; Docket No. R–0931]

Relations With Dealers in Securities Under Section 32, Banking Act of 1933; Miscellaneous Interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is rescinding Regulation R, which the Board believes is no longer necessary. The Board also is amending its regulations to remove an interpretation of section 32 of the Glass-Steagall Act, which the Board believes is no longer necessary. This interpretation explains the position of the Board regarding the application of the prohibitions of section 32 to bank holding companies.

EFFECTIVE DATE: December 6, 1996.

FOR FURTHER INFORMATION CONTACT: Richard M. Ashton, Associate General Counsel (202/452–3750), Thomas M. Corsi, Senior Attorney (202/452–3275), or Tina Woo, Attorney (202/452–3890), Legal Division. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act)

Section 303(a) of the CDRI Act (12 U.S.C. 4803(a)) requires the Board, as well as the other federal banking agencies, to review its regulations and written policies in order to streamline and modify these regulations and policies to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. The Board has reviewed its interpretations of section 32 of the Glass-Steagall Act (12 U.S.C. 78) with this purpose in mind, and, as is explained in greater detail in the text that follows, is amending these interpretations in a way designed to meet the goals of section 303(a).

Substantive Provisions of Regulation R

Regulation R implements section 32 of the Glass-Steagall Act,[1] which prohibits officer, director and employee interlocks between member banks and firms ''primarily engaged'' in underwriting and dealing in securities. Section 32 authorizes the Board to exempt from this prohibition, under limited circumstances, certain interlocks by regulation. Currently, Regulation R merely restates the statutory language of section 32, and sets forth the only exemption adopted by the Board since passage of the Glass-Steagall Act. The Board also has codified in the CFR a series of 14 interpretations of the substantive provisions of section 32 and the regulation.[2] In July, the Board sought public comment on removing Regulation R from the CFR and removing from the CFR an interpretation that applies the restrictions of section 32 to bank holding companies.[3]

The exemption in Regulation R, adopted by the Board in 1969, permits interlocks between member banks and securities firms whose securities underwriting and dealing activities are limited to those permissible for national banks. The adoption of the express exemption was apparently based on the assumption that the literal language of the section 32 prohibition could at least arguably cover bank-eligible securities activities.

Subsequently, in approving other applications under the Bank Holding Company Act, the Board interpreted the prohibitions of section 20 of the Glass-Steagall Act as not applying on their face to securities underwriting and dealing activities authorized for member banks.[4] At that time, the Board also expressed the view that section 32 did not cover an interlock between a member bank and a firm that was not engaged in securities activities covered by section 20.[5] Accordingly, in light of the Board's more recent view of the scope of section 32, the express exemption from the provisions of section 32 for bank-eligible securities activities is no longer necessary.[6] The Board has never adopted any other exemption to the interlocks provision and historically, requests that the Board create new exemptions have been infrequent and have been uniformly denied.[7] In seeking public comment on removing Regulation R, the Board noted that the exemption in the regulation is no longer necessary, and it is not necessary to have a substantive regulation solely to restate a statutory provision.

Extension of Section 32 Prohibitions to Bank Holding Companies

The Board also sought public comment on removing a 1969 interpretation that extended the prohibitions of section 32 to a bank holding company where the principal activity of the bank holding company is the ownership and control of member banks.[8] The Board based its 1969 interpretation not so much on the literal language of section 32, but on its belief that where the ownership and control of member banks is the principal activity

[1] 12 U.S.C. 78.

[2] 12 CFR 218.101–218.114. The Board and staff have issued other interpretations of section 32 that are contained in the FRRS.

[3] *See* 61 FR 34749, July 3, 1996.

[4] Section 20 of the Glass-Steagall Act (12 U.S.C. 377) prohibits a member bank from being affiliated with a firm engaged principally in underwriting and dealing in securities.

[5] This interpretation has been upheld by the courts. *Securities Industry Association* v. *Board of Governors of the Federal Reserve System*, 839 F.2d 47, 62 (2d Cir. 1988), *cert. denied*, 486 U.S. 1059 (1988).

[6] To avoid any confusion on this matter, the Board is inserting an additional interpretation into the CFR to clarify that the prohibitions of section 32 do not apply to bank-eligible securities activities. This interpretation will be set out at 12 CFR 250.413.

[7] A footnote to Regulation R that dates to 1936 makes clear the Board's interpretation that a broker who is engaged solely in executing orders for the purchase and sale of securities on behalf of others in the open market is not engaged in the business referred to in section 32. The Board has since authorized bank holding companies to engage in this activity directly, reiterating that securities brokerage is not a proscribed activity under either sections 32 or 20 of the Glass-Steagall Act. *BankAmerica Corporation*, 69 Federal Reserve Bulletin 105 (1983). The courts upheld the Board's interpretation. *Securities Industry Assn.* v. *Board of Governors*, 468 U.S. 207 (1984). The removal of Regulation R does not affect this interpretation.

[8] 12 CFR 218.114.

of a bank holding company, the same possibilities of abuse that section 32 was designed to prevent would be present in the case of a director of the holding company as in the case of the member bank.[9]

The Board now believes that it could rescind this interpretation and give some measure of regulatory burden relief to bank holding companies in a manner consistent with section 32, and without frustrating the Congressional purpose underlying the section. As noted above, section 32 specifically restricts only those interlocks involving member banks. It could be argued that the bank holding company structure was not in widespread use when section 32 was adopted, and that Congress did not contemplate issues that could arise from interlocks involving bank holding companies. Congress has amended section 32 since the section was adopted and since bank holding companies have become commonplace, but never has extended the prohibitions in the section to bank holding companies. Notably, in 1987, Congress extended the prohibitions of section 32 to cover interlocks involving nonmember banks and thrift institutions but not interlocks involving bank holding companies.[10]

The potential that removal of the interpretation could frustrate Congressional purpose in enacting section 32 is mitigated by the fact that the prohibitions of section 32 would continue to apply to member banks. In a specific case where an interlock between a bank holding company and a securities firm were to result in unsafe or unsound practices, the Board could impose corrective measures by use of its formal enforcement authority. Accordingly, the directors, officers and employees of these banks, none of whom would be interlocked with a securities firm, could serve as a check against the possibilities of abuse that section 32 is intended to prohibit. Finally, by rescinding this interpretation, the Board would be granting regulatory relief to bank holding companies by giving them access to a larger pool of persons from which to choose their officers, directors, and employees.[11]

Summary of Public Comments

The Board received a total of 17 public comments in response to its proposed amendments.[12] In general, the commenters stated their support for the reduction in regulatory burden that would result from the removal of the regulation and holding company interpretation. Some of the commenters offered additional suggestions as to how the Board could reduce the regulatory burden associated with the Glass-Steagall Act.

The public commenters overwhelmingly supported the Board's proposal to remove Regulation R, and agreed with the Board that it was unnecessary to reiterate the statutory language of section 32 in a regulation. One commenter opposed the removal of Regulation R and the renumbering of the retained interpretations contending that this would cause confusion and would remove the Board's flexibility in creating exemptions to section 32 in the future.[13] All commenters generally agreed that in light of the Board's precedent and the proposed addition of section 250.413, it is unnecessary to have the exemption permitting interlocks between member banks and securities firms whose securities underwriting and dealing activities are limited to those permissible for a national bank.

All public commenters supported the proposal to remove the interpretation regarding the application of the prohibitions of section 32 to bank holding companies. These commenters believed that removal of the interpretation would benefit bank holding companies by increasing the pool from which to recruit qualified directors, officers, and employees. Many commenters recommended that the Board determine that the removal of this interpretation would allow bank holding companies and their nonbank subsidiaries to have interlocks with registered open-end investment companies (mutual funds) that receive investment advice and/or administrative services from the bank holding company's subsidiaries.

Three commenters suggested that the Board permit interlocks between member banks and mutual funds. One of these commenters recommended that the Board use its general rulemaking authority to create such an exemption. Two of these commenters stated that such interlocks should be allowed because the Investment Company Act and other federal banking laws already exist to protect banks, mutual funds, and their customers.

Two commenters suggested that the Board modify its interpretation that mutual funds are primarily engaged in the issuance, underwriting, or distribution of securities. One of these commenters argued that mutual funds are engaged in an investment business and that the offering of shares is an incidental activity. One commenter argued that a mutual fund holds a portfolio of securities and issues pro-rata interests in the pool of underlying securities, but does not engage in underwriting because it does not purchase securities from issuers and resell them to the public.

One commenter also requested that the Board exempt from the prohibitions of section 32 all but directors, policymaking officers, and officers or employees who make investment recommendations or decisions for the accounts of customers.[14]

In response to the Board's request for comment on whether other interpretations of section 32 should be amended, one commenter recommended that the Board rescind 12 CFR 218.107, which extends the prohibitions of section 32 to interlocks between a member bank and an investment adviser of a mutual fund if the adviser was created for the sole purpose of advising a particular fund. This commenter argued that this interpretation may not be consistent with current judicial and administrative positions, since the Board has permitted bank holding companies to act as investment advisers to mutual funds, pursuant to Regulation Y, without prohibiting officer, director, or employee interlocks between the investment adviser and any member bank.

Discussion

After review of the public comments, which raise no substantive issues as to adoption of the proposal, the Board is

[9] As noted in the Board's interpretation, section 32 is directed to the probability or likelihood that a bank director interested in the underwriting business may use his or her influence in the bank to involve it or its customers in securities sold by his or her underwriting house.

[10] The provisions extending the prohibitions of section 32 to nonmember banks and thrifts expired in 1988.

[11] The remaining interpretations of section 32 will be retained in the CFR and transferred to Part 250, which contains miscellaneous Board interpretations.

[12] Comments were received from eight banks and bank holding companies, five trade associations, two individuals, one investment adviser, and one law firm.

[13] This commenter believed that moving and renumbering the interpretations would make finding the interpretations more difficult, particularly where citations are found in past Board orders or other published materials. The Board believes that publication of this final action in the Federal Register and changes to the cross-citations in the interpretations that will remain in the CFR will be sufficient to inform the public of this action.

[14] This commenter also suggested that the Board should delay final action on this proposal until comments relating to Board proposals regarding limitations on so-called section 20 subsidiaries are received so that the Board could act on the portions of both proposals relating to interlocks at the same time.

adopting the changes to Regulation R as they were proposed.[15]

The Board does not believe it is within the scope of the present rulemaking or appropriate without further analysis and rulemaking to permit interlocks between a member bank and a mutual fund, or grant other exemptions from the prohibitions of section 32.

In view of the Board determination to rescind its current interpretation applying the prohibitions of section 32 to bank holding companies, section 32 would no longer bar director, officer, or employee interlocks between a bank holding company and a mutual fund.[16] The Board has been concerned that under certain circumstances interlocks between a bank holding company and a mutual fund could raise issues as to whether the holding company controls the fund in a manner that creates an affiliation with the subsidiary bank in violation of section 20 of the Glass-Steagall Act.[17] The Board is not modifying any of its prior interpretations at this time.[18] To the extent that the Board's prior interpretations do not restrict interlocks between a bank holding company and a mutual fund, bank holding companies should ensure that they do not take any action that would cause them to control a mutual fund under the Board's existing rulings concerning what constitutes control.

Other

It does not appear that it would be appropriate for the Board to follow the suggestion to rescind 12 CFR 218.107. In this interpretation, the Board opined that section 32 prevented interlocks between a member bank and a mutual fund manager that advised, managed and distributed two mutual funds. In addition, two senior officers of the mutual fund manager served as trustees of the funds. These facts, viewed in light of recent Board precedent, would continue to raise an issue as to whether the mutual fund manager noted in 12 CFR 218.107 controlled two mutual funds. Under such circumstances, interlocks between the mutual fund manager and a member bank could be prohibited. Accordingly, the Board will not rescind 12 CFR 218.107 at this time.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 95–354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that adoption of this rule will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

This amendment will remove a regulation and an interpretation that the Board believes are no longer necessary. The amendment does not impose more burdensome requirements on bank holding companies than are currently applicable.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects

12 CFR Part 218

Antitrust, Federal Reserve System, Securities.

12 CFR Part 250

Federal Reserve System.

For the reasons set forth in the preamble, the Board is amending Chapter II of title 12 of the Code of Federal Regulation under the authority of 12 U.S.C. 248 as set forth below:

PART 218—[AMENDED]

§§ 218.101 through 218.113 [Redesignated as §§ 250.400 through 250.412]

1. Sections 218.101 through 218.113 are redesignated as set forth in the following table:

Old section	New section
218.101	250.400
218.102	250.401
218.103	250.402
218.104	250.403
218.105	250.404
218.106	250.405
218.107	250.406
218.108	250.407
218.109	250.408
218.110	250.409
218.111	250.410
218.112	250.411
218.113	250.412

§ 218.114 [Removed]

2. Section 218.114 is removed.

PART 218—[REMOVED]

3. Part 218 is removed.

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 is revised to read as follows:

Authority: 12 U.S.C. 78, 248(i) and 371c(e).

2. A new center heading is added immediately preceding the newly designated § 250.400 to read as follows:

Interpretations of Section 32 of the Glass-Steagall Act

3. Section 250.413 is added to read as follows:

§ 250.413 ''Bank-eligible'' securities activities.

Section 32 of the Glass-Steagall Act (12 U.S.C. 78) prohibits any officer, director, or employee of any corporation or unincorporated association, any partner or employee of any partnership, and any individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, from serving at the same time as an officer, director, or employee of any member bank of the Federal Reserve System. The Board is of the opinion that to the extent that a company, other entity or person is engaged in securities activities that are expressly authorized for a state member bank under section 16 of the Glass-Steagall Act (12 U.S.C. 24(7), 335), the company, other entity or individual is not engaged in the types of activities described in section 32. In addition, a securities broker who is engaged solely in executing orders for the purchase and sale of securities on behalf of others in the open market is not engaged in the business referred to in section 32.

By order of the Board of Governors of the Federal Reserve System, October 30, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–28359 Filed 11–5–96; 8:45 am]

BILLING CODE 6210–01–P

[15] The Board will reserve Part 218 in the CFR in the event that the Board determines in the future to adopt an exemption to section 32.

[16] The Board has not interpreted the prohibitions of section 32 as applying to a nonbanking subsidiary of a bank holding company if the nonbanking subsidiary does not directly or indirectly own shares of a member bank.

[17] The Board has found that the Glass-Steagall Act prohibits affiliates of banks from sponsoring, organizing, or controlling mutual funds or distributing their shares. 12 CFR 225.125. *See, e.g., The Governor and Company of the Bank of Ireland*, 82 Federal Reserve Bulletin __ (Order dated October 21, 1996); *Mellon Bank Corporation*, 79 Federal Reserve Bulletin 626, 630 (1993).

[18] In soliciting public comment on the instant proposal, the Board stated that its action would not affect any of its precedent regarding whether a bank holding company is deemed to control a mutual fund for purposes of section 20 of the Glass-Steagall Act.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

Civil Monetary Penalty Inflation Adjustment

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: Congress, in the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required all federal agencies with the authority to impose civil monetary penalties (CMPs) to regularly evaluate those CMPs to ensure that they continue to maintain their deterrent value. As a result of these acts, the head of each agency is required, by October 23, 1996, and at least once every four years thereafter, to adjust its CMPs for inflation. In order to comply with Congress' mandate, the National Credit Union Administration is issuing this final rule to implement the required adjustments to the CMPs authorized by the Federal Credit Union Act.

EFFECTIVE DATE: November 6, 1996.

FOR FURTHER INFORMATION CONTACT: Allan Meltzer, Associate General Counsel, or Jon Canerday, Trial Attorney, Office of General Counsel, NCUA, 1775 Duke Street, Alexandria, Virginia 22314, or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION: The Debt Collection Improvement Act of 1996 (DCIA) [1] amended the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 [2] (FCMPIA Act) to require every Federal agency to enact regulations that adjust each civil monetary penalties (CMPs) [3] provided by law under its jurisdiction by the rate of inflation pursuant to the inflation adjustment formula in section 5(b) of the FCMPIA Act. Each Federal agency is required to issue these implementing regulations by October 23, 1996, which is 180 days after the date that DCIA was enacted, and at least once every 4 years thereafter. Section 7 of the amended FCMPIA Act specifies that inflation-adjusted CMPs will only apply to violations that occur after October 23, 1996.

The inflation adjustment is based on the percentage increase in the Consumer Price Index (CPI) [4] for the period from June of the calendar year when the CMP was established or last adjusted until June of the calendar year preceding the adjustment. Furthermore, each CMP that has been adjusted for inflation must be rounded to a number prescribed by section 5(a) of the FCMPIA Act.[5] Another provision of the DCIA limits the first adjustment of a CMP to an amount not to exceed 10 percent of the original penalty. The amount of increase in the final regulation would have been more if this limit did not exist.

Section 206(k)(2) of the Federal Credit Union Act (12 U.S.C. 1786(k)(2)) authorizes the National Credit Union Administration (NCUA) to impose three levels or tiers of CMPs upon insured credit unions or institution-affiliated parties. First tier CMPs, 12 U.S.C. 1786(k)(2)(A), may be imposed for the violation of any law or regulation, the violation of certain final orders or temporary orders, the violation of conditions imposed in writing by the NCUA Board, or the violation of any written agreement between the credit union and NCUA. The statute presently provides that first tier CMPs shall not be more than $5,000 for each day the violation continues. After the required adjustment for inflation, the maximum penalty is increased to $5,500 for each day.

Second tier CMPs, 12 U.S.C. 1786(k)(2)(B), are authorized for violations described in first tier CMPs, the reckless engaging in an unsafe or unsound practice in conducting the affairs of a credit union, or the breach of any fiduciary duty, when the violation, practice or breach is part of a pattern of misconduct, or causes or is likely to cause more than a minimal loss to the credit union, or results in pecuniary gain or other benefit. The maximum second tier CMP is currently $25,000 for each day the violation, practice or breach continues. After the required adjustment for inflation, the maximum penalty is increased to $27,500 per day.

Third tier CMPs, 12 U.S.C. 1786(k)(2)(C), may be imposed for any of the acts described in second tier CMPs that cause a substantial loss to the credit union or a substantial pecuniary gain or other benefit. The amount of third tier CMPs depends upon the status of the respondent required to pay the CMP (12 U.S.C. 1786(k)(2)(D)). For a person other than an insured credit union, the current maximum third tier CMP is $1,000,000 for each day the violation, practice or breach continues. For an insured credit union, the current daily maximum CMP is the lesser of $1,000,000 or 1 percent of the total assets of the credit union. The maximum CMP for a person other than an insured credit union will be increased for inflation to $1,100,000 per day. The maximum CMP for an insured credit union will be increased to the lesser of $1,100,000 or 1 percent of the total assets of the credit union.

The NCUA now adopts this final rule which adjusts these three CMPs for the rate of inflation, as required by the DCIA. DCIA provides Federal agencies with no discretion in the adjustment of CMPs for inflation, and it also requires the new regulation to take effect on October 23, 1996. Further, the regulation that the NCUA adopts today to implement DCIA is ministerial and technical. For these reasons, the NCUA finds good cause to determine that public notice and comment for this new regulation is unnecessary, impractical and contrary to the public interest, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(a)(3)(B). These same reasons also provide the NCUA with good cause to adopt an effective date for this regulation that is less than 30 days after the date of publication in the Federal Register. Furthermore, the NCUA determines that pursuant to the requirements of section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, this regulation shall take effect prior to the expiration of the 60-day Congressional waiting period for final NCUA regulatory action due to the Congressionally-mandated effective date of October 23, 1996.

Regulatory Requirements

Regulatory Flexibility Act

The NCUA has determined and certifies that the final rule will not have a significant impact on a substantial number of small credit unions (primarily those under $1,000,000 in assets).

Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the final rule. Consequently, no information has been

[1] Pub. L. 104–134, section 31001(s), 110 Stat. 1321–358, (Apr. 26, 1996). The provision is codified at 28 U.S.C. 2461 *note*.

[2] Pub. L. 101–410, 104 Stat. 890, (Oct. 5, 1990).

[3] Section 3(2) of the amended FCMPIA Act defines a CMP as any penalty, fine, or other sanction that: (1) either is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law; (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

[4] The CPI is published by the Department of Labor, Bureau of Statistics.

[5] For example, an increase that is less than $100 would be rounded to the nearest multiple of $10, and an increase over $100 but less than $1,000 would be rounded to the nearest multiple of $100.

submitted to the Office of Management and Budget for review.

Executive Order 12612

The NCUA Board, pursuant to Executive Order 12612, has determined that this final rule will not have a substantial direct effect 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.

List of Subjects in 12 CFR Part 747

Administrative practice and procedure, Credit unions, Penalties.

By the National Credit Union Administration Board on October 28, 1996.

Becky Baker,

Secretary to the Board.

Accordingly, the NCUA amends 12 CFR part 747 as follows:

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

1. The authority citation for part 747 is revised to read as follows:

Authority: 12 U.S.C. 1766, 1784, 1786, and 1787; 42 U.S.C. 4012a; Pub. L. 101–410, 104 Stat. 890; Pub. L. 104–134, 110 Stat. 1321–358 (28 U.S.C. 2461 note).

2. Part 747 is amended by adding Subpart K consisting of § 747.1001 to read as follows:

Subpart K—Inflation Adjustment of Civil Monetary Penalties

§ 747.1001 Adjustment of civil money penalties by the rate of inflation pursuant to section 31001(s) of the Debt Collection Improvement Act of 1996 (Public Law 104–134, 110 Stat. 1321–358 (28 U.S.C. 2461 note)).

(a) A first tier civil money penalty imposed pursuant to 12 U.S.C. 1786(k)(2)(A), for a violation occurring after October 23, 1996, shall not exceed $5,500 per day for each day the violation continues.

(b) A second tier civil money penalty imposed pursuant to 12 U.S.C. 1786(k)(2)(B), for a violation, practice or breach occurring after October 23, 1996, shall not exceed $27,500 per day for each day the violation, practice or breach continues.

(c) A third tier civil money penalty imposed pursuant to 12 U.S.C. 1786(k)(2)(C) upon any person other than an insured credit union, for a violation, practice or breach occurring after October 23, 1996, shall not exceed $1,100,000 per day for each day the violation, practice or breach continues.

(d) A third tier civil money penalty imposed pursuant to 12 U.S.C. 1786(k)(2)(C) upon an insured credit union, for a violation, practice or breach occurring after October 23, 1996, shall not exceed the lesser of—

(1) $1,100,000 per day for each day the violation, practice or breach continues; or

(2) 1 percent of the total assets of such credit union for each day the violation, practice or breach continues.

[FR Doc. 96–28189 Filed 11–5–96; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

RIN 2120–AA64

[Docket No. 94–NM–226–AD; Amendment 39–9790; AD 96–22–01]

Airworthiness Directives; Boeing Model 747–200, –300, and –400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–200, –300, and –400 series airplanes, that requires modification of the left and right inboard elevator servo assemblies and the hydraulic routing of the right inboard elevator power control package (PCP). This amendment is prompted by a report of an uncommanded right elevator deflection after takeoff and reports of elevator/control column bumps during landing gear retraction on these airplanes. The actions specified by this AD are intended to prevent uncommanded elevator deflection, which could result in structural damage and reduced controllability of the airplane.

DATES: Effective December 6, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 6, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207; and Parker Hannifin Corporation, Customer Support Operations, 16666 Von Karman Avenue, Irvine, California 92714. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1760; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published as a supplemental Notice of Proposed Rulemaking (NPRM) in the Federal Register on December 11, 1995 (60 FR 63465). That action proposed to require modification of the left and right inboard elevator servo assemblies and the hydraulic routing of the right inboard elevator power control package (PCP).

Comments

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

Requests To Extend the Compliance Time for Hydraulic Tubing Modification

Two commenters request that the compliance time for accomplishing the proposed modification of the hydraulic tubing of the right inboard elevator PCP be extended from the proposed 1 year to 18 months. The commenters state that such an extension will allow the modification to be accomplished during a regularly scheduled ''C'' or ''D'' check, and thereby eliminate any additional expenses that would be associated with special scheduling.

One of these commenters notes that it had submitted an identical request to the FAA during the comment period for the original NPRM, but the FAA denied this request, in part, because it ''determined that a heavy maintenance visit is not required to accomplish the modification.'' The commenter states that the proposed modification requires draining and purging of the stabilizer fuel tank, which is not an activity suited for a line or field maintenance environment. Additionally, access to remove the elevator actuator and modify the hydraulic tubing on the stabilizer aft spar would be difficult to accomplish during line maintenance or at a field maintenance facility.

The FAA does not concur with the commenters' request to extend the compliance time. The FAA agrees that, due to the complexity of the modification, it should be performed at a facility where special equipment and trained maintenance personnel will be available, if necessary. However, the FAA points out that the compliance time of one year was developed in consideration of not only the degree of urgency associated with addressing the unsafe condition, but such factors as the manufacturer's recommendations, the availability of required parts, and the practical aspect of installing the required modification within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. In consideration of all of these factors, and in consideration of the amount of time that has already elapsed since issuance of the original NPRM, the FAA has determined that further delay of this modification is not appropriate.

However, under the provisions of paragraph (c) of the final rule, the FAA may approve requests for adjustments to the compliance time if sufficient data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Requests To Extend the Compliance Time for Servo Assembly Modification

Several commenters request that the compliance time for accomplishing the proposed modification of the left and right servo assemblies of the inboard elevator PCP be extended from the proposed 3 years to 5 years or, preferably, to 7 years. Some of these commenters contend that, due to the complexity and proprietary technology used to manufacture the servo valve, Parker (the original equipment manufacturer/supplier of the assemblies) is the only facility that is qualified to perform the rework and retrofit that would be required by the proposed modification. These commenters state that Parker's current facility would be unable to support modification of the affected fleet within the proposed 3-year compliance time; therefore, additional time will be necessary for compliance. One commenter contends that, even if other maintenance facilities are available to accomplish the modification, a sufficient inventory of parts to support multiple repair facilities does not currently exist.

The FAA does not concur. In developing an appropriate compliance time for this modification, the FAA specifically considered the availability of required parts as well as the process necessary for modifying the affected fleet in an orderly and timely manner. The FAA maintains that other facilities will be able to support maintenance of the PCP's, even if the spool valve units must be modified only by Parker. In consideration of all of these items (as well as the revision to the applicability of this requirement, as explained below), the FAA finds that a compliance time of 3 years for this modification is appropriate. However, under the provisions of paragraph (c) of the final rule, the FAA may approve requests for adjustment of the compliance time if sufficient data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Requests To Reconsider Limiting the Applicability of Servo Assembly Modification

Several commenters request that the applicability of proposed paragraph (b) (which would require the modification of the left and right servo assemblies of the inboard elevator PCP) be limited to only Model 747–200 and –300 series airplanes having cumulative line number (C/L) 696 and subsequent. These commenters request that airplanes having C/L 001 through 695 (which are commonly referred to as ''classic'' models) and Model 747–400 series airplanes, be exempt from this requirement. These commenters bring up three reasons to justify this request.

1. No history of service actuator assembly failures on ''classic'' models. Several commenters state that the servo assembly modification is unjustified for ''classic'' model airplanes because the entire Model 747 fleet has accumulated over 87 million flight hours, during which time, there have been no reports of uncommanded elevator movement on the ''classic'' model airplanes. These commenters point out that they submitted an identical request to the FAA during the comment period for the original NPRM, but, again, the FAA denied the request. As part of the reason for its denial, the FAA indicated that only a small percentage of airplanes are equipped with a flight data recorder that records the position of the elevator; therefore, if an operator elects to record only the control column position and an uncommanded elevator motion occurred, the incident may not be recorded, due to the flight crew's inability to confirm the anomaly. However, several of the commenters point out the flight crew can quickly ascertain the cause of a sudden pitching moment, since the elevator position is indicated on the flight deck for the flightcrew to see. Another commenter states that, even if operators have elected not to record the control surface position, it still does not negate the fact that there have been over 87 million flight hours of safe flight of the Model 747 fleet on which the proposed modification has not been installed. Therefore, the commenters request that, when determining whether the current servo configuration is safe, the FAA should also consider this long history of absence of reports of uncommanded elevator motion.

2. Potential structural damage concerns on Model 747–100, –100B SUD, –200, –300, SR, and SP series airplanes up to and including C/L 695. One commenter points out that it submitted a similar request, along with a justifying probability analysis, to the original NPRM. That analysis was conducted to demonstrate that the aft fuselage structural limit load cannot be exceeded for the ''classic'' model airplanes for any valve jam in any portion of the flight envelope. As a result of that analysis, the commenter states that the probability of exceeding the structural limit of the aft fuselage on these airplanes is less than 1×10^{-9}. The FAA did not concur with that request, and indicated that the analysis was based ''on a sampling that was much too small from which accurate statistical conclusions could be drawn that would be representative of the fleet.'' The commenter states that this FAA statement and others in the Discussion section of the preamble to the supplemental NPRM indicate that clarification is necessary. The commenter notes that the structural and systems configurations of ''classic'' model airplanes are such that, the maximum capability of the hydraulic system cannot induce a valve pressure on that airplane that exceeds structural limit loading; this point does not rely on the statistical sampling presented for the net valve differential pressure. The commenter maintains that the key point of the analysis it submitted previously is that only Model 747–200 and –300 series airplanes having C/L 696 and subsequent require the retrofit for potential structural damage concerns.

3. Hydraulic tube change eliminates the possibility of high pressure spike for Model 747–400 series airplanes. Several commenters request that Model 747–400 series airplanes be removed from the applicability of proposed paragraph (b) and not be subject to the servo modification requirement. One commenter states that a high pressure spike in hydraulic system 4 was identified as the source of the valve movement that caused the initial incident on which this AD action is based; the commenter maintains that the

hydraulic tubing modification required by proposed paragraph (a) of the AD will remove the possibility of such high pressure spikes. Therefore, the servo assembly modification would be unnecessary. Two commenters present test results and analyses defending this position.

Certain commenters submitted a similar request, along with analysis of data, to the original NPRM, but note that the FAA denied it. As reason for its denial, the FAA concluded that the data submitted ''do not substantiate * * * that routing the hydraulic system 3 to the sensitive side of the servo valve would preclude uncommanded elevator deflection.'' One of the commenters believes that the FAA drew these conclusions based on hydraulic pressure data for only one Model 747–400 airplane; the commenter contends that such data are too small for the FAA to draw accurate conclusions. In light of this, the commenters request that the proposed modification of the servo assembly be deleted until the FAA conducts further studies of hydraulic systems 3 and 4 pressure fluctuations on affected airplanes.

The FAA has reconsidered its previous position and partially concurs with the commenters' request. However, a clarification of certain points associated with the data that were submitted by these commenters in support of their initial request must first be addressed.

As for Item 1, indicated above, the FAA has considered the absence of reports of uncommanded elevator motion, as brought up by these commenters. The FAA finds that an absence of reports may be due to the fact that a flight data recorder is not installed on all airplanes that records the elevator surface movement. However, the FAA agrees with the commenters that the recording of the elevator time history is not the sole determination in the reporting of an event. The FAA also agrees with the commenters that the occurrence of uncommanded elevator movement would most likely be quickly ascertained by the flight crew. However, the FAA still maintains that the ability to confirm the anomaly may not exist.

As for Item 2, indicated above, the FAA has re-reviewed the probability analysis that Boeing submitted. Based on Boeing's clarification of the previously submitted data, the FAA has determined that the ''classic'' model airplanes should not be subject to the modification of the servo assembly. The FAA has determined that the ''classic'' model airplanes have sufficient structural strength to sustain a potential valve jam in the elevator PCP. Based on the configuration and loading of the ''classic'' model airplanes, the limit load cannot be exceeded with this type of valve jam. While the possibility of degradation in the controllability of these airplanes still exists, it is extremely improbable.

In addition, the FAA has determined that Model 747–200 and –300 series airplanes having C/L 696 and subsequent, are subject to the requirements of paragraph (b) of the AD. The FAA bases this determination on the fact that the limit load capability of the Model 747–200 and –300 series airplanes having C/L 696 and subsequent, commonly referred to as ''common tail classic'' model airplanes, is similar to that of the ''classic'' model airplanes, but have a similar control configuration as that of Model 747–400 series airplanes. Due to the changes made in the configuration of the ''common tail classic'' model airplanes, uncommanded elevator motion could cause structural loading on these airplanes, which could result in structural damage and reduced controllability of the airplane.

As for Item 3, indicated above, Boeing has conducted further testing, since issuance of the supplemental NPRM. The FAA has reviewed the results of this testing. The FAA has determined that the data presented do not adequately support that the high pressure spike in the hydraulic system 4 is the only potential cause of a secondary slide jam; or a pressure fluctuation will not occur in the hydraulic system 3, which could lead to a potential uncommanded valve movement.

In addition, the FAA has re-reviewed the data submitted by the commenters and maintains that:

- The analysis is based on a sampling size that is too small from which accurate statistical conclusions can be drawn that would be representative of the fleet.
- The variability in the data and the tests for normality indicate that the data depart from the mean.
- Due to the sampling size of the data, a strong argument supporting normality cannot be inferred.
- The flow rate and differential pressures used by the commenters in the analysis were not substantiated to be the worst case scenario.
- Uncommanded elevator motion may occur on all Model 747 series airplanes if the servo valve secondary slide moves to the valve's internal stop, regardless of hydraulic system routing.

Therefore, the FAA finds that accomplishment of the hydraulic tubing modification alone, as required by paragraph (a) of the AD, does not adequately eliminate the possibility of crossflow in the servo valve on Model 747–400 series airplanes. The FAA acknowledges the possibility that uncommanded valve motion may be reduced following the installation of the hydraulic tubing modification on Model 747–400 series airplanes. However, the FAA finds that the data presented, as well as service history, do not adequately demonstrate that uncommanded motion is the only potential cause of a secondary slide jam, or that a pressure fluctuation will not occur in hydraulic system 3 and lead to uncommanded movement of the valves.

In light of the all of factors discussed above and the review of all of the data submitted, the FAA has determined that the servo assembly modification is warranted only for:

1. Model 747–200 and –300 series airplanes having C/L 696 and subsequent (the ''common tail classic'' model airplanes) and
2. The Model 747–400 series airplanes.

The applicability of the final rule and of paragraph (b) have been revised accordingly.

In addition, the FAA has revised the cost impact information, below, to indicate that the number of airplanes affected by this final rule has been reduced.

Request To Require Only Certain Type of Testing

One commenter requests that paragraph (b) of the proposed AD be revised to require that the servo valve be tested only for the crossflow neutralization improvement feature in accordance with Parker Service Bulletins 93600–27–173 and 327400–27–171. The commenter states that certain specific tests that are called out in the service bulletins, such as the PCU dielectric test and eight-hour duty cycle test, are unrelated to the subject of the crossflow neutralization improvement. The commenter considers that revising the proposal as requested will eliminate redundant and unnecessary testing when reworking the PCP. The commenter contends that accomplishment of many of the tests in accordance with the subject service bulletins will not appreciably affect the flightworthy status of the PCP, as related to the crossflow enhancement, but will appreciably increase the cost of performing maintenance on the PCP. The commenter also requests that FAA allow operators to test the main manifold and assembled PCP's in

accordance with existing approved procedures.

The FAA does not concur with the commenter's requests. The FAA has reviewed and approved all of the procedures specified in the Parker service bulletins that are referenced in paragraph (b) of the AD as the appropriate source of service information. The FAA has determined that accomplishment of the modification, including the various follow-on testing, in accordance with these service bulletins will prevent blockage of the hydraulic balance passageway by the spring guide, which can contribute to the uncommanded motion of the PCP. The FAA points out that some of the tests identified in the subject service bulletins are optional.

Requests To Revise the Cost Impact Statement

Several commenters question the FAA's cost estimate presented in the preamble to the supplemental NPRM. These commenters consider the cost estimate to be significantly understated. Some commenters point out that the cost of a serviceable elevator PCP will be far greater than the FAA's estimated cost of $5,910 per unit. One of these commenters states that a serviceable elevator PCP costs $23,633; another commenter states that the cost is closer to $45,500.

Additionally, some of the commenters note that, since many of the affected inboard elevator PCP's are older units, they may need additional rework or overhaul if they do not pass their respective acceptance tests. However, the FAA's cost estimate did not take these costs into consideration. In addition, one of these commenters states that the FAA's estimates failed to address the cost to modify spare units.

The FAA finds that clarification of the costs associated with the requirements of this AD is necessary. The FAA points out that the economic analysis of the AD is usually limited only to the cost of actions actually required by the rule. It does not consider the costs of ''on condition'' actions (e.g., ''repair if a unit fails the functional test''), since those actions would be required to be accomplished, regardless of AD direction, in order to correct an unsafe condition identified in an airplane, and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations.

The AD's cost estimate also does not consider the costs of ''spare parts,'' since part 39 (''Airworthiness Directives'') of the Federal Aviation Regulations (14 CFR part 39) does not permit AD's to address parts or components that are not installed on an airplane (''a product''). Therefore, the FAA cannot require via an AD that operators modify a ''spare part;'' an AD can only require that the part be modified before it is installed on an affected airplane.

In addition, the FAA points out that many operators have their own shop facilities in which to disassemble the PCP and accomplish the PCP overhaul/modification; for these operators, the costs associated with those actions may be far less than estimated by the FAA.

As for the exact cost of required parts, the FAA has verified with the manufacturer that the parts costs that was presented in the cost impact information in the preamble to the supplemental NPRM, and reiterated below, are valid.

FAA's Conclusions

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

Cost Impact

There are approximately 30 Model 747–200 and –300 series airplanes; and 332 Model 747–400 series airplanes; of the affected design in the worldwide fleet (362 airplanes total).

There currently are no Boeing Model 747–200 and –300 series airplanes on the U.S. Register that are subject to the requirements of this AD. All of the affected airplanes of those models that are included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that inclusion of these airplanes in the rule is necessary to ensure that the unsafe condition is addressed in the event that any of these airplanes are imported and placed on the U.S. Register in the future.

Should any affected Model 747–200 and –300 series airplanes be imported and placed on the U.S. Register in the future, it would take approximately 73 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $7,440 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $11,820 per airplane.

The FAA estimates that 65 Model 747–400 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 111 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $12,269 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of Model 747–400 series airplanes is estimated to be $1,230,385, or $18,929 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–22–01 Boeing: Amendment 39–9790. Docket 94–NM–226–AD.

Applicability: Model 747–200, –300, and –400 series airplanes having cumulative line number (C/L) 696 through 1057, inclusive; equipped with Parker inboard elevator power control packages (PCP) having part numbers (P/N) 93600–5005 through –5051 inclusive, or P/N's 327400–1001, –1003, –1005, and –1007; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded elevator deflection, which could result in structural damage and reduced controllability of the airplane, accomplish the following:

(a) For Model 747–400 series airplanes, as listed in Boeing Alert Service Bulletin 747–27A2348, Revision 1, dated January 26, 1995: Within 1 year after the effective date of this AD, modify the hydraulic tubing of the right inboard elevator PCP, in accordance with Boeing Alert Service Bulletin 747–27A2348, Revision 1, dated January 26, 1995.

(b) For all airplanes: Within 3 years after the effective date of this AD, modify the left and right servo assemblies of the inboard elevator PCP, in accordance with Parker Service Bulletin 327400–27–171, Revision 1, dated April 14, 1995, or Parker Service Bulletin 93600–27–173, dated May 17, 1995, as applicable.

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

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

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

(e) The modifications shall be done in accordance with Boeing Alert Service Bulletin 747–27A2348, Revision 1, dated January 26, 1995; Parker Service Bulletin 327400–27–171, Revision 1, dated April 14, 1995; and Parker Service Bulletin 93600–27–173, dated May 17, 1995; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207; and Parker Hannifin Corporation, Customer Support Operations, 16666 Von Karman Avenue, Irvine, California 92714. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 6, 1996.

Issued in Renton, Washington, on October 15, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–26952 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–167–AD; Amendment 39–9792; AD 96–22–03]

RIN 2120–AA64

Airworthiness Directives; Beech (Raytheon) Model BAe 125 Series 1000A and Model Hawker 1000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech (Raytheon) Model BAe series 1000A and Model Hawker 1000 airplanes, that requires modifications of the thrust reversers. This amendment is prompted by a review of the certification analysis of the thrust reversers and by testing of the thrust reversers, which indicated that additional design features are necessary to prevent failure of the driver link and the inadvertent deployment of a thrust reverser during flight. The actions specified by this AD are intended to prevent inadvertent deployment of a thrust reverser during flight, which could result in reduced controllability of the airplane.

DATES: Effective December 11, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 11, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Beech (Raytheon) Model BAe series 1000A and Model Hawker 1000 airplanes was published in the Federal Register on August 9, 1996 (61 FR 41537). That action proposed to require modifications of the thrust reversers.

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

Conclusion

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

Cost Impact

The FAA estimates that 23 Beech (Raytheon) Model BAe series 100A and Model Hawker 1000 airplanes of U.S. registry will be affected by this AD, that it will take approximately 110 work hours per airplane (excluding time to gain access and functional testing) to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $151,800, or $6,600 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–22–03 Beech Aircraft Corporation (Formerly deHavilland; Hawker Siddeley; British Aerospace, plc; Raytheon Corporate Jets, Inc.): Amendment 39–9792. Docket 95–NM–167–AD.

Applicability: Model BAe series 1000A and Model Hawker 1000 airplanes; as identified in Hawker Service Bulletin SB.78–14–3691A, B&E, dated June 21, 1995; certificated in any category.

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

Note 2: Beech (Raytheon) Model BAe 125 series 1000B airplanes are similar in design to the airplanes that are subject to the requirements of this AD and, therefore, also may be subject to the unsafe condition addressed by this AD. However, as of the effective date of this AD, those models are not type certificated for operation in the United States. Airworthiness authorities of countries in which the Model BAe 125 series 1000B airplanes are approved for operation should consider adopting corrective action, applicable to those models, that is similar to the corrective action required by this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the thrust reversers by accomplishing Modifications 253691 Part A, Part B, and Part E, in accordance with Hawker Service Bulletin SB.78–14–3691A, B&E, dated June 21, 1995.

Note 3: The Hawker service bulletin references Rohr Service Bulletin PW300 78–8, dated June 21, 1995, as an additional source of service information for accomplishment of Modification 253691 Part E.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) The modifications shall be done in accordance with Hawker Service Bulletin SB.78–14–3691 A,B&E, dated June 21, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 11, 1996.

Issued in Renton, Washington, on October 15, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–26953 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–139–AD; Amendment 39–9791; AD 96–22–02]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model BAe ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model BAe ATP airplanes, that requires repetitive inspections of the ram air inlet ducts for structural integrity and security of fasteners, and repairs, if necessary. This amendment also provides an optional terminating modification for the repetitive inspections. This amendment is prompted by a report of the separation of a ram air inlet duct from the airplane during flight. The actions specified by this AD are intended to prevent such separation, which could pose a hazard to persons or property on the ground.

DATES: Effective December 11, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 11, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer,

Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Jetstream Model BAe ATP airplanes was published in the Federal Register on August 12, 1996 (61 FR 41757). That action proposed to require the inspection of the airplane's left and right ram air inlet ducts to determine whether the duct base plate flange has delaminated and the screws fastening these ducts have pulled through the duct base plate; and would require repair, if necessary. The action also proposed to require repetitive inspections and repairs, if necessary, unless an optional terminating action is performed.

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

Conclusion

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

Cost Impact

The FAA estimates that 10 Jetstream Model BAe ATP airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $600 per inspection, or $60 per airplane, per inspection.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–22–02 Jetstream Aircraft, Ltd. (Formerly British Aerospace Commercial Aircraft, Limited): Amendment 39–9791. Docket 96–NM–139–AD.

Applicability: Model Model BAe ATP airplanes having constructor numbers 2002 through 2063 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the separation of the ram air inlet duct from the airplane, accomplish the following:

(a) Prior to the accumulation of 50 flight hours after the effective date of this AD, inspect the left and right ram air inlet ducts to determine whether the duct base plate flange has delaminated and the screws fastening the duct have pulled through the duct base plate, in accordance with Jetstream BAe ATP Service Bulletin ATP–21–36, dated January 3, 1996.

(1) If no discrepancy is detected, repeat the inspection thereafter at intervals not to exceed 250 flight hours.

(2) If any discrepancy is detected, prior to further flight, repair in accordance with the service bulletin. Thereafter, repeat the inspection at intervals not to exceed 250 flight hours.

(b) Accomplishment of the modification of the ram air inlet ducts in accordance with Jetstream BAe ATP Service Bulletin ATP–21–37, dated January 23, 1996, constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(e) The inspections and repair shall be done in accordance with Jetstream BAe ATP Service Bulletin ATP–21–36, dated January 3, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 11, 1996.

Issued in Renton, Washington, on October 15, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–26954 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–213–AD; Amendment 39–9793; AD 96–22–04]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model Avro 146–RJ70A, –RJ85A, and –RJ100A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model Avro 146–RJ70A, –RJ85A, and –RJ100A airplanes, that requires repetitive inspections for cracking of fuselage frame 29, and repair, if necessary. This amendment is prompted by results of fatigue testing, which revealed fatigue cracking in the web and inboard flange of frame 29. The actions specified by this AD are intended to prevent reduced structural integrity of the fuselage due to fatigue cracking in frame 29.

DATES: Effective December 11, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 11, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft Limited, Avro International Aerospace Division, Customer Support, Woodford Aerodrome, Woodford, Cheshire SK7 1QR, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model Avro 146–RJ70A, –RJ85A, and –RJ100A airplanes was published in the Federal Register on August 7, 1996 (61 FR 41037). That action proposed to require repetitive visual inspections to detect cracking of the fuselage at frame 29.

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

Conclusion

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

Cost Impact

The FAA estimates that 11 British Aerospace Model Avro 146–4J70A, –RJ85A, and –RJ100A airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $5,940, or $540 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–22–04 British Aerospace: Amendment 39–9793. Docket 95–NM–213–AD.

Applicability: Model Avro 146–RJ70A, –RJ85A, and –RJ100A airplanes; as listed in Avro International Aerospace Inspection Service Bulletin S.B. 53–131, dated March 29, 1995; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage of the airplane due to fatigue cracking in frame 29, accomplish the following:

(a) Perform a detailed visual inspection for cracking of frame 29 between stringers 12 and 18 on the left and right side of the fuselage, in accordance with Avro International Aerospace Inspection Service Bulletin S.B. 53–131, dated March 29, 1995. If the polymer coating on frame 29 prevents a detailed visual inspection, perform a surface eddy current inspection for cracking in accordance with the service bulletin. Perform the inspections at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For Model Avro 146–RJ100A airplanes on which British Aerospace Modification HCM01411A, HCM01411B, or HCM01411C has not been accomplished: Perform the inspection within 6 months after the effective date of this AD, or prior to the accumulation of 12,000 total landings, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 4,000 landings.

(2) For Model Avro 146–RJ70A and –RJ85A airplanes on which British Aerospace

Modification HCM01411A or HCM01411C has not been accomplished: Perform the inspection within 6 months after the effective date of this AD, or prior to the accumulation of 24,000 total landings, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 4,000 landings.

(3) For Model Avro 146–RJ100A airplanes on which British Aerospace Modification HCM01411C has been accomplished, but on which British Aerospace Modification HCM01411A or HCM01411B has not been accomplished: Perform the inspection within 6 months after the effective date of this AD, or prior to the accumulation of 68,000 total landings, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 4,000 landings.

(b) If any cracking is found during any inspection required by paragraph (a) of this AD: Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) Accomplishment of the modification of each affected bolt position in accordance with Avro International Aerospace Inspection Service Bulletin S.B. 53–131, dated March 29, 1995, prior to the embodiment times shown in Table 'A' of that service bulletin, constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

Note 2: Avro Repair Instruction Leaflet (RIL) HC536H9168 provides detailed instructions for modification of all bolt positions in the affected areas of frame 29.

(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, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(f) The inspection and modification shall be done in accordance with Avro International Aerospace Inspection Service Bulletin S.B. 53–131, dated March 29, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft Limited, Avro International Aerospace Division, Customer Support, Woodford Aerodrome, Woodford, Cheshire SK7 1QR, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 11, 1996.

Issued in Renton, Washington, on October 15, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–26955 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–251–AD; Amendment 39–9794; AD 96–22–05]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes, and Model Avro 146–RJ70A, –RJ85A, and RJ–100A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes, that requires a one-time inspection of terminal block ''D'' to ensure that a two-way link is installed, and installation of a new link, if necessary. This amendment is prompted by a report indicating that a two-way link that should be installed on direct current (DC) panel No. 1 may be missing from certain airplanes. The actions specified by this AD are intended to ensure that a two-way link is installed. If the link is not installed, it could result in loss of the emergency electrical system and, consequently, increased pilot workload and possible reduced controllability of the airplane.

DATES: Effective December 11, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 11, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft Limited, Avro International Aerospace Division, Customer Support, Woodford Aerodrome, Woodford, Cheshire SK7 1QR, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes was published in the Federal Register on August 9, 1996 (61 FR 41539). That action proposed to require a one-time visual inspection of terminal block ''D'' on DC panel No. 1 to ensure that a two-way link is installed between terminals ''D8'' and ''D9,'' and installation of a new link, if necessary.

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

Conclusion

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

Cost Impact

The FAA estimates that 10 British Aerospace Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $600, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–22–05 British Aerospace: Amendment 39–9794. Docket 95–NM–251–AD.

Applicability: Model BAe 146–100A, –200A, and–300A series airplanes and Model Avro 146–RJ70A, –RJ85A, and RJ–100A airplanes equipped with a dual lead-acid battery installation (British Aerospace Modification HCM40028B or D) accomplished during production or in accordance with British Aerospace Modification Service Bulletin 24–45–40028D; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the emergency electrical system, and consequent increased pilot workload and possible reduced controllability of the airplane due to insufficient capacity of the No. 2 battery to power the electrical system; accomplish the following:

(a) Within 3 months after the effective date of this AD: Perform a one-time visual inspection of terminal block ''D'' on DC panel No. 1 to ensure that a two-way link is installed between terminals ''D'' and ''D9,'' in accordance with Avro International Aerospace Inspection Service Bulletin S.B. 24–107, dated January 25, 1995.

(1) If a two-way link is installed, no further action is required by this AD.

(2) If no two-way link is installed, prior to further flight, install a new two-way link having part number S3403–102 on terminals ''D8'' and ''D9'' on terminal block ''D'' on DC panel No. 1 in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(d) The inspection and installation shall be done in accordance with Avro International Aerospace Inspection Service Bulletin S.B. 24–107, dated January 25, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft Limited, Avro International Aerospace Division, Customer Support, Woodford Aerodrome, Woodford, Cheshire SK7 1QR, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 11, 1996.

Issued in Renton, Washington, on October 15, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–26956 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–68–AD; Amendment 39–9796; AD 96–22–07]

RIN 2120–AA64

Airworthiness Directives; Jetstream Model 4100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Jetstream Model 4100 series airplanes, that requires replacement of the existing decompression panel on the aft bulkhead of the toilet compartment with a modified decompression panel. This amendment is prompted by a report that a decompression panel that does not meet flammability requirements was installed on these airplanes during manufacture. The actions specified by this AD are intended to prevent injury to the crew and passengers and damage to the airplane structure due to the incapability of the decompression panel to contain a fire.

DATES: Effective December 11, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 11, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft Limited, Customer Support Department, Prestwick International Airport, Ayrshire KA9 2RW, Scotland. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Jetstream Model 4100 series airplanes was published in the Federal Register on August 7, 1996 (61 FR 41039). That action proposed to require replacement of the existing decompression panel on the aft bulkhead of the toilet

compartment with a modified decompression panel.

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

The commenter supports the proposed rule.

Conclusion

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

Cost Impact

The FAA estimates that 17 Jetstream Model 4100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,120, or $360 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–22–07 Jetstream: Amendment 39–9796. Docket 96–NM–68–AD.

Applicability: Model 4100 series airplanes; constructors numbers 41004 through 41017 inclusive, and 41019 through 41033 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent injury to the crew and passengers and damage to the airplane structure due to the incapability of the decompression panel to contain a fire, accomplish the following:

(a) Within 60 days after the effective date of this AD, replace the existing decompression panel on the aft bulkhead of the toilet compartment with a modified decompression panel, in accordance with Jetstream Service Bulletin J41–25–068, dated November 9, 1995.

(b) As of the effective date of this AD, no person shall install a decompression panel having part number 04125106–403 on the bulkhead assembly of any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(e) The replacement shall be done in accordance with Jetstream Service Bulletin J41–25–068, dated November 9, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft Limited, Customer Support Department, Prestwick International Airport, Ayrshire KA9 2RW, Scotland. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 11, 1996.

Issued in Renton, Washington, on October 17, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–27240 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–24–AD; Amendment 39–9795; AD 96–22–06]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–15 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10–15 airplanes, that requires, among other things, inspections to detect discrepancies at various locations of pylons 1 and 3, and correction of any discrepancy found. This amendment is prompted by a report of internal structural damage to the wing engine pylon that occurred during maintenance of a Model DC–10 series airplane. The actions specified by this AD are intended to ensure the integrity of the structure and attachment of the wing engine pylon.

DATES: Effective December 11, 1996.

The incorporation by reference of certain publications listed in the

regulations is approved by the Director of the Federal Register as of December 11, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5224; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–10–15 airplanes was published in the Federal Register on June 19, 1996 (61 FR 31059). That action proposed to require:

1. At each pylon removal and installation, the engine and pylon must be removed and installed separately, and the pylon aft bulkhead lug must be protected from contact with certain attach bolt heads.

2. Performance of various repetitive inspections to detect discrepancies at various locations of pylons 1 and 3, and correction of any discrepancy found.

3. Submission of a pylon maintenance program that includes specific repetitive inspections at intervals of 20,000 hours time-in-service.

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

The commenter supports the proposed rule.

Conclusion

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

Cost Impact

There are approximately 7 McDonnell Douglas Model DC–10–15 airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 22 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,640, or $1,320 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–22–06 McDonnell Douglas: Amendment 39–9795. Docket 96–NM–24–AD.

Applicability: All Model DC–10–15 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (k) 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 ensure the integrity of the structure and attachment of the wing engine pylon, accomplish the following:

(a) At each pylon removal and installation that is accomplished after the effective date of this AD: The engine and pylon shall be removed and installed separately, unless such removal or installation, or both, as an assembly is accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) At each pylon removal and installation that is accomplished after the effective date of this AD: Protect the pylon aft bulkhead lug from contact with the clevis-to-wing attach bolt heads using part number (P/N) DZZ7268–1 in accordance with page 417, dated January 1, 1982, and page 427, dated May 1, 1985, of Chapter 54–00–01 of the McDonnell Douglas DC–10 Maintenance Manual.

(c) Prior to further flight following any pylon reinstallation that is accomplished after the effective date of this AD: Accomplish the requirements of paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Perform an inspection of the aft pylon bulkhead to detect cracking, in accordance with page 634, dated December 1, 1979, and page 634A, dated August 1, 1990, of Chapter 54–10–11 of the McDonnell Douglas DC–10 Nondestructive Testing Manual.

(2) Perform a visual inspection of the pylon aft spherical bearing and attaching hardware to verify the security of the nut and bolt.

(3) Perform a visual inspection of the torque stripe for proper alignment.

(d) Perform the inspections required by paragraph (e) of this AD at the later of the times specified in paragraphs (d)(1) and (d)(2) of this AD. Thereafter, repeat these inspections at intervals not to exceed 3,600 hours time-in-service or 12 months, whichever occurs later.

(1) Prior to the accumulation of 3,600 total hours time-in-service.

(2) Within 3,600 hours time-in-service or 12 months after the effective date of this AD, whichever occurs later.

(e) Perform the inspections required by paragraphs (e)(1) through (e)(5) of this AD at the times indicated in paragraph (d) of this AD.

(1) Perform a visual inspection to detect cracking of the external surfaces of the thrust link forward (pylon) and aft (wing) attachment lugs, in accordance with paragraph 2.C.(1) of McDonnell Douglas DC–10 Service Bulletin 54–74, dated December 21, 1979.

(2) Perform a visual inspection to detect discrepancies of the upper surface of the pylon upper spar aft of station Yn=342.864, in accordance with paragraph 2.G. of McDonnell Douglas DC–10 Service Bulletin 54–74, dated December 21, 1979.

(3) Perform a visual inspection to detect discrepancies of the center and lower (firewall) spar and spar cap angles from the aft bulkhead to the forward bulkhead, in accordance with paragraph 2.M. of McDonnell Douglas DC–10 Service Bulletin 54–74, dated December 21, 1979.

(4) Perform an inspection for discrepancies at the various locations of the wing and tail specified on pages 601, 602, 602A, 604, 605, 606, and 608, all dated November 1, 1986; page 603, dated May 1, 1986; and pages 604A and 607, dated May 1, 1987; of Chapter 05–51–08 of the McDonnell Douglas DC–10 Maintenance Manual. Accomplish the inspections in accordance with the procedures specified on those pages of the McDonnell Douglas DC–10 Maintenance Manual.

(5) Perform a visual inspection of the pylon aft spherical bearing and attaching hardware to verify the security of the nut and bolt, and inspect the torque stripe for alignment.

(f) Within 30 days after the effective date of this AD: Submit a pylon maintenance program, as an amendment to the maintenance program, to the assigned FAA Principal Maintenance Inspector for approval. The pylon maintenance program shall specify that, prior to the accumulation of 20,000 total hours time-in-service, or within 20,000 hours time-in-service since the last inspection, whichever occurs later, the operator will accomplish, as a minimum, the actions specified in paragraphs (f)(1)through (f)(9) of this AD.

(1) Perform a visual inspection to detect cracking of the pylon aft bulkhead, in accordance with paragraphs 2.E. and 2.F. of McDonnell Douglas DC–10 Service Bulletin 54–74, dated December 21, 1979; and an eddy current inspection to detect cracking of the pylon aft bulkhead, in accordance with page 634, dated December 1, 1979, and page 634A, dated August 1, 1990, of Chapter 54–10–11 of the McDonnell Douglas DC–10 Nondestructive Testing Manual.

(2) Perform a visual inspection to detect discrepancies of the front spar bulkhead, in accordance with paragraph 2.H. of McDonnell Douglas DC–10 Service Bulletin 54–74, dated December 21, 1979.

(3) Perform a visual inspection to detect cracking of the attachment fitting-to-pylon forward bulkhead (footstool) of the wing front spar; perform a detailed visual inspection to detect cracking, and loose or missing fasteners, of the wing pylon attachment; and verify that the pre-load indicating (PLI) washers cannot be rotated; in accordance with paragraph 2.L. of McDonnell Douglas DC–10 Service Bulletin 54–74, dated December 21, 1979.

(4) Perform an inspection to verify that the attach bolt PLI washers on the lower spherical bearing plug cannot be rotated; verify that no interference exists between the plug forward flange aft face, and the forward face of the spherical bearing; and perform a detailed visual inspection of the plug in situ; in accordance with paragraph 2.I. of McDonnell Douglas DC–10 Service Bulletin 54–74, dated December 21, 1979.

(5) Perform a visual inspection to verify the condition, security, and torque stripe alignment of the plug assembly of the forward upper spherical bearing installation, in accordance with paragraph 2.J. of McDonnell Douglas DC–10 Service Bulletin 54–74, dated December 21, 1979.

(6) Perform a visual inspection to verify proper installation of the thrust link bolts, nuts, and retaining washers of the thrust link installation, in accordance with paragraph 2.C.(2) of McDonnell Douglas DC–10 Service Bulletin 54–74, dated December 21, 1979.

(7) Perform an inspection of the aft spherical bearing, as specified in paragraphs (f)(7)(i) through (f)(7)(iv) of this AD.

(i) Remove the aft spherical bearing through bolt. Inspect the inner bore of the bushing in situ using Magnaflux bolt and visual inspection techniques. Perform a visual inspection using a 10x (power) glass (or equivalent) to detect cracks of the forward and aft surfaces of the spherical bearing. Reinstall the through bolt.

(ii) Verify that the torque of the through bolt is 1,200 to 1,300 inch-pounds.

(iii) Inspect the clearance of the aft spherical bearing forward face/clevis.

(iv) Torque stripe the nut to bolt.

(8) Perform an ultrasonic inspection to detect cracking of the bulkhead lug and wing clevis-to-wing attachment, including the bolts, in accordance with pages 635, 636, 638, 638A, and 638B, dated December 1, 1979; page 637, dated September 1, 1993; page 651, dated February 1, 1982; and page 652, dated August 1, 1992; of Chapter 54–10–11 of the McDonnell Douglas DC–10 Nondestructive Testing Manual.

(9) Accomplish either paragraph (f)(9)(i) or (f)(9)(ii) of this AD.

(i) Perform an X-ray inspection in situ to ensure the integrity of the steel thrust links, in accordance with page 632A, dated August 1, 1984, and page 632B, dated February 1, 1981, of the McDonnell Douglas DC–10 Nondestructive Testing Manual. Or

(ii) Perform an ultrasonic inspection in situ to ensure the integrity of the steel thrust links, in accordance with page 632C, dated August 1, 1985, and page 632D, dated August 1, 1984, of the McDonnell Douglas DC–10 Nondestructive Testing Manual.

(g) Prior to further flight after a pylon has been subjected to vertical or horizontal misalignment, or both (e.g., during maintenance), perform an inspection to detect cracking of the aft pylon bulkhead, in accordance with page 634, dated December 1, 1979, and page 634A, dated August 1, 1990, of Chapter 54–10–11 of the McDonnell Douglas DC–10 Nondestructive Testing Manual.

(h) Prior to further flight following any event that produces high pylon loads: Perform an inspection of the pylon for structural integrity, in accordance with pages 601, 602, 602A, 604, 605, 606, and 608, dated November 1, 1986; page 603, dated May 1, 1986; and pages 604A and 607, dated May 1, 1987; of Chapter 05–51–08 of the McDonnell Douglas DC–10 Maintenance Manual.

Note 2: Examples of events that produce high pylon loads, include, but are not limited to, the following:

- Hard or overweight landings (for the purpose of this AD, overweight landings are made at aircraft weights in excess of 369,000 pounds);
- Severe turbulence encounters;
- Engine vibration that requires engine removal or critical engine failure, or both;
- Ground damage (work stands, etc.);
- Compressor stalls requiring engine removal; and
- Excursions from the runway of a nature that might have imposed loads more severe than those encountered normally on the runway.

(i) Prior to further flight, correct any discrepancy found during any inspection required by this AD, in accordance with a method approved by the Manager, Los Angeles ACO; the Structural Repair Manual; or McDonnell Douglas DC–10 Service Bulletin 54–74, dated December 21, 1979; as appropriate.

(j) Within 10 days after accomplishing the inspections required by this AD, report inspection results, positive or negative, to the FAA Principal Maintenance Inspector. The report shall include the information specified in paragraphs (j)(1)through (j)(5) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) The ''N'' number of the airplane.

(2) The total number of hours time-in-service accumulated on the airplane.

(3) The pylon number of the airplane.

(4) The specific paragraph (and subparagraph) of this AD that corresponds with the inspection results being reported.

(5) Specific inspection results: For example, the location and size of cracking, specific location of discrepant fasteners, and part numbers.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(l) 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.

(m) Certain actions shall be done in accordance with McDonnell Douglas DC–10 Service Bulletin 54–74, dated December 21, 1979. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(n) This amendment becomes effective on December 11, 1996.

Issued in Renton, Washington, on October 17, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–27241 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–NM–214–AD; Amendment 39–9798; AD 96–22–10]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 and DC–9–80 Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas DC–9 and DC–9–80 series airplanes, and Model MD–88 airplanes, that requires repetitive leak checks of the lavatory drain system and repair, if necessary; provides for the option of revising the FAA-approved maintenance program to include a schedule of leak checks; requires the installation of a cap on the flush/fill line; and requires replacement or modification of the vent system piping. This amendment is prompted by continuing reports of damage to engines and airframes, separation of engines from airplanes, and damage to property on the ground, caused by ''blue ice'' that forms from leaking lavatory drain systems on transport category airplanes and subsequently dislodges from the airplane fuselage. The actions specified by this AD are intended to prevent such damage associated with the problems of ''blue ice.''

DATES: Effective December 11, 1996. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 11, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5336; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas DC–9 and DC–9–80 series airplanes, and Model MD–88 airplanes was published in the Federal Register on December 26, 1995 (60 FR 66764). That action proposed to:

1. require repetitive leak checks of the lavatory drain system and repair, if necessary;

2. provide for the option of revising the FAA-approved maintenance program to include a schedule of leak checks;

3. require the installation of a cap on the flush/fill line; and

4. require replacement or modification of the vent system piping.

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

Support for the Proposal

Two commenter support the proposed rule.

Request to Exclude All-Cargo Configured Airplanes from Applicability

One commenter requests that the applicability of the proposal be revised to exclude airplanes operating in an all-cargo configuration, where lavatories and lavatory fill/drain systems have been removed.

The FAA concurs. This final rule requires leak checks of the lavatory/fill drain system. However, if no such system is installed on the airplane then, obviously, the requirements of the AD cannot be performed and, likewise, should not be required. As long as there is one lavatory drainage system installed on the airplane, the requirements of this AD would still apply. To make this eminently clear to affected operators, the FAA has revised the applicability of the final rule to clarify that the AD applies to airplanes that are equipped with a lavatory drainage system.

Request for Permission to Use Alternative Check Valves on Flush/Fill Line

Two commenters request that the proposed rule be revised to allow the use of Monogram 4803–86 series check valves on flush/fill lines as an alternative to the specified lever/lock cap. These commenters point out that Monogram check valves with similar design characteristics were approved previously by the FAA as an acceptable alternative item for compliance with a similar proposed AD that is applicable to Boeing Model 737 series airplanes [reference Docket No. 95–NM–111–AD (60 FR 55673, November 2, 1995)].

The FAA concurs with these commenters' request. Paragraphs (a)(5), (b)(3), and (d) of the final rule have been revised to specify this. Additionally, paragraphs (a)(5) and (b)(3) of the final rule have been revised to provide the necessary instructions for replacing the O-rings associated with the Monogram 4803–86 series check valve, and for testing the check valve for proper operation.

Request to Increase Leak Check Interval for Certain Shaw Aero Valves

One commenter requests that proposed paragraphs (a)(2) and (b)(2)(ii) be revised to allow the following Shaw Aero valves to be leak checked at 1,000-hour intervals:

- 331 series, all serial numbers
- 332 series, all serial numbers

The commenter states that these valves have been accepted previously by the FAA for a 1,000-hour leak check interval either in accordance with AD 94–23–10, which is applicable to Boeing

Model 727 series airplanes; or a similar proposed rule applicable to Boeing Model 737 series airplanes (reference Docket No. 95–NM–111–AD).

The FAA concurs. Paragraphs (a)(2) and (b)(2)(ii) of this final rule have been revised to include these part-numbered valves in the requirements for leak checks at 1,000-hour intervals.

Request to Increase Leak Check Interval for Certain Kaiser Valves

One commenter requests that the proposed repetitive leak check interval of 1,000 hours for Kaiser valves having part numbers 0218–0026 and 0218–0032, be increased to 1,500 hours. As justification for this request, the commenter submits qualification and test data.

The FAA cannot concur, since insufficient data were submitted to support a longer inspection interval. Paragraph (g) of the final rule provides guidance as to the specific type of data needed to justify extensions to the leak check intervals set forth in this AD.

Two other commenters request that the proposed repetitive leak check interval of 1,500 hours for Kaiser valves having part number 2651–329 series, be increased to 4,500 hours. These commenters state that the longer interval has been proposed for this same valve in another proposed AD that is applicable to Boeing Model 737 series airplanes (reference Docket No. 95–NM–111–AD).

The FAA concurs with these commenters' request, since this valve previously was found to be acceptable for a 4,500-hour leak check interval. Paragraph (a)(1) of this final rule has been revised accordingly.

Request to Increase Leak Check Interval for Certain Pneudraulics Valves

One commenter requests that the proposed leak check interval of 1,000 hours for Pneudraulics valves having part number 9527, be increased to 2,000 hours. The commenter states that, to date, it has accumulated over 580,000 flight hours using this Pneudraulics valve on its fleet of airplanes, and there have been only two cases of leaking reported. In both cases, the valves were inspected and found to be serviceable without repair. This in-service experience should justify a longer repetitive check interval.

The FAA does not concur, since insufficient data were submitted to support a longer inspection interval. Paragraph (g) of the final rule provides guidance as to the specific type of data needed to justify extensions to the leak check intervals set forth in this AD.

Request to Revise Procedure for Dump Valve Leak Check

One commenter requests that the proposed rule be revised to change the procedure for conducting a dump valve leak check so that less fluid can be used. This commenter points out that NOTE 2 of the proposal states that this leak check is to be accomplished with water/rinsing fluid to a level at least 4 inches above the flapper in the bowl. However, the commenter notes that this is 2 inches more fluid than is needed for similar leak checks of Boeing Model 727 series airplanes required by AD 94–23–10 [amendment 39–9073 (59 FR 59124, November 16, 1994)]. The commenter maintains that the same level of fluid should be used so that all leak checks are standardized for all airplanes.

The FAA does not concur with the commenter's request. The procedure to fill the toilet bowl to 4 inches above the flapper (approximately ½ full) is also meant to check the tank and the rinse line check valves. The FAA finds that performing the test using less fluid does not do as complete and adequate a job as is necessary to meet the intent of this AD.

Request for Clarification of Leak Check Procedures

One commenter considers that proposed paragraphs (a)(2)(i) and (a)(2)(ii) contradict each other. The former paragraph would require that both the inner door/closure device and the outer cap/door must be leak checked; while the latter paragraph states that, in lieu of pressure testing, the outer seal and seal surface may be visually inspected for damage on service panel valves that have an inner seal. The commenter states that, to leak check the outer cap, maintenance personnel will have to remove the inner seal, thus ruining the seal in the process, and there is no guarantee that the tests would be performed in a particular sequence to avoid this. The commenter contends that a leak check on the outer seal would negate the test on the inner seal, and that only a visual inspection of the outer seal is necessary.

The FAA does not concur with the commenters statement that the two paragraphs contradict each other. Paragraph (a)(2)(i) calls for a leak check of each closure device. For certain types of service panel valves, paragraph (a)(2)(ii) merely provides an alternative to that leak check, since it states that an inspection of the seal may be performed *in lieu* of the leak check; that paragraph does not require that both actions be performed.

Request for Procedures for Performing Leak Check of Lavatory Vent System

One commenter requests that proposed paragraph (e), which would require a leak check of the lavatory vent system, be revised to include procedures for how these leak checks are to be performed.

The FAA concurs that inclusion of such procedures is necessary. NOTE 2 has been revised to add this information, and a new NOTE 7 has been included, which also contains these procedures.

Request to Delete Alternative Visual Inspections

One commenter requests that the proposal be revised to delete the alternative that would allow operators only to visually inspect the cover (outer) seal of lavatory drain valves for wear or damage, rather than to leak check them. This commenter considers it important that leak testing of the drain valves should be performed both on the internal portions of the valve and on the cap portions of the valve as well. This commenter states that one of the primary emphases of addressing the problems of blue ice has been the need for a dual sealing valve; by using a dual sealing valve, the reliability of a drain valve is doubled, and the potential for blue ice incidents is significantly reduced. However, if the FAA would permit only a visual inspection of the outer seal, rather than an actual leak test, the benefit of the dual sealing valve is lost and safety is compromised because ''the potential for a failure through the outer seal that has not been tested rises exponentially as it is not being tested.'' The commenter considers that the only reason for allowing the visual inspection (rather than a leak test) is to provide a cost savings to the airlines.

The FAA does not concur with the commenter's request to delete the provision for the alternative procedure. The maintenance procedures required by this final rule, as well as the intervals at which maintenance is required, were developed in consideration of the design and known service experience of the many designs used in lavatory systems. The alternative procedure for the visual inspection is allowed based on the fact that some valves have an inner seal that is closed when the outer cap is closed; for this type of valve, leakage from the outer cap could only be checked if the inner seal were removed since, when the inner seal is correctly in place, it will prevent any fluid from reaching the outer cap seal. It is for this type of valve that the AD provides the

alternative to allow operators to inspect the seal and seal surface of the outer cap seal in lieu of performing a leak check of the outer seal. The FAA's ultimate determination with regard to this provision was not made to provide a cost savings to airlines (as suggested by the commenter), but to allow procedures to be accomplished that will provide an acceptable level of safety.

Request to Increase Leak Checks at Flush/Fill Port

One commenter considers that an upstream device with positive shut-off and anti-siphon features would eliminate the ''blue ice'' that occurs at the flush/fill port. The commenter considers that, until such time as a new device can be tested and approved, the leak checks and inspections of that port should be increased. As further indication of a need for more inspections, the commenter states that the currently installed flush/fill caps and lever lock cap can be damaged or removed by maintenance personnel; additional inspections would ensure that these discrepancies are identified and corrected in a timely manner.

The FAA does not concur with the commenter's request. The FAA considers that action is necessary at this time to improve leakage conditions at the flush/fill port. The lever lock cap required by this AD action will contribute to this goal by being less likely to be left unclosed, more difficult to remove, and less prone to falling off, than the conventional turn cap. While other suitable devices currently may be under development, the FAA finds no justification for delaying this AD action while waiting for their availability. However, as those devices become available, the FAA may consider requests for the use of them as alternative methods of compliance, under the provisions of paragraph (g) of this final rule. As for the inspections intervals, the FAA developed them based on the best data obtainable to date; however, if blue ice originating from this leak path becomes increasingly problematic, the FAA may consider further rulemaking to adjust the inspection interval as appropriate.

Request to Require Same Maintenance Program for All Operators

One commenter requests that any future extensions of leak check intervals should be based on performance of the hardware involved, not on the performance of an individual operator's maintenance program. This commenter requests that the FAA consider requiring the same maintenance program (relative to the leak checks) for all operators; an individual maintenance program should not influence the leak check extensions that the FAA gives to any particular valve. While it is important to have a proper maintenance program to ensure reliability of the aircraft and the lavatory system, the commenter considers it more important to realize that a quality valve (regardless of the maintenance program) is what increases reliability—not the ''maintenance program'' itself. A quality valve is not affected by the service personnel. The best of maintenance programs can be compromised for any number of reasons due to necessary human involvement; however, hardware, if properly designed has a built-in safe integrity.

The FAA does not concur with the commenter's request. The FAA considers that hardware design and maintenance are both factors in the effective prevention of leakage at the lavatory service panel. This AD has been structured to give ''credit'' for both of these factors in determining appropriate leak check intervals. Although the FAA could require the same maintenance program of all airlines, it recognizes that varying aspects of each airlines' operational environment and the human factors associated with maintenance procedures means that equal results for all airlines would not necessarily result. This AD allows airlines who have proven, effective maintenance programs to obtain ''credit'' (i.e., in the form of increased leak check intervals) for their programs.

Request to Require Leak Checks of All Outer Cap/Door Seals

One commenter requests that the proposal be revised to require that all seals that could potentially come into contact with the effluent that causes blue ice be leak tested. The commenter points specifically to proposed paragraph (b)(2)(iii), which states that, if an operator uses ''donut'' -type valves, both the donut and the outer cap/door seal must be leak checked. Other provisions of the proposed rule, however, would require only a visual inspection of the outer cap/door seal on other types of valves. This commenter states that it is not in the best interest of eliminating blue ice not to leak check every seal.

The FAA acknowledges this commenter's concern, and does not disagree with the suggestion that testing every seal could lower the possibility of the formation of blue ice. It is obvious that more testing, either by testing of every seal or by increasing the frequency of tests, theoretically could reduce the potential for blue ice to occur. However, in this AD, the FAA has attempted to establish a reasonable test program for each configuration of valve, in consideration of the unique design of the individual valve assemblies and the service history data relative to each valve. The FAA has determined that the program set forth in this AD will achieve an acceptable level of safety with regard to the problems associated with blue ice.

Request to Require that ''Donut'' Assemblies Be Removed from Service

One commenter requests that the proposal be revised to require that all ''donut''-type valve assemblies be removed from service. This commenter contends that this type of valve has a long history of poor performance, and it is commonplace for the ''donut'' component of the valve not to be installed (missing), thereby rendering the valve inoperative. The commenter states that during ground service, the donut component sometimes washes into the lavatory service cart and is not replaced into the lavatory drain panel valve until the next inspection. The commenter maintains that blue ice will continue to fall if ''this archaic approach to valve technology continues to be used.''

The FAA does not concur with the commenter's request. The FAA acknowledges that the ''donut'' design is neither the latest in technology standards nor the most effective valve assembly. However, based on the best data obtainable to date, the FAA has determined that a leak check of ''donut''-type valve assemblies at intervals of 200 flight hours will ensure that the valve is monitored adequately to provide an acceptable level of safety. [This leak check requirement is stated in paragraph (a)(4) of the final rule.] The FAA is continuing to review the on-going service history of these valves, and may consider further rulemaking to require their removal from service if future data justify such an action.

Request to Require Standard Nomenclature for Primary vs. Secondary Seals

One commenter requests that the FAA require all valve manufacturers to use standard nomenclature for primary and secondary seals. This commenter asserts that the first seal that the effluent comes in contact with should be referred to as the ''primary'' seal; the cover seal should be referred to as the ''secondary'' seal. This commenter states that certain valve manufacturers have begun to call the cover seal on their valves ''primary'' seals. This can create problems, since

paragraph (b)(2)(i)(B) of the proposal would require that the outer cap/door seal is only visually inspected and, thus, the ''primary'' seal on this manufacturer's assemblies is never pressure tested. The commenter maintains that the FAA should not allow the primary seal to go untested.

The FAA acknowledges this commenter's concerns, but finds that no change to the AD is necessary. The FAA does not control the nomenclature that manufacturers choose to identify seals in their valve assemblies; further, the FAA does not consider it appropriate that what a manufacturer chooses to call a seal should be used to determine the actions required by this AD. The FAA finds that the wording used in the requirement for the visual inspection is very specific as to which component of the valve assembly is to be inspected (the service panel drain valve outer cap/door seal and the inner seal if the valve has an inner door/closure device with a second positive seal). The requirement deliberately does not contain the words ''primary'' or ''secondary'' in referring to seals, since those terms are not specific and, as the commenter points out, are used differently by different manufacturers.

Request to Revise Data Collection Guidance

One commenter requests that the data collection guidance iterated in proposed paragraph (c) be revised. Specifically, the commenter asks that language contained in proposed paragraph (c)(8) that refers to removal of debris done as part of maintenance be modified to reflect more specifically what occurs during normal ground servicing. The commenter states that normally the only debris that is removed during ground servicing is what could be called ''major'' blockage items; simple things, such as toilet paper or other minor debris, are left in place as part of normal ground maintenance. In light of this, the tested condition from which data is gathered should represent the condition that the system would be in during normal operations. The commenter requests that paragraph (c)(8) be changed to specify this.

The FAA concurs. The commenter's suggested revision will provide useful clarification of the intent of the requirement. Paragraph (c)(8) of the final rule has been revised to specify that only major blockages should be removed prior to a leak check test, and that minor debris removal that is not commonly removed during normal ground maintenance check should not be removed prior to the leak check.

Request Not to Consider Test Data with Drain Valves Below Ball Valves

One commenter requests that proposed paragraph (c) be revised to specify that test data on a panel valve that is below a ball valve is not valid data, and that such data should not be included in any test data submitted to the FAA for purposes of requesting an increase in a leak check interval for any valve. This commenter states that a panel valve below a ball valve would not be subject to the same operational requirements as a panel valve without a ball valve ahead of it in the drain line, as the highly reliable ball valve would always be stopping any leaks.

The FAA concurs. A panel valve installation *with* a ball valve is not subject to the same operating environment as an panel valve installation *without* a ball valve. Therefore, any data collected on the former type of valve installation would not be valid as justification for an extended leak check interval for the latter type of valve installation. To clarify this, the FAA has revised NOTE 9 of the final rule (which addressed collecting data for leak check intervals) to include information indicating that the configuration of the entire drain system on the airplanes used in evaluating a drain valve leak check interval should be defined. This way, it can be assured that the data submitted is representative of the applications where the drain valve will be used.

Conclusion

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

Cost Impact

There are approximately 2,097 Model DC–9 and DC–9–80 series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,191 airplanes of U.S. registry and 47 U.S. operators, will be affected by this AD.

1. *Leak checks.* It will take approximately 4 work hours per airplane lavatory drain to accomplish each leak check, at an average labor cost of $60 per work hour. There normally are 2 drains per airplane. Depending upon the type of valves installed and the flight utilization rate of the airplane, an airplane subject to this AD could be required to be inspected as few as 2 times per year or as many as 15 times per year. Based on these figures, the cost impact of the leak check requirement on U.S. operators will be between $960 and $7,200 per airplane per year.

2. *Inspections.* Should an operator elect to perform the inspection of the service panel drain valve cap/door seal and seal mating surface, the inspection will take approximately 1 work hour to accomplish, at an average labor cost of $60 per work hour. Depending upon the type of valves installed and the flight utilization rate of the airplane, an airplane subject to this AD could be required to be inspected as few as 2 times per year or as many as 15 times per year. Based on these figures, the cost impact of the inspection requirement on U.S. operators will be between $120 and $1,800 per airplane per year.

3. *Installation of cap on flush/fill line.* The proposed installation will take approximately 2 work hours to accomplish, at an average labor cost of $60 per work hour. The cost of required parts is estimated to be $275 per flush/fill line. There are normally 3 flush/fill lines per airplane. Based on these figures, the cost impact of the proposed installation requirement on U.S. operators will be $1,411,335, or $1,185 per airplane.

4. *Installation of lavatory vent system replacement/modification.* The portion of this installation that entails modification of the toilet assembly will require between 2 and 4 work hours per airplane to accomplish, depending on the brand of toilet involved. The average labor cost is estimated to be $60 per work hour. The cost of required parts is estimated to be between $83 and $2,121 per airplane. Based on these figures, the cost impact of this portion of the required installation on U.S. operators will be between $203 and $2,361 per airplane.

The portion of this installation that entails modification of lavatory vent lines will require between 15 and 52 work hours per airplane to accomplish, depending upon the configuration of the airplane, if certain other modifications have already been accomplished, and the modification option selected. The average labor cost is estimated to be $60 per work hour. The cost of required parts is estimated to be between $600 and $13,000 per airplane. Based on these figures, the cost impact of this portion of the required installation on U.S. operators will be between $1,500 and $16,120 per airplane.

The number of required work hours, as indicated above, is presented in this discussion as if the actions required by this AD were to be conducted as ''stand

alone'' actions. However, in actual practice, these actions could be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary ''additional'' work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling should be minimal.

In addition to the costs discussed above, for those operators who elect to comply with proposed paragraph (b) of this AD action, the FAA estimates that it will take approximately 40 work hours per operator to incorporate the lavatory drain system leak check procedures into the maintenance programs, at an average labor cost of $60 per work hour. Based on these figures, the cost impact of the maintenance revision requirement of this AD on U.S. operators is estimated to be $2,400 per operator.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–22–10 McDonnell Douglas: Amendment 39–9798. Docket 95–NM–214–AD.

Applicability: All Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) series airplanes; and Model MD–88 airplanes; equipped with a lavatory drainage system; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent engine damage, airframe damage, and/or hazard to persons or property on the ground as a result of ''blue ice'' that has formed from leakage of the lavatory drain system and dislodged from the airplane, accomplish the following:

Note 2: The leak checks of the toilet dump valve, flush/fill line, and lavatory vent system that are required by this AD may be performed by filling the toilet tank with water/rinsing fluid to a level at least 4 inches above the flapper in the bowl, and checking for leakage after a period of 5 minutes.

(a) Except as provided in paragraph (b) of this AD, accomplish the applicable procedures specified in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of this AD. If the individual waste drain system panel incorporates more than one type of valve, the inspection interval that applies to that panel is determined by the component with the longest inspection interval allowed. Each of the components must be inspected or tested at that time at each service panel location.

(1) For each lavatory drain system that has an in-line drain valve installed, Kaiser Electroprecision part number series 2651–329: Within 4,500 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 4,500 flight hours, accomplish the procedures specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD:

(i) Conduct a leak check of the dump valve (in-tank valve that is spring loaded closed and operable by a T-handle at the service panel), and the in-line drain valve. The in-line drain valve leak check must be performed with a minimum of 3 pounds per square inch differential pressure (PSID) applied across the valve.

(ii) Visually inspect the service panel drain valve outer cap seal and the inner seal (if the valve has an inner door/closure device with a second positive seal), and the seal mating surfaces, for wear or damage that may allow leakage.

(2) Within 1,000 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 1,000 flight hours, accomplish the applicable procedures specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD for each lavatory drain system with a service panel drain valve installed that is listed in Table 1, below:

TABLE 1.—VALVES REQUIRING LEAK CHECKS AT 1,000—FLIGHT HOUR INTERVALS

Manufacturer	Part No.	Serial No.
Shaw Aero Devices	10101000C–A (or higher dash number)	All serial numbers.
Shaw Aero Devices	10101000B – A (or higher dash number)	All serial numbers.
Shaw Aero Devices	10101B–577–1	All serial numbers.
Shaw Aero Devices	10101B–577–2	All serial numbers.
Shaw Aero Devices	331 series	All serial numbers.
Shaw Aero Devices	332 series	All serial numbers.
Pneudraulics	9527 series	All serial numbers.

(i) Conduct a leak check of the dump valve and the service panel drain valve. The service panel drain valve leak check must be performed with a minimum of 3 PSID applied across the valve. Both the inner door/closure device and the outer cap/door must be leak checked.

(ii) For service panel valves that have an inner seal: In lieu of pressure testing, the outer cap seal and seal surface may be visually inspected for damage or wear.

(3) For each lavatory drain system that has a service panel drain valve installed, Shaw Aero Devices part number series 10101000C [except as specified in paragraph (a)(2) of this AD], or Shaw Aero Devices part number 10101000B [except as specified in paragraph (a)(2) of this AD]: Within 600 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 600 flight hours, accomplish the procedures specified in paragraphs (a)(3)(i) and (a)(3)(ii) of this AD, on each:

(i) Conduct a leak check of the dump valve and the service panel drain valve. The service panel drain valve leak check must be performed with a minimum of 3 PSID applied across the valve. Both the inner door/closure device and the outer cap/door must be leak checked.

(ii) For service panel valves that have an inner seal: In lieu of pressure testing, the outer cap seal and seal surface may be visually inspected for damage or wear.

(4) For other lavatory drain systems not addressed in paragraph (a)(1), (a)(2), or (a)(3) of this AD: Within 200 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 200 flight hours, accomplish the procedures specified in paragraphs (a)(4)(i) and (a)(4)(ii) of this AD:

(i) Conduct a leak check of the dump valve and the service panel drain valve. The service panel drain valve leak check must be performed with a minimum of 3 PSID applied across the valve. Both the inner door/closure device and the outer cap/door must be leak checked.

(ii) For service panel valves that have an inner seal: In lieu of pressure testing, the outer cap seal and seal surface may be visually inspected for damage or wear.

(5) For flush/fill lines: Within 5,000 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 5,000 flight hours, accomplish the procedures specified in either paragraph (a)(5)(i) or (a)(5)(ii) of this AD, as appropriate for the airplane's flush/fill line installation:

(i) For airplanes equipped with a flush/fill line cap, accomplish either paragraph (a)(5)(i)(A) or (a)(5)(i)(B):

(A) Conduct a leak check of the flush/fill line cap. This leak check must be made with a minimum of 3 PSID applied across the cap. Or

(B) Replace the seals on the toilet tank anti-siphon (check) valve and in the flush/fill line cap. Additionally, perform a leak check of the toilet tank anti-siphon (check) valve with a minimum of 3 PSID across the valve after changing the seals.

(ii) For airplanes equipped with a check valve vacuum breaker, Monogram part number 4803–86 series: Replace the O-rings/seals in the valve and test the check valve and vacuum breaker sections of the valve for proper operation, in accordance with the manufacturer's component maintenance/overhaul manual.

(6) As a result of the leak checks and inspections required by this paragraph, or if evidence of leakage is found at any other time, accomplish the requirements of either paragraph (a)(6)(i), (a)(6)(ii) or (a)(6)(iii) as applicable:

(i) If a leak is discovered, prior to further flight, repair the leak. Prior to further flight after repair, perform the leak test. Additionally, prior to returning the airplane to service, clean the surfaces adjacent to where the leakage occurred to clear them of any horizontal fluid residue streaks; such cleaning must be to the extent that any future appearance of a horizontal fluid residue streak will be taken to mean that the system is leaking again.

Note 3: For purposes of this AD, ''leakage'' is defined as any visible leakage observed during a leak test; the presence of ice in the service panel; or horizontal fluid residue streaks or ice trails originating at the service panel. The fluid residue is usually, but not necessarily, blue in color.

(ii) If any worn or damaged seal is found, or if any damaged seal mating surface is found, prior to further flight, repair or replace it in accordance with the valve manufacturer's maintenance manual.

(iii) In lieu of performing the requirements of paragraph (a)(6)(i) or (a)(6)(ii): Prior to further flight, drain the affected lavatory system and placard the lavatory inoperative until repairs can be accomplished.

(b) As an alternative to the requirements of paragraph (a) of this AD: Within 180 days after the effective date of this AD, revise the FAA-approved maintenance program to include the requirements specified in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7) of this AD:

(1) Replace the valve seals in accordance with the applicable schedule specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this AD. Any revision to this replacement schedule must be approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(i) For each lavatory drain system that has an in-line drain valve installed, Kaiser Electroprecision part number series 2651–329: Replace the seals within 5,000 flight hours after revision of the maintenance program in accordance with paragraph (b) of this AD, and thereafter at intervals not to exceed 52 months.

(ii) For each lavatory drain system that has any other type of drain valve: Replace the seals within 5,000 flight hours after revision of the maintenance program in accordance with paragraph (b) of this AD, and thereafter at intervals not to exceed 18 months.

(2) Conduct periodic leak checks of the lavatory drain systems in accordance with the applicable schedule specified in paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iii), and (b)(2)(iv) of this AD. If the individual waste drain system incorporates more than one type of valve, the interval that applies to that system is determined by the component with the longest inspection interval allowed. Each of the components in that system must be inspected/tested at that time. Any revision to this leak check schedule must be approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(i) For each lavatory drain system that has an in-line drain valve, Kaiser Electroprecision part number series 2651–329: Within 5,000 flight hours after revision of the maintenance program in accordance with paragraph (b) of this AD, and thereafter at intervals not to exceed 24 months or 5,000 flight hours, whichever occurs later, accomplish the procedures specified in paragraphs (b)(2)(i)(A) and (b)(2)(i)(B) of this AD:

(A) Conduct a leak check of the dump valve (in-tank valve that is spring loaded closed and operable by a T-handle at the service panel) and the in-line drain valve. The in-line drain valve leak check must be performed with a minimum of 3 PSID applied across the valve.

(B) Visually inspect the service panel drain valve outer cap/door seal and the inner seal (if the valve has an inner door/closure device with a second positive seal) and seal mating surface for wear or damage that may cause leakage. Any worn or damaged seal must be replaced and any damaged seal mating surface must be repaired or replaced, prior to further flight, in accordance with the valve manufacturer's maintenance manual.

(ii) Within 1,000 flight hours after revising the maintenance program in accordance with paragraph (b) of this AD, and thereafter at intervals not to exceed 1,000 flight hours, accomplish the procedures specified in paragraphs (b)(2)(ii)(A) and (b)(2)(ii)(B) of this AD for each lavatory drain system that has a service panel drain valve installed that is listed in Table 2 of this AD:

TABLE 2.—VALVES REQUIRING LEAK CHECKS AT 1,000-FLIGHT HOUR INTERVALS

Manufacturer	Part No.	Serial No.
Shaw Aero Devices	10101000C	All serial numbers.
Shaw Aero Devices	10101000B	All serial numbers.
Shaw Aero Devices	331 series	All serial numbers.
Shaw Aero Devices	332 series	All serial numbers.
Pneudraulics	9527 series	All serial numbers.

(A) Conduct leak checks of the dump valve and the service panel drain valve. The service panel drain valve leak check must be performed with a minimum of 3 PSID applied across the valve. Only the inner door/closure device of the service panel drain valve must be leak checked.

(B) Visually inspect the service panel drain valve outer cap/door seal and seal mating surface for wear or damage that may cause leakage.

(iii) For each lavatory drain system that has a lavatory drain system valve that incorporates only an outer cap seal (i.e., uses no inner flapper), or that incorporates an inner seal that is not an attached part of the valve (i.e., a ''donut''): Within 200 flight hours after revising the maintenance program in accordance with paragraph (b) of this AD, and thereafter at intervals not to exceed 200 flight hours, conduct leak checks of the dump valve and the service panel drain valve. The service panel drain valve leak check must be performed with a minimum 3 PSID applied across the valve. Both the donut and the outer cap/door must be leak checked.

(iv) For each lavatory drain system that incorporates any other type of approved valve(s): Within 400 flight hours after revising the maintenance program in accordance with paragraph (b) of this AD, and thereafter at intervals not to exceed 400 flight hours, accomplish the procedures specified in paragraphs (b)(2)(iv)(A) and (b)(2)(iv)(B) of this AD:

(A) Conduct leak checks of the dump valve and the service panel drain valve. The service panel drain valve leak check must be performed with a minimum 3 PSID applied across the valve. If the service panel drain valve has an inner door/closure device with a second positive seal, only the inner door must be leak checked.

(B) If the valve has an inner door/closure device with a second positive seal: Visually inspect the service panel drain valve outer door/cap seal and seal mating surface for wear or damage that may cause leakage.

(3) For flush/fill lines: Within 5,000 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 5,000 flight hours, accomplish the procedures specified in either paragraph (b)(3)(i) or (b)(3)(ii) of this AD, as applicable:

(i) For airplanes equipped with a flush/fill line cap, accomplish either paragraph (b)(3)(i)(A) or (b)(3)(i)(B):

(A) Conduct a leak check of the flush/fill line cap. This leak check must be made with a minimum of 3 PSID applied across the cap. Or

(B) Replace the seals on the toilet tank anti-siphon (check) valve and the flush/fill line cap. Additionally, perform a leak check of the toilet tank anti-siphon (check) valve with a minimum of 3 PSID across the valve after changing the seals.

(ii) For airplanes equipped with a check valve vacuum breaker, Monogram part number 4803–86 series: Replace the O-rings/seals in the valve and test the check valve and vacuum breaker sections of the valve for proper operation, in accordance with the manufacturer's component maintenance/overhaul manual.

(4) Provide procedures for accomplishing visual inspections to detect leakage of the lavatory waste drain line and lavatory flush/fill line, at each waste service panel, to be conducted by maintenance personnel at intervals not to exceed 4 calendar days or 45 flight hours, whichever occurs later.

(5) Provide procedures for reporting leakage. These procedures shall provide that any ''horizontal blue streak'' findings must be reported to maintenance and that, prior to further flight, the leaking system shall either be repaired, or be drained and placarded inoperative.

(i) For systems incorporating an in-line drain valve, Kaiser Electroprecision part number series 2651–329: The reporting procedures must include provisions for reporting to maintenance any instances of abnormal operation of the valve handle for the in-line drain valve, as observed by service personnel during normal servicing.

(A) Additionally, for these systems, these provisions must include procedures for either: Prior to further flight, following the in-line drain valve manufacturer's recommended troubleshooting procedures and correction of the discrepancy; or prior to further flight, draining the lavatory system and placarding it inoperative until the correction of the discrepancy can be accomplished.

(B) If the drain system also includes an additional service panel drain valve, Shaw Aero Devices part number 10101000C–A (or higher dash number); or Shaw Aero Devices part number 10101000B–A (or higher dash number); or Shaw Aero Devices part number 10101B–577–1 or 10101B–577–2; or Pneudraulics part number series 9527: Indications of abnormal operation of the valve handle for the in-line drain valve need not be addressed immediately if a leak check of the service panel drain valve indicates no leakage or other discrepancy. In these cases, repair of the in-line drain valve must be accomplished within 1,000 flight hours after the leak check of the additional service panel drain valve.

(6) Provide training programs for maintenance and servicing personnel that include information on ''Blue Ice Awareness'' and the hazards of ''blue ice.''

(7) As a result of the leak checks and inspections required by this paragraph, or if evidence of leakage is found at any other time, accomplish the requirements of either paragraph (b)(7)(i), (b)(7)(ii) or (b)(7)(iii), as applicable:

(i) If a leak is discovered, prior to further flight, repair the leak. Prior to further flight after repair, perform the leak test. Additionally, prior to returning the airplane to service, clean the surfaces adjacent to where the leakage occurred to clear them or any horizontal fluid residue streaks; such cleaning must be to the extent that any future appearance of a horizontal fluid residue streak will be taken to mean that the system is leaking again.

Note 4: For purposes of this AD, ''leakage'' is defined as any visible leakage observed during a leak test; the presence of ice in the service panel; or horizontal fluid residue streaks/ice trails originating at the service panel. The fluid residue is usually, but not necessarily, blue in color.

(ii) If any worn or damaged seal is found, or if any damaged seal mating surface is found, prior to further flight, repair or replace it in accordance with the valve manufacturer's maintenance manual.

(iii) In lieu of performing the requirements of paragraph (b)(7)(i) or (b)(7)(ii): Prior to further flight, drain the affected lavatory system and placard the lavatory inoperative until repairs can be accomplished.

(c) For operators who elect to comply with paragraph (b) of this AD: Any revision to (i.e., extension of) the leak check intervals required by paragraph (b) of this AD must be approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Requests for such revisions must be submitted to the Manager of the Los Angeles ACO through the FAA Principal Maintenance Inspector (PMI), and must include the following information:

(1) The operator's name;

(2) A statement verifying that all known cases/indications of leakage or failed leak tests are included in the submitted material;

(3) The type of valve (make, model, manufacturer, vendor part number, and serial number);

(4) The period of time covered by the data;

(5) The current FAA leak check interval;

(6) Whether or not seals have been replaced between the seal replacement intervals required by this AD;

(7) Whether or not leakage has been detected between leak check intervals required by this AD, and the reason for leakage (i.e., worn seals, foreign materials on sealing surface, scratched or damaged sealing surface or valve, etc.); and

(8) Whether or not any leak check was conducted without first inspecting or cleaning the sealing surfaces, changing the seals, or repairing the valve. [If such activities have been accomplished prior to conducting the periodic leak check, that leak check shall be recorded as a ''failure'' for purposes of the data required for this request submission. The exception to this is the normally scheduled seal change in accordance with paragraph (b)(1) of this AD. Performing this scheduled seal change immediately prior to a leak check will not cause that leak check to be recorded as a failure.] The leak check is meant to be performed with the valve in the condition it would be in when in normal service. Only major blockages need be removed prior to a leak check. Minor debris that is not commonly removed during normal ground maintenance should not be removed prior to the leak check.

Note 5: Requests for approval of revised leak check intervals may be submitted in any format, provided that the data give the same level of detail specified in paragraph (c) of this AD.

Note 6: For the purposes of expediting resolution of requests for revisions to the leak check intervals, the FAA suggests that the requester summarize the raw data; group the data gathered from different airplanes (of the same model) and drain systems with the same kind of valve; and provide a recommendation from pertinent industry group(s) and/or the manufacturer specifying an appropriate revised leak check interval.

(d) For all airplanes: Within 5,000 flight hours after the effective date of this AD, accomplish the requirements of either paragraph (d)(1) or (d)(2) of this AD:

(1) Install a lever/lock cap on the flush/fill lines at each lavatory service panel. The cap must be either an FAA-approved lever/lock cap, or a cap installed in accordance with McDonnell Douglas DC–9 Service Bulletin 38–47, dated April 17, 1992. Or

(2) Install a Monogram 4803–86 series check valve on the flush/fill lines for all lavatory service panels.

(e) For only those airplanes listed in McDonnell Douglas DC–9 Service Bulletin 38–41, Revision 3, dated July 5, 1994: Accomplish the procedures specified in paragraphs (e)(1) and (e)(2) of this AD:

(1) Conduct leak checks of the lavatory vent system at the same time as conducting the leak checks of the dump valve and flush/fill line required by this AD. If a leak is discovered, prior to further flight, accomplish the procedures specified in either paragraph (e)(1)(i), (e)(1)(ii), (e)(1)(iii), or (e)(1)(iv) of this AD:

Note 7: The leak check of the lavatory vent system should be performed with a minimum of 3 pounds per square inch differential pressure (PSID) across the vent system. This leak check may be performed by filling the toilet tank with water/rinsing fluid to a level at least 4 inches above the flapper in the bowl, and checking for leakage after a period of 5 minutes. (These are the same procedures to be used for performing the leak checks of the dump valve and flush/fill line.)

(i) Repair the leak and retest. Or

(ii) Drain the affected lavatory system and placard the lavatory inoperative until repairs can be accomplished. Or

(iii) Install an FAA-approved modification that deactivates the vent system. After accomplishment of this deactivation, the leak checks of the lavatory vent system may be discontinued. Or

(iv) Replace/modify the vent system in accordance with McDonnell Douglas DC–9 Service Bulletin 38–41, Revision 3, dated July 5, 1994. After accomplishment of this replacement/modification, the leak checks of the lavatory vent system may be discontinued.

(2) Within 3 years after the effective date of this AD: Either replace/modify the vent system in accordance with McDonnell Douglas DC–9 Service Bulletin 38–41, Revision 3, dated July 5, 1994; or install an FAA-approved modification that deactivates the vent system. Accomplishment of either of these actions constitutes terminating action for the leak checks of the lavatory vent system that are required by this AD.

(f) For any affected airplane acquired after the effective date of this AD: Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of the leak checks required by this AD shall be established in accordance with either paragraph (f)(1) or (f)(2) of this AD, as applicable. After each leak check has been performed once, each subsequent leak check must be performed in accordance with the new operator's schedule, in accordance with either paragraph (a) or (b) of this AD, as applicable.

(1) For airplanes previously maintained in accordance with this AD: The first leak check to be performed by the new operator must be accomplished in accordance with either the previous operator's schedule or the new operator's schedule, whichever would result in the earlier accomplishment date for that leak check.

(2) For airplanes that have not been previously maintained in accordance with this AD: The first leak check to be performed by the new operator must be accomplished prior to further flight; or in accordance with a schedule approved by the FAA PMI, but within a period not to exceed 200 flight hours.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA PMI, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Note 9: For any valve that is not eligible for the extended leak check intervals of this AD: To be eligible for the leak check interval specified in paragraph (a)(1), (a)(2), (b)(2)(i), or (b)(2)(ii), the service history data of the valve must be submitted to the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate, with a request for approval of an alternative method of compliance with this AD. The request should include an analysis of known failure modes for the valve, if it is an existing design, and known failure modes of similar valves. Additionally, the request should include an explanation of how design features will preclude these failure modes, results of qualification tests, and approximately 25,000 flight hours or 25,000 flight cycles of service history data, including a winter season, collected in accordance with the requirements of paragraph (c) of this AD or a similar program. The configuration of the entire drain system on the airplanes used in evaluating a drain valve leak check interval should be defined in the request so as to ensure that the drain system is representative of the applications where the valve will be used. As an example, data collected on a panel valve installed below a ball valve would not be acceptable for substantiating a leak check interval for the panel valve, since an installation below a ball valve would not be representative of the normal applications where it could be used.

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

(i) The actions shall be done in accordance with McDonnell Douglas DC–9 Service Bulletin 38–47, dated April 17, 1992; and McDonnell Douglas DC–9 Service Bulletin 38–41, Revision 3, dated July 5, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on December 11, 1996.

Issued in Renton, Washington, on October 18, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–27395 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–09–AD; Amendment 39–9797; AD 96–22–09]

RIN 2120–AA64

Airworthiness Directives; Shorts Model SD3–60 and SD3–SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Shorts Model SD3–60 and SD3–SHERPA series airplanes, that requires a one-time inspection to detect cracks and/or corrosion of the gland nut on the shock absorber of the main landing gear (MLG), and follow-on actions. This amendment also requires repair or replacement of any cracked/corroded gland nut with a new nut. This amendment is prompted by a report indicating that, due to stress corrosion and cracking of the gland nut on the shock absorber, the MLG collapsed on an in-service airplane. The actions specified by this AD are intended to detect and correct such stress corrosion or cracking in a timely manner and consequent reduced structural integrity of the gland nut, which could result in separation of the shock absorber cylinder from the MLG shock absorber body and consequently, lead to the collapse of the MLG during landing.

DATES: Effective December 11, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 11, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3719. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2799; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Shorts Model SD3–60 and SD3–SHERPA series airplanes was published in the Federal Register on July 29, 1996 (61 FR 39364). That action proposed to require a one-time visual and fluorescent dye penetrant inspection to detect cracks and/or corrosion of the gland nut on the shock absorber of the main landing gear (MLG), and repair or replacement of the gland nut with a new nut, if necessary. That action also proposed to require, after the inspection is completed, the application of grease to the threads of the cylinder and the application of sealant to the inner radius of the gland nut.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received. The commenter supports the proposed rule.

Conclusion

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

Cost Impact

The FAA estimates that 88 airplanes (72 Model SD3–60 series airplanes and 16 Model SD3–SHERPA series airplanes) of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $26,400, or $300 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–22–09 Short Brothers, PLC: Amendment 39–9797. Docket 96–NM–09–AD.

Applicability: Model SD3–-60 and Model SD3–SHERPA series airplanes, as listed in Shorts Service Bulletin SD360–32–34 (for Model SD3–60 series airplanes), and Shorts Service Bulletin SD3 SHERPA–32–2 (for Model SD3–SHERPA series airplanes), both dated September 22, 1995; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct stress corrosion or cracking of the gland nut on the shock absorber of the main landing gear (MLG) in a timely manner and consequent reduced structural integrity of the nut, which could result in separation of the shock absorber cylinder from the MLG shock absorber body and, consequently, lead to the collapse of the MLG during landing; accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a one-time visual and fluorescent dye penetrant inspection to detect cracks and/or corrosion of the gland nut on the shock absorber of the MLG, in accordance with Shorts Service Bulletin SD360–32–34 (for Model SD3–60 series airplanes), and Shorts Service Bulletin SD3 SHERPA–32–2 (for Model SD3–SHERPA series airplanes), both dated September 22, 1995, as applicable.

Note 2: Short Service Bulletins SD360–32–34 and SD3 SHERPA–32–2 reference Messier-Dowty Service Bulletin 32–78SD, dated July 19, 1995, as an additional source of service information.

(1) If no crack and/or corrosion is detected, no further action is required by paragraph (a) of this AD.

(2) If no crack is detected, but corrosion is detected that is within the limits specified in the service bulletin, prior to further flight, repair the gland nut in accordance with the applicable service bulletin.

(3) If any crack is detected, or if any corrosion is detected that is outside the limits specified in the service bulletin, prior to further flight, replace the gland nut with a new gland nut, in accordance with the applicable service bulletin.

(b) Following accomplishment of paragraph (a) of this AD, prior to further flight, apply grease to the threads of the cylinder, and apply sealant to the inner radius of the gland nut, in accordance with Shorts Service Bulletin SD360–32–34 (for Model SD3–60 series airplanes), and Shorts Service Bulletin SD3 SHERPA–32–2 (for Model SD3–SHERPA series airplanes), both dated September 22, 1995, as applicable.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager,

Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, is any, may be obtained from the Standardization Branch, ANM–113.

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

(e) The actions shall be done in accordance with Shorts Service Bulletin SD360–32–34, dated September 22, 1995, and Shorts Service Bulletin SD3 SHERPA–32–2, dated September 22, 1995, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3719. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 11, 1996.

Issued in Renton, Washington, on October 18, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–27396 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 96–NM–36–AD; Amendment 39–9799; AD 96–22–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100 and –200 Series Airplanes, and Model 747–100, –200, –300, and –SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 and 747 series airplanes, that requires replacement of Waterman hydraulic fuse assemblies with modified assemblies. This amendment is prompted by reports of failure of hydraulic system A and the standby system, due to corrosion on the magnesium piston of the hydraulic fuse and consequent failure of the fuse to close sufficiently to prevent the loss of hydraulic fluid from the system. The actions specified by this AD are intended to prevent such failure of the fuse, which could result in the failure of one or more hydraulic systems and resultant reduced controllability of the airplane.

DATES: Effective December 11, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 11, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2673; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737 and 747 series airplanes was published in the Federal Register on April 30, 1996 (61 FR 18997). That action proposed to require replacement of Waterman hydraulic fuse assemblies with modified assemblies.

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

Request To Extend Compliance Time

The Air Transport Association (ATA) of America, on behalf of several of its members, requests that the proposed compliance time be extended from 3,000 flight hours to 24 months. The commenter indicates that accomplishment of the modification is dependent upon the ability of an outside vendor to rework the fuse assemblies and return them to the operator. The commenter states that the proposed compliance time may be insufficient for the vendor to provide this service. Additionally, two ATA members indicate that no fuse failures have occurred within their fleets.

Another commenter suggests that, since the compliance time would be insufficient to send the assemblies to a vendor for modification, operators of affected Model 747 series airplanes should be required to perform an initial and periodic inspections of the Waterman hydraulic fuses having part number G905–120 in accordance with the Airplane Maintenance Manual to confirm the function of the fuses until they can be replaced with PneuDraulics fuses having part number 6105.

The FAA concurs that the compliance time may be extended. In developing an appropriate compliance time for this AD action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the practical aspect of sending the fuse assemblies to an outside vendor for accomplishment of the modification. The FAA has considered the information presented by the commenters as to the turnaround time for accomplishment of the modification. In light of this information and the number of fuses that may need to be modified, the FAA agrees that the compliance time should be extended. The FAA has determined that extending the compliance time from the proposed 3,000 flight hours to 24 months will provide an acceptable level of safety without the need for interim inspections (as suggested by one of the commenters). Paragraphs (a) and (b) of the final rule have been revised accordingly.

Request To Add a Note to the AD

One commenter requests that the FAA add a note to the proposal to specify that availability of replacement fuses should be considered when scheduling compliance with the AD, and to advise operators to begin accomplishing the requirements of the AD as soon as the final rule is issued. The commenter expresses concern that the lead time for obtaining replacement fuses may be inadequate and that the proposed compliance time may not be met unless operators place orders for these fuses during the early stages of the compliance period.

The FAA does not concur that a note should be added to the final rule. The FAA acknowledges that accomplishment of the replacement is dependent upon the ability of outside vendors to manufacture and rework rotable units within a certain time frame. However, as explained previously, the FAA has extended the compliance time for accomplishing the replacement from 3,000 flight hours to 24 months. The FAA finds that this extension should allow sufficient time

for operators to obtain replacement parts within the compliance time specified in this final rule.

Request To Allow Additional Method of Compliance

One commenter requests that the FAA revise the proposal to cite Gould/Waterman Service Bulletin G905–40–8, dated July 15, 1981, as an additional method of complying with the requirements of the AD. The Gould/Waterman service bulletin describes procedures for modifying the G905–120 Type II fuse by replacing the magnesium piston with an aluminum piston and by revising the part number to G9051–120. The commenter indicates that accomplishing the Gould/Waterman service bulletin is equivalent to replacing the fuse with a PneuDraulics fuse.

A second commenter requests that the FAA revise the proposed rule to include replacement of Waterman fuses having part number G905–120 with Waterman fuses having part number G9051–120, in accordance with the Gould/Waterman service bulletin, as an acceptable method of compliance with the AD for Model 747 series airplanes. This commenter indicates that the change in piston subassembly materials from magnesium to an all aluminum design eliminates corrosion problems related to the G905–8–120 model fuse. The commenter adds that many operators have replaced G905–120 fuses with the replacements identified in the Gould/Waterman service bulletin.

The FAA does not concur that the final rule should be revised to cite the Gould/Waterman service bulletin or to specify that the G9051–120 Waterman fuse is an acceptable replacement part. The FAA has not approved the Gould/Waterman service bulletin as an additional method of complying with the AD. The FAA finds that it is inappropriate to delay the issuance of this final rule to provide time for review and approval of the Gould/Waterman service bulletin. However, should an operator of an affected Model 747 series airplane wish to accomplish the requirements of this AD by replacing Waterman fuses having part number G905–120 with Waterman fuses having part number G9051–120, that operator should submit a request for approval of such replacement, in accordance with the provisions of paragraph (d) of this final rule.

Request To Disallow Use of Certain Replacement Fuses

One commenter asks that the FAA disapprove any request from an operator of a Model 747 series airplane to accomplish the proposed replacement using a modified fuse in lieu of a PneuDraulics fuse having part number 6105. The commenter explains that one of the primary reasons for replacing the Waterman fuses is that the fuse would not reset once pressure was balanced in the system. The commenter indicates that the airplane manufacturer prefers to install PneuDraulics fuses having part number 6105 in the hydraulics systems of Model 747 series airplanes. The commenter adds that replacement of Waterman hydraulic fuse pistons with modified fuse pistons does not incorporate the use of the latest technology.

The FAA concurs partially. The FAA points out that paragraph (b) of this final rule requires that operators of Model 747 series airplanes use PneuDraulics fuse assemblies having part number 6105 as replacement parts. However, as explained previously, if an operator of these airplanes wishes to request approval of the use of other airworthy replacement parts (including modified parts) in lieu of the PneuDraulics part, the FAA would consider such a request provided that data is submitted to substantiate approval of that request.

Request for Clarification of Fuse Locations and Numbers

One commenter requests that the FAA provide the exact position and number of fuses that require replacement. The commenter notes that the preamble of the proposed rule indicates there are eight affected fuses installed on each Model 737 series airplane. However, the commenter's records show that there are only four possible locations for the affected fuses to be installed on those airplanes.

The FAA concurs that clarification is necessary. A total of eight affected fuses (four wheel brake fuses, one auto brake fuse, one leading edge fuse, and two thrust reverser fuses) are installed in the standby leading edge system, the brake system, and the standby thrust reverser system of Model 737 series airplanes. Further, a total of 24 brake fuses are installed in the normal and reserve brake systems on Model 747 series airplanes. The FAA finds that no change to the final rule is necessary in response to the commenter's request.

Revision to Service Letter Citation

The FAA has revised paragraph (a) of the final rule to indicate that Boeing Service Letter 737–SL–29–21, dated December 16, 1982, includes Attachments 1, 2, and 3, dated April 15, 1982.

Revision to Cost Impact Information

Since the issuance of the proposed rule, a vendor has advised the FAA that the cost for required replacement parts for Boeing Model 747 series airplanes will be $31,200 per airplane ($1,300 per fuse; 24 fuses per airplane). In light of this, the FAA has revised the cost impact information, below, to reflect this change.

Conclusion

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

Cost Impact

There are approximately 1,145 Boeing Model 737 series airplanes and 727 Boeing Model 747 series airplanes of the affected design in the worldwide fleet.

The FAA estimates that 421 Boeing Model 737 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per airplane (8 fuses per airplane; 2 work hours per fuse) to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts that are modified by the vendor will be provided at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators of Model 737 series airplanes is estimated to be $404,160, or $960 per airplane.

The FAA estimates that 208 Boeing Model 747 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 48 work hours per airplane (24 fuses per airplane; 2 work hours per fuse) to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost for required parts will be $31,200 per airplane ($1,300 per fuse; 24 fuses per airplane). Required parts that are modified by the vendor will be provided at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators of Model 747 series airplanes is estimated to be $7,088,640, or $34,080 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–22–11 Boeing: Amendment 39–9799. Docket 96–NM–36–AD.

Applicability: Model 737–100 and –200 series airplanes, as identified in Boeing Service Letter 737–SL–29–21, dated December 16, 1982; and Model 747–100, –200, –300, and –SP series airplanes, as identified in Boeing Service Letter 747–SL–32–19, dated January 16, 1980; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the hydraulic fuse, which could result in the failure of one or more hydraulic systems and resultant reduced controllability of the airplane, accomplish the following:

(a) For Model 737–100 and –200 series airplanes: Within 24 months after the effective date of this AD, replace Waterman hydraulic fuse assemblies, having Waterman part number (P/N) G838–8–40, G838–8–60, or G838–8–160, with modified assemblies having P/N G8381–8–40, G8381–8–60, or G8381–8–160, respectively; or with a PneuDraulics fuse specified in Boeing Service Letter 737–SL–29–21, dated December 16, 1982, including Attachments 1, 2, and 3, dated April 15, 1982. Accomplish the replacement in accordance with the service letter.

Note 2: The Boeing service letter references Imperial Clevite, Inc., Service Bulletins G838–80–4, G838–80–5, and G838–80–6, all dated April 15, 1982, as additional sources of service information for accomplishment of the replacement.

(b) For Model 747–100, –200, –300, and –SP series airplanes: Within 24 months after the effective date of this AD, replace Waterman hydraulic fuse assemblies, having Waterman P/N G905–120, with PneuDraulics assemblies having PneuDraulics P/N 6105, in accordance with Boeing Service Letter 747–SL–32–19, dated January 16, 1980.

(c) As of the effective date of this AD, no person shall install on any airplane Waterman hydraulic fuse assemblies having Waterman P/N G838–8–40, G838–8–60, G838–8–160, or G905–120.

(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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(f) The replacement shall be done in accordance with the following Boeing service letters, as applicable, which include the specified list of effective pages:

Service letter referenced and date	Page No.	Revision level shown on page	Date shown on page
737–SL–29–21, December 16, 1982	1, 2		December 16, 1982.
	Attachment 1, Page 1, 2; Attachment 2, Page 1, 2; Attachment 3, Page 1, 2.		April 15, 1982.
747–SL–32–19, January 16, 1980	1, 2		January 16, 1980.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 11, 1996.

Issued in Renton, Washington, on October 22, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–27645 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–CE–85–AD; Amendment 39–9801; AD 96–22–13]

RIN 2120–AA64

Airworthiness Directives: Pilatus Aircraft Ltd., Model PC–6 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Pilatus Aircraft Ltd. (Pilatus), Model PC–6 airplanes. This action requires inspecting for loose or sheared rivets in the hinge brackets on the horizontal stabilizer and inspecting for incorrect spacing tolerance of the hinge brackets. If the rivets are found loose or sheared, the AD requires replacing the rivets and also re-positioning the hinge brackets, if found incorrectly spaced. Several reports of rivets shearing on the hinge brackets prompted this action. The actions specified by this AD are intended to prevent structural failure of the hinge bracket on the horizontal stabilizer, which could result in partial or complete loss of control of the horizontal stabilizer and loss of control of the airplane.

DATES: Effective December 27, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 27, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–85–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Events Leading to This Action

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Pilatus Model PC–6 airplanes was published in the Federal Register on June 11, 1996 (61 FR 29501). The action proposed to require the following:

— Inspecting the hinge brackets attached to the fuselage for loose or sheared rivets,
—Inspecting the hinge brackets for correct spacing tolerance and positioning,
—Removing the brackets and adjusting any incorrect spacing or positioning, and
—Replacing any loose or sheared rivets with new rivets.

Related Service Information

Accomplishment of this action would be in accordance with Pilatus Service Bulletin (SB) PC–6 165, dated February 7, 1994.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that one airplane in the U.S. registry will be affected by this AD, that it will take less than 1 workhour per airplane to accomplish these actions, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD for the only U.S. operator is estimated to be $60. This is the cost of the inspection only and does not include the cost for replacing any loose rivets, if found. This figure is based on the assumption that the affected owner/operator of the affected airplane has not performed the inspection or modification.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–22–13 Pilatus Aircraft Ltd.: Amendment 39–9801; Docket No. 95–CE–85–AD.

Applicability: Model PC–6 airplanes (all serial numbers), certificated in any category.

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

Compliance: Required within the next 75 hours time-in-service (TIS), after the effective date of this AD, unless already accomplished.

Note 2: The compliance time required in this AD takes precedence over the compliance time in Pilatus Service Bulletin PC–6 165, dated February 7, 1994.

To prevent structural failure of the hinge bracket on the horizontal stabilizer, which could result in partial or complete loss of control of the horizontal stabilizer and loss of control of the airplane, accomplish the following:

(a) Inspect the hinge brackets on the horizontal stabilizer for sheared or loose rivets in accordance with paragraph 2.A. in the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus Service Bulletin (SB) PC–6 165, dated February 7, 1994.

(b) Inspect the spacing tolerance of the hinge bracket in accordance with paragraph 2.C. in the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus SB PC–6 165, dated February 7, 1994.

(c) If there are loose or sheared rivets or if the bracket spacing is out of the spacing tolerance, prior to further flight, modify the position and space tolerance of the hinge brackets, and replace any loose or sheared rivets in accordance with paragraph 2.D. in the ACCOMPLISHMENT INSTRUCTIONS section of Pilatus SB PC–6 165, dated February 7, 1994.

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

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) The inspection, modification, and replacement required by this AD shall be done in accordance of Pilatus Service Bulletin PC–6 165, dated February 7, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this document may be obtained from Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland. Copies also may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–9801) becomes effective on December 27, 1996.

Issued in Kansas City, Missouri, on October 22, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–27676 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–222–AD; Amendment 39–9804; AD 96–22–15]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that requires repetitive Tap Test inspections to detect debonding of the elevator skins, and corrective actions, if necessary. This amendment is prompted by a report of a debonded area of the upper skin of an elevator that was discovered during a visual inspection. The actions specified by this AD are intended to prevent the presence of water in the elevator, which could cause debonding of the elevator skins and, consequently, adversely affect the structural integrity of the elevator.

DATES: Effective December 11, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 11, 1996.

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

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes was published in the Federal Register as a supplemental Notice of Proposed Rulemaking (NPRM) on July 12, 1996 (61 FR 36664). That action proposed to require repetitive Tap Test inspections to detect debonding of the elevator skins, and corrective actions, if necessary.

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

Request to Withdraw the Proposal

The Air Transport Association (ATA) of America, on behalf of two of its member operators, and the manufacturer have no technical objection to the proposal, but request that the FAA withdraw the proposal. These commenters state that the entire affected U.S. fleet has been modified already, so there is no need for an AD.

The FAA does not concur with the commenters' request to withdraw the proposal. Even if the current U.S.-registered fleet is in compliance with the requirements of the AD, the issuance of the rule is still necessary to ensure that any affected airplane that is imported and placed on the U.S. register in the future will be required to be in compliance as well. The manufacturer has provided no supporting data to the FAA demonstrating that all of the affected airplanes, worldwide, have been modified; therefore, the possibility exists that an unmodified airplane could be imported to the U.S. at some future time. Issuance of this AD will ensure that any such airplane is modified prior to the time it is permitted to operate in the U.S.

Request to Include Equipment Costs in the Economic Analysis

Two commenters state that their fleet of airplanes have already accomplished the actions of the proposed rule; however, one of the commenters advises that the cost of the thermographic inspections required by the proposed rule involves the use of equipment that costs approximately $30,000. The commenter notes that the cost impact information presented in the preamble to the notice does not take this factor into consideration, but it should have.

The FAA does not concur that a change to the information is necessary. The thermographic inspections that the commenter refers to are inspections that must be accomplished in the event that debonding is detected and the amount of it is outside the limits specified in the service bulletin. The economic analysis of the AD is limited only to the cost of actions actually required by the rule. It does not consider the costs of ''on condition'' actions (that is, actions taken to correct an unsafe condition if found), since those actions would be required to be accomplished, regardless of AD direction, in order to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. In addition, the FAA has taken into consideration that some operators already may have the equipment at their main base, or that such equipment can be rented, borrowed, etc. The FAA also is aware that some manufacturers provide certain equipment on temporary loan to operators. Moreover, based on

the previous commenters' input that all U.S. operators have previously accomplished the inspections, and the fact that only a single operator commented on the cost of the equipment, the FAA assumes that operators who were required to perform the thermographic inspections found workable ways and means to conduct them.

Reference to Service Bulletin Revision

The FAA has revised the final rule to include a reference to ''Revision 1'' of Airbus Service Bulletins A310–55–2019 and A300–55–6016. This reference to the revision level of the service bulletins was inadvertently omitted from the notice. (The issuance date of these service bulletins was correctly cited in the notice as December 18, 1995.)

Conclusion

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

Cost Impact

The FAA estimates that 15 Airbus Model A310 and A300–600 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,500, or $300 per airplane, per inspection cycle.

This cost impact figure is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that the terminating modification already has been installed on a number of airplanes that are subject to this AD. Therefore, the future economic cost impact of this rule on U.S. operators is expected to less than the cost impact figure indicated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–22–15 Airbus: Amendment 39–9804. Docket 94–NM–222–AD.

Applicability: Model A310 and A300–600 series airplanes equipped with carbon fiber elevators having part number (P/N) A5527605500000 (left-hand side) and P/N A5527605600000 (right-hand side), on which Airbus Modifications 10489 and 10533 have not been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the presence of water in the elevator, which could cause debonding of the elevator skins and, consequently, could affect the structural integrity of the elevator, accomplish the following:

(a) Perform a thermographic inspection to detect any water that is trapped within the elevator structure, in accordance with Airbus Service Bulletin A310–55–2016, Revision 1, dated August 8, 1995 (for Model A310 series airplanes); or Airbus Service Bulletin A300–55–6014, Revision 1, dated August 8, 1995 (for Model A300–600 series airplanes); as applicable. Perform the inspection at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes on which CARCOM elevators are installed: Perform the inspection at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 4,500 total landings on the elevator, or within 5 years after the first landing on the elevator, whichever occurs later; or

(ii) Within 3 months after the effective date of this AD.

(2) For airplanes on which CASA elevators are installed: Perform the inspection at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Prior to the accumulation of 5,000 total landings on the elevator, or within 6 years after the first landing on the elevator, whichever occurs later.

(ii) Within 3 months after the effective date of this AD.

(b) If no water is detected, repeat the thermographic inspection required by paragraph (a) of this AD thereafter at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes on which CARCOM elevators are installed: Repeat the inspection at intervals not to exceed 4,500 landings or 5 years, whichever occurs first;

(2) For airplanes on which CASA elevators are installed: Repeat the inspection at intervals not to exceed 5,000 landings or 6 years, whichever occurs first.

(c) If any water is detected in the elevator, and the area is within the limits specified in the Accomplishment Instructions of Airbus Service Bulletin A310–55–2016, Revision 1, dated August 8, 1995 (for Model A310 series airplanes); or Airbus Service Bulletin A300–55–6014, Revision 1, dated August 8, 1995 (for Model A300–600 series airplanes); as applicable: Prior to further flight, protect and/or repair the elevator in accordance with the applicable service bulletin. Thereafter, repeat the thermographic inspections required by paragraph (b) of this AD at the times specified in the Accomplishment Instructions of the applicable service bulletin until the replacement of the elevator is accomplished as specified in paragraph (e) of this AD.

(d) If any water is detected in the elevator that exceeds the limits specified in the

Accomplishment Instructions of Airbus Service Bulletin A310–55–2016, Revision 1, dated August 8, 1995 (for Model A310 series airplanes); or Airbus Service Bulletin A300–55–6014, Revision 1, dated August 8, 1995 (for Model A300–600 series airplanes); as applicable: Accomplish the requirements of either (d)(1) or (d)(2) of this AD, as applicable.

(1) If any damage is detected that is less than or equal to 60,000 square millimeters or 93 square inches: Prior to further flight, protect or repair and perform repetitive inspections in accordance with the applicable service bulletin.

(2) If any damage is detected that is more than 60,001 square millimeters or 93 square inches: Prior to further flight, perform the requirements of either paragraph (d)(2)(i) or (d)(2)(ii) of this AD.

(i) If the damage is within the limits of the Structural Repair Manual (SRM) (Ref. SRM 55–20–00), accomplish the repair in accordance with the SRM. Or

(ii) Replace the elevator in accordance with Airbus Service Bulletin A310–55–2019, Revision 1, dated December 18, 1995 (for Model A310 series airplanes); or Airbus Service Bulletin A300–55–6016, Revision 1, dated December 18, 1995 (for Model A300–600 series airplanes); as applicable. After this replacement is accomplished, no further action is required by this AD.

(e) Replacement of the elevator in accordance with Airbus Service Bulletin A310–55–2019, Revision 1, dated December 18, 1995 (for Model A310 series airplanes); or Airbus Service Bulletin A300–55–6016, Revision 1, dated December 18, 1995 (for Model A300–600 series airplanes); as applicable; constitutes terminating action for the requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(h) The actions shall be done in accordance with the following Airbus service bulletins, which contain the specified list of effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
A310–55–2016	1–55	.....	August 8, 1995.
Revision 1: August 8, 1995	Appendix 1 pages 1–8	(1)	September 10, 1993.
A300–55–6014	1–55	.....	August 8, 1995.
Revision 1: August 8, 1995	Appendix 1 pages 1–8	(1)	September 10, 1993.
A310–55–2019	1–9	.....	December 18, 1995.
Revision 1: December 18, 1995.			
A300–55–6016	1–9	.....	December 18, 1995.
Revision 1: December 18, 1995.			

[1] Original.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on December 11, 1996.

Issued in Renton, Washington, on October 24, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–27923 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–208–AD; Amendment 39–9803; AD 96–22–14]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 and 200) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 and 200) airplanes. This action requires repetitive inspections to detect discrepancies of the shock strut end caps and attachment pins of the main landing gear (MLG), and replacement of discrepant parts with new parts. It also requires a check for and replacement of certain pins that currently may be installed on some airplanes. This amendment is prompted by reports of corrosion, wear, and loss of chrome plating on the upper and lower attachment pins of the shock strut of the MLG, and reports of cracks in the lower attachment pins and the end cap of upper attachment pins. The actions specified in this AD are intended to prevent failure of attachment pin and the attachment pin's end cap, which could result in failure of the MLG.

DATES: Effective November 21, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 21, 1996.

Comments for inclusion in the Rules Docket must be received on or before January 6, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–208–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Bombardier Inc., Bombardier Regional Aircraft Division, Canadair Administrative Center, 400 Cote Vertu Road West, Dorval, Quebec, Canada H4S 1Y9; and Messier-Dowty CSC, P.O. Box 49, Sterling, Virginia, 20167. This information may be examined at the FAA, Transport Airplane Directorate,

1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: George Duckett, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7525; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 and 200) airplanes. Transport Canada Aviation advises that it has received several reports of cracks in the lower attachment pins and one of the two end caps, which retain the upper attachment of the shock strut. The cause of such cracking is unknown at this time. Cracking in the subject attachment pin could result in failure of the pin and consequent failure of the MLG. Cracking in the subject end cap could result in loss of the end cap and possible loss of the retaining pin holding the upper end of the shock strut to the main fitting; this situation ultimately could result in failure of the MLG.

Explanation of Relevant Service Information

Bombardier has issued Canadair Regional Jet Alert Service Bulletin S.B. A601R–32–062, Revision 'C', dated September 18, 1996. In addition, Messier-Dowty has issued Service Bulletin M–DT 17002–32–10, Revision 3, dated September 6, 1996. For certain airplanes, these service bulletins describe procedures for performing a check to determine the serial number of the lower attachment pin of the shock strut of each main landing gear, removal of certain pins, and the installation of new pins, if necessary. These service bulletins also describe procedures for performing repetitive in-situ and detailed inspections to detect corrosion, wear, loss of chrome plating, and cracking of the MLG shock strut upper and lower attachment pins and pin end caps. They also describe procedures for replacement of discrepant parts with new parts.

Transport Canada Aviation classified these service bulletins as mandatory and issued Canadian airworthiness directive CF–96–12, dated July 23, 1996, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, 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 Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of the attachment pins and end caps of the MLG, which could result in failure of the MLG. For certain airplanes, this AD requires a check to determine the serial number of the lower attachment pin of the shock strut of each main landing gear, removal of certain pins, and the installation of new pins, if necessary. This AD also requires repetitive in-situ visual and detailed inspections to detect discrepancies of the left and right-hand shock struts of the MLG, and replacement of discrepant parts with new parts. Those actions are required to be accomplished in accordance with the service bulletins described previously.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–208–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an

emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–22–14 Bombardier, Inc. (Formerly Canadair): Amendment 39–9803. Docket 96–NM–208–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100 and 200) airplanes; serial numbers 7003 through 7160, inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) 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 failure of the attachment pins and end caps of the main landing gear (MLG), which could result in failure of the MLG, accomplish the following:

(a) *Serial Number Check.* For airplanes having serial numbers 7003 through 7126, inclusive: Within 150 landings after the effective date of this AD, check the serial number of each MLG shock strut lower attachment pin, part number 17144–1, in accordance with paragraphs 2.A. and 2.B. of the Accomplishment Instructions of Canadair Regional Jet Alert Service Bulletin S.B. A601R–32–062, Revision 'C', dated September 18, 1996; and paragraphs 2.A.(4), 2.B.(4), and 2.C.(3) of the Accomplishment Instructions of Messier-Dowty Service Bulletin M-DT 17002–32–10, Revision 3, dated September 6, 1996.

(1) If the serial number is within the range of DCL206 through DCL259, inclusive, prior to further flight, remove the pin and install a new pin having a serial number outside (either higher or lower) of that range, in accordance with the service bulletins. Thereafter, inspect that replacement pin in accordance with paragraphs (b) and (c) of this AD.

(2) If the serial number is outside of the range (higher or lower) of DCL206 through DCL259, thereafter inspect the pin in accordance with paragraphs (b) and (c) of this AD.

(b) *In-Situ Visual Inspection.* Within 150 landings after the effective date of this AD, perform an in-situ visual inspection to detect discrepancies of the left- and right-hand shock strut of the MLG, in accordance with paragraphs 2.C. and 2.D. of the Accomplishment Instructions of Canadair Regional Jet Alert Service Bulletin S.B. A601R–32–062, Revision 'C', dated September 18, 1996; and paragraph 2.B.(1) of the Accomplishment Instructions of Messier-Dowty Service Bulletin M-DT 17002–32–10, Revision 3, dated September 6, 1996.

Note 2: In-situ visual inspections that have been accomplished prior to the effective date of this amendment in accordance with Messier-Dowty Service Bulletin M–DT 17002–32–10, dated June 13, 1996; Revision 1, dated June 29, 1996; or Revision 2, dated July 17, 1996; are considered acceptable for compliance with paragraph (b) of this amendment.

(1) If no discrepancy is detected, repeat the in-situ visual inspection thereafter at intervals not to exceed every ''A'' check or 400 landings, whichever occurs later.

(2) If any discrepancy is detected, prior to further flight, replace the discrepant part with a new part in accordance with the service bulletins. Thereafter, repeat the in-situ visual inspection at intervals not to exceed every ''A'' check or 400 landings, whichever occurs later.

(c) *Detailed Inspection.* Within 3,000 landings since the date of airplane manufacture, or within 400 landings after the effective date of this AD, whichever occurs later, perform a detailed inspection to detect discrepancies of the shock strut end caps and attachment pins of the MLG, in accordance with paragraphs 2.E. and 2.F. of the Accomplishment Instructions of Canadair Regional Jet Alert Service Bulletin S.B. A601R–32–062, Revision 'C', dated September 18, 1996; and paragraph 2.B.(2) of the Accomplishment Instructions of Messier-Dowty Service Bulletin M–OT 17002–32–10, Revision 3, dated September 6, 1996. Non-destructive testing (NDT) must be accomplished in accordance with the instructions provided or references referred to in these service bulletins. Where instructions in those documents specify dye penetrant inspections (DPI), accomplish fluorescent penetrant (Type 1) inspections, sensitivity level 3 or higher, using material qualified to Military Standard MIL–I–25135.

Note 3: Detailed inspections accomplished prior to the effective date of this amendment in accordance with Messier-Dowty Service Bulletin M-DT 17002–32–10, dated June 13, 1996; Revision 1, dated June 29, 1996; or Revision 2, dated July 17, 1996; are considered acceptable for compliance with paragraph (c) of this amendment.

(1) If no discrepancy is detected, repeat the detailed inspection thereafter at intervals not to exceed 2,000 landings.

(2) If any discrepancy is detected, prior to further flight, replace the discrepant part with a new part in accordance with the service bulletins. Repeat the detailed inspection thereafter at intervals not to exceed 2,000 landings.

(d) As of the effective date of this AD, no person shall install on any airplane an MLG shock strut lower attachment pin, part number 17144–1, that has a serial number that is within the range of DCL206 through DCL259, inclusive.

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(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.

(g) The specified actions shall be done in accordance with Messier-Dowty Service Bulletin No. M–DT 17002–32–10, Revision 3, dated September 6, 1996, and Canadair Regional Jet Alert Service Bulletin S.B. A601R–32–062, Revision 'C', dated September 18, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier Inc., Bombardier Regional Aircraft Division, Canadair Administrative Center, 400 Cote Vertu Road West, Dorval, Quebec, Canada H4S 1Y9. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on November 21, 1996.

Issued in Renton, Washington, on October 24, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–27922 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–CE–39–AD; Amendment 39–9805; AD 96–22–16]

RIN 2120–AA64

Airworthiness Directives; HB Aircraft Industries AG HB–23 2400 Hobbyliner/Scanliner Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain HB Aircraft Industries AG HB–23 2400 Hobbyliner/Scanliner sailplanes. This action requires inspecting the rudder bearing support bracket for cracks, replacing the bracket if cracked, and modifying the bracket with a third bolt, if no cracks are found. Cracks found in the rudder bearing support brackets prompted this action. The actions specified by this AD are intended to prevent cracks in the rudder bearing support bracket, which could cause loss of control of the rudder and possible loss of the sailplane.

DATES: Effective December 30, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 30, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from Ing. Heino Brditschka, HB-Flugtechnik Ges m.b.H, attn: Dr. Adolf Scharf, Strasse 42, Post Fach 74, A–4053, Haid, Austria. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–39–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to This Action

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain H.B. Flugtechnik GmbH (Flugtechnik) HB–23/2400 sailplanes (also known as HB Aircraft Industries AG HB–23 2400 Hobbyliner/Scanliner sailplanes) was published in the Federal Register on May 13, 1996, (61 FR 21980). The action proposed to require inspecting the rudder bearing support bracket for cracks, and replacing the bracket with a new bracket that has 3 bolt holes, or modifying the bracket by drilling a third hole and installing a new bolt.

Accomplishment of this action would be in accordance with Ing. Heino Brditschka Flugtechnik Ges m.b.H (HB Flugtechnik) Service Bulletin (SB) HB 23/19/91, dated October 5, 1991

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. These editorial corrections involve changing the name of the company and the sailplane cited in the NPRM. The NPRM referred to the sailplane name as H.B. Flugtechnik Models 23/2400, and the company as H.B. Flugtechnik GmbH. The actual company name listed on the company's Type Certificate (TC) data sheet for this sailplane is HB Aircraft Industries AG. The sailplane model listed on the TC data sheet is Model HB–23 2400 Hobbyliner/Scanliner. Therefore , the name for the company and the sailplane have been changed to reflect the correct names in the final rule. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that one sailplane in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per sailplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $5 per sailplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $65. This figure is based upon the assumption that no affected sailplane owner/operator has accomplished the proposed inspection and replacement.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

96–22–16 HB Aircraft Industries AG: Amendment 39–9805; Docket No. 95–CE–39–AD.

Applicability: Model HB–23 2400 Hobbyliner/Scanliner Sailplanes, (serial numbers 23001 through 23048), certificated in any category.

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

Compliance: Required within the next 50 hours time-in-service (TIS), after the effective date of this AD, unless already accomplished.

To prevent the rudder bearing support bracket from cracking, which could cause loss of rudder control and possible loss of the sailplane, accomplish the following:

(a) Inspect (one time) the rudder bearing support bracket with a 10x magnifying glass for any visible cracks in accordance with the *Actions* section of Ing. Heino Brditschka Flugtechnik Ges m.b.H (HB Flugtechnik) Service Bulletin (SB) HB–23/19/91, dated October 5, 1991.

(1) If cracks are found, prior to further flight, replace the rudder bearing support bracket with a new support bracket that has 3 bolt holes in accordance with the *Actions* section of HB Flugtechnik SB HB–23/19/91, dated October 5, 1991.

(2) If no cracks are found, modify the rudder bearing support bracket by drilling a third hole and installing a third bolt (part number M6x30), or replace the bracket with a new bracket that has 3 bolt holes in accordance with the *Actions* section of HB Flugtechnik SB HB–23/19/91, dated October 5, 1991.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(d) The inspection, replacement or modification required by this AD shall be done in accordance with Ing. Heino Brditschka Flugtechnik Ges m.b.H Service Bulletin HB–23/19/91, dated October 5, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Ing. H. Brditschka HB-Flugtechnik, Ges m.b.H, attn: Dr. Adolf Scharf, Strasse 42, Post Fach 74, A–4053, Haid, Austria. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–9805) becomes effective on December 30, 1996.

Issued in Kansas City, Missouri, on October 24, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–27934 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–SW–35–AD; Amendment 39–9806; AD 96–23–01]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, a Division of Textron Canada, Ltd. Model 206L–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Bell Helicopter Textron, a Division of Textron Canada, Ltd. (BHTC) Model 206L–1 helicopters that have a Kratos turbine outlet temperature (TOT) indicator (Kratos indicator) installed, that requires replacing certain Kratos indicators. This amendment is prompted by manufacturer's tests and FAA analyses that show certain Kratos indicators may incorrectly provide low-temperature readings when the battery voltage is below 10 volts. The actions specified by this AD are intended to prevent false low-temperature indications, which could result in overheating of the engine turbine (turbine) and subsequent thermal fatigue damage to the turbine wheel.

EFFECTIVE DATE: December 11, 1996.

ADDRESSES: The service information may be obtained from BHTC, 12,800 Rue de L'Avenir, Mirabel, Quebec, Canada J7J1R4, ATTN: Product Support Engineering Light Helicopters.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Kuehn, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5366, fax (817) 222–5960.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to BHTC Model 206L–1 helicopters was published in the Federal Register on April 10, 1996 (61 FR 15903). That action proposed to require removing the Kratos indicator and replacing it with an airworthy TOT indicator within 90 days after the effective date of this AD.

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

One commenter states that the AD should refer to the specific TOT indicator as is stated in the BHTC Model 206L–1 Illustrated Parts Catalog; otherwise, the AD will require owners/operators to obtain additional FAA approval since the particular part number referenced in the AD may not be reflected in any BHTC document. The FAA partially concurs. The FAA does not endorse specific vendors or manufacturers of parts unless those parts are the only parts authorized for use as replacements. There are alternative TOT indicator part numbers in the applicable helicopter parts catalog. The final rule will specify replacement TOT indicator part numbers, and the wording in the Compliance section has been revised to refer to using an airworthy replacement TOT indicator that is approved for this helicopter.

The same commenter states that the reference to the Alert Service Bulletin (ASB) should not be contained in a Note, and instead compliance in accordance with the ASB should be mandatory. The FAA does not concur. Generally, ASB's may be mandatory for Part 135 owners/operators, but not for Part 91 owners/operators.

Finally, the same commenter states that the AD should not require replacement of the TOT indicator, and should instead require owners/operators to ensure their helicopters' electrical systems provide at least 10 volts during startup. The FAA does not concur that this should be included in the AD. There are procedures by which owners/operators may request permission to accomplish this as an alternate means of compliance.

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

The FAA estimates that 100 helicopters of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per helicopter to accomplish the required

actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $8,300 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $878,000.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 96–23–01 Bell Helicopter Textron, a Division of Textron Canada, Ltd: Amendment 39–9806. Docket No. 95–SW–35–AD.

Applicability: Model 206L–1 helicopters that have a Kratos turbine outlet temperature (TOT) indicator (Kratos indicator), part number (P/N) 124.444–6 or 124.444–20, installed, certificated in any category.

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

Compliance: Required within 90 days after the effective date of this AD, unless accomplished previously.

To prevent false low-temperature indications, which could result in overheating of the engine turbine (turbine) and subsequent thermal fatigue damage to the turbine wheel, accomplish the following:

(a) Remove the Kratos indicator, P/N 124.444–6 or 124.444–20, and replace it with an indicator, P/N 206–075–680–105 or P/N 206–375–006–101, or any other airworthy TOT indicator approved for use on the Bell Model 206L–1 helicopter, except for the Kratos TOT indicator, P/N 124.444–6 or 124.444–20.

Note 2: Bell Helicopter Textron, Inc. Alert Service Bulletin 206L–94–94, Revision A, dated July 11, 1994, pertains to this AD.

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

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

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

(d) This amendment becomes effective on December 11, 1996.

Issued in Fort Worth, Texas, on October 25, 1996.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96–28167 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 96–AEA–06]

Establishment of Class E Airspace; Weedsport, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Weedsport, NY. The development of a Very High Frequency Omni-Directional Range (VOR) Distance Measuring Equipment (DME) Standard Instrument Approach Procedure (SIAP) to Whitfords Airport, Weedsport, NY has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Whitfords Airport.

EFFECTIVE DATE: 0901 UTC, January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Frances T. Jordan, Airspace Specialist, Operations Branch, AEA–530, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On August 15, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a Class E airspace area at Whitfords Airport, Weedsport, NY (61 FR 42396). The development of a VOR/DME A SIAP at Whitfords Airport has made this action necessary.

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 areas designations are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996 and effective September 16, 1996, 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 Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes a Class E airspace area at Whitfords Airport. The development of a VOR/DME A SIAP at Whitfords Airport has made this action necessary. The intended effect of this

action is to provide adequate Class E airspace for aircraft executing the VOR/DME A SIAP at the airport.

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 10034; 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 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—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996 and effective September 16, 1996, is amended as follows:

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

* * * * *

AEA NY E5 Weedsport, NY [New]

Whitfords Airport, NY
(Lat. 43°04′47″N, Long. 76°32′18″W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Whitfords Airport excluding that portion within the Syracuse, NY and Skaneateles, NY 700 foot Class E Airspace Area.

* * * * *

Issued in Jamaica, New York on October 21, 1996.

John S. Walker,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 96–28412 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 365 and 375

[Docket No. RM96–13–000]

Amendment to Filing Requirements and Ministerial Procedures for Persons Seeking Exempt Wholesale Generator Status; Order No. 591

Issued October 30, 1996.

AGENCY: Federal Energy Regulatory Commission, DOE

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to provide that the Commission may, in its discretion for good cause shown, allow an applicant for exempt wholesale generator status to amend its application without paying an additional filing fee; however, the statutory sixty-day period for Commission action will be restarted on the date on which the Commission receives the amendment. The Commission believes that by allowing these applications to be amended to correct deficiencies, it will improve administrative efficiency. The Commission is also amending its regulations to delegate to the General Counsel the authority to act on uncontested amendments that do not present unusual or interpretation issues.

EFFECTIVE DATE: October 30, 1996.

FOR FURTHER INFORMATION CONTACT: Kimberly Bose, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D. C. 20426, Telephone: (202) 208–2284.

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 Commission's Public Reference Room, Room 2A, 888 First Street, N.E., Washington, D. C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. CIPS is also available through the Fed World System (by modem or Internet). To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200bps full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS indefinitely in ASCII and WordPerfect 5.1 format for one year. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, Ladorn Systems Corporation, also located in Room 2A, 888 First Street, N.E., Washington, D. C. 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

I. Introduction

This final rule amends 18 CFR Parts 365 and 375 to provide that the Commission may, in its discretion for good cause shown, allow an applicant for exempt wholesale generator (EWG) status to amend its application without paying an additional filing fee; however, the statutory sixty-day period for Commission action will be restarted on the date on which the Commission receives the amendment. The Commission is delegating to the General Counsel the authority to act on uncontested amendments that do not present unusual or interpretation issues.

II. Public Reporting Burden

The Commission estimates the public reporting burden for the collection of information under the final rule will remain unchanged for FERC–598, since the only modifications are to the Commission's procedures to allow an applicant for exempt wholesale generator (EWG) status to amend its application without paying an additional filing fee and to change the Commission's delegation authority.

This estimate includes the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The current annual reporting burden for the industry for the collection of information is estimated to be:

Data collection FERC–598	Number of respondents	Number of responses	Hours per response	Total annual hours
Reporting	280	1	6	1,680

This order contains minor, technical amendments to Parts 365 and 375 of the regulations. The amendments are intended to allow an applicant for EWG status to amend its application without paying an additional filing fee. Therefore, these amendments will not have a significant impact on the estimated reporting burden that is submitted by the Commission to OMB.

For copies of the OMB submission contact Michael Miller, Information Policy and Standards Branch, at (202) 208–1415. Comments on the requirements of this order should be directed to the Desk Officer for the Federal Energy Regulatory Commission, Office of Management and Budget, Room 3019NEOB, Washington, D.C. 20503, phone 202–395–3087, facsimile: 202–395–7285 or via the Internet at hillier __t@a;1/eop.gov. A copy of any comments filed with the Office of Management and Budget and comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden should also be sent to the following address at the Commission: Federal Energy Regulatory Commission, Information Services, Room 41–17, 888 First Street, N.E., Washington, D.C. 20426, (Attention: Michael Miller, Information Services Division, 202–208–1415), and to the Office of Information and Regulatory Affairs of the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission), FAX: (202) 395–7285, phone: (202) 395–3087.

III. Background

Section 32 of the Public Utility Holding Company Act of 1935 (PUHCA), as amended by the Energy Policy Act,[1] created a new category of entities known as EWGs that are exempt from regulation under PUHCA.[2] It requires that applicants for EWG status file applications for determination of their status by the Commission. An applicant that has applied in good faith for such a determination is deemed to be an EWG pending the Commission's determination. The Commission is required to render its determination within 60 days of the receipt of an application.

The Commission's regulations (EWG Rules) set forth filing requirements and ministerial procedures for EWG applications.[3] They provide that any person seeking EWG status must file a sworn statement containing certain information.[4] The Commission publishes notices of filing of EWG applications in the Federal Register and permits comments or interventions.[5]

In adopting the EWG Rules, we stated that we will not issue deficiency letters,[6] reasoning that the absolute sixty-day deadline for Commission action does not leave adequate time for review of deficiency responses.[7] For the same reason, the Commission stated that it would not allow amendments to filings.[8] The order on rehearing affirmed this decision, noting that the EWG filing requirements, which follow the requirements of section 32(a)(1) of PUHCA, are simple and straightforward.[9]

IV. Discussion

Since the Commission issued the EWG Rules, we have received applications that, for various reasons, did not meet the requirements set forth in 18 CFR 365.3. Some of these deficiencies have been extremely minor or have been the result of drafting errors. In the past, when Commission staff has identified problems with an application that it believed would cause the application to be disapproved, Commission staff has telephoned the applicant to tell them of the problems. The applicant has generally chosen to withdraw the application and file a new one. This has meant that those applicants who will not be public utilities have had to pay new filing fees.[10] This approach has proven to be costly to the applicants and cumbersome for the Commission.

Based on this experience, we have decided to revise the EWG Rules to provide that we may, in our discretion for good cause shown, allow applicants to amend their applications[11] without paying a new filing fee.[12] We will issue a notice of the filing of such an amendment in the Federal Register allowing interventions and/or comments. Filing of the amendment will restart the statutory sixty-day approval period.[13]

The General Counsel has delegated authority to grant certain EWG applications and to act on uncontested motions to withdraw such applications.[14] Accordingly, we will delegate to the General Counsel similar authority to act on uncontested amendments to applications that do not present unusual or interpretation issues. The notice of the amendment in the Federal Register will serve as notification that the amendment has been accepted.

[1] 15 U.S.C. 79z-5a (West Supp. 1994).

[2] Pub. L. 102–486, 106 Stat. 2776 (1992).

[3] 18 CFR Part 365.

[4] The information required is: (1) A representation that the applicant is engaged directly, or indirectly through one or more affiliates as defined in section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale; (2) any exceptions for foreign sales of power at retail; (3) a brief description of the facility or facilities that are or will be eligible facilities and related transmission interconnection components; (4) any lease arrangements involving the facility and any public utility companies; (5) any electric utility company that is an affiliate or associate company of the applicant; and (6) any State commission determinations required by sections 32(c) and (d)(2) of PUHCA.

[5] See 18 CFR 365.4.

[6] Filing Requirements and Ministerial Procedures for Persons Seeking Exempt Wholesale Generator Status, Order No. 550, 58 FR 8897 (February 18, 1993 (as corrected at 58 FR 11886 (March 1, 1993)), FERC Stats. & Regs. Regulations Preambles (1991–1996) ¶ 30,964 at 30,778 (Order No. 550).

[7] Id.

[8] Id. n. 30.

[9] Filing Requirements and Ministerial Procedures for Persons Seeking Exempt Wholesale Generator Status, Order No. 550–A, FERC Stats. & Regs., Regulations Preambles (1991–1996) ¶ 30,969 at 30,839–40 (1993).

[10] Order No. 550 created a separate filing fee category for EWGs that will not become public utilities upon the sale of electric energy at wholesale. This would include foreign EWGs, EWGs owning only eligible facilities located and selling wholly within the Electric Reliability Council of Texas, in Hawaii, in Alaska, in Puerto Rico, etc. FERC Stats. & Regs. Regulations Preambles (1991–1996) at 30,773.

[11] The Commission would not expect to accept an amendment if the result of such action is to effectively result in a new proposal.

[12] When the Commission does allow an amendment to a deficient application, the amended filing will receive the same docket number that the Commission assigned to the original application.

[13] See 18 CFR 365.5.

[14] Delegation of Authority to the Secretary, the Director of the Office of Electric Power Regulation and the General Counsel, 60 FR 62326 (Dec. 6, 1995).

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[15] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[16] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural.[17] As explained below, this final rule is procedural in nature. Accordingly, no environmental statement is necessary.

VII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[18] requires rulemakings either to contain a description and analysis of the impact the rule will have on small entities or a certification that the rule will not have a substantial economic impact on a substantial number of small entities. This final rule is procedural and ministerial in nature and will not add any burdens to any entities. Rather, it will make it easier and quicker for entities, including small entities, to receive approval for their applications. Therefore, the Commission certifies that promulgating this rule will not have a significant economic impact on a substantial number of small entities.

VIII. Information Collection Statement

Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by an agency.[19] The information collection requirements in the final rule are contained in FERC–598.

Title: FERC–598, Determinations for Entities Seeking EWG Status.

Action: Final Rule.

OMB Control No: 1902–0166 (Respondents shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.)

Respondents: Business or other for profit, including small businesses. Section 711 of the Energy Policy Act of 1992 (P.L. 102–46) amended the Public Utility Holding Company Act of 1935 (PUHCA) to create a category of power producers known as EWGs. An applicant is an EWG when it files an application demonstrating that it is engaged directly, or indirectly through one or more affiliates as defined in the PUHCA section 2(a)(11)(B), and exclusively in the business of owning and/or operating all or part of one or more eligible facilities, and selling electricity at wholesale.

Frequency of Responses: On occasion.

Necessity of Information: This final rule amends Parts 365 and 375 of the Commission's regulations to provide that the Commission may, in its discretion for good cause shown, allow EWG applicants to amend their applications without paying new filing fees. The Commission believes that allowing these applications to be amended will improve administrative efficiency and will be less burdensome to applicants. The information is collected by the Commission in the form of a written application for determination of status as an EWG. The Commission uses the data to make a determination as to whether the applicant meets the statutory requirements for EWG status.

The Final Rule will not change the reporting requirements of FERC–598. This final rule amends Parts 365 and 375 of the Commission's regulations to allow an applicant for EWG status to amend its application without paying additional filing fee. The Commission believes that by allowing these applications to be amended to correct deficiencies, it will improve administrative efficiency. This rule therefore is not subject to OMB review. The Commission is submitting a copy of the proposed rule to OMB for information purposes only.

Interested persons may obtain information on or submit comments concerning the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426 [Attention: Michael Miller, Information Service Division, (202)208–1415], and to the Office of Management and Budget [Attention: Desk Officer for the Energy Regulatory Commission (202)396–3087.]

IX. Administrative Findings and Effective Date

The Administrative Procedure Act (APA)[20] requires rulemakings to be published in the Federal Register. The APA also mandates that an opportunity for comments be provided when an agency promulgates regulations. However, notice and comment are not required under the APA when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[21] The Commission finds that notice and comment are unnecessary for this rulemaking. As explained above, this final rule is procedural and ministerial in nature. The Commission is merely amending its rules to improve the efficiency with which certain routine items are processed. We therefore find good cause to make this rule effective immediately upon issuance.

X. Congressional Notification

The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates.[22] That reporting requirement does not apply to this final rule because it falls within a statutory exception for rules relating to agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.[23]

List of Subjects

18 CFR Part 365

Exempt wholesale generators.

18 CFR Part 375

Authority delegations (Government agencies), Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends Parts 365 and 375, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 365—FILING REQUIREMENTS AND MINISTERIAL PROCEDURES FOR PERSONS SEEKING EXEMPT WHOLESALE GENERATOR STATUS

1. The authority citation for Part 365 continues to read as follows:

Authority: 15 U.S.C. 79.

2. Part 365 is amended by revising § 365.2(b)(2), by redesignating § 365.5 as § 365.6, § 365.6 as § 365.7, and § 365.7 as § 365.8, and by adding § 365.5.

§ 365.2 Definitions.

(b) * * *

[15] Regulations Implementing the National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles (1986–1990) ¶ 30,783 (1987) (codified at 18 CFR Part 380).

[16] 18 CFR 380.4.

[17] 18 CFR 380.4(a)(2)(ii).

[18] 5 U.S.C. 601–612.

[19] 5 CFR 1320.12.

[20] 5 U.S.C. 551–559.

[21] 5 U.S.C. 553(B).

[22] Pub. L. 104–121, 110 Stat. 847 (1996).

[23] Pub. L. 104–121, 110 Stat. 847, 804(3)(C) (1996).

(2) *Receipt of an application* means the date on which the Commission receives the application or an amendment allowed for good cause shown and the applicable filing fee, if any; and

* * * * *

§ 365.5 Amendment of Applications.

The Commission will allow amendments of applications for good cause shown without payment of additional filing fees. If the amendment is accepted, notice of the amended application will be published in the Federal Register, with further opportunity for comments.

PART 375—THE COMMISSION

1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

2. In § 375.309, paragraph (g) is revised to read as follows:

§ 375.309 Delegations to the General Counsel.

* * * * *

(g) Grant uncontested applications for exempt wholesale generator status that do not involve unusual or interpretation issues; to act on uncontested motions to withdraw such applications; and to act on uncontested amendments to applications for EWG status that do not present unusual or interpretation issues.

[FR Doc. 96–28476 Filed 11–5–96; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 610

[Docket No. 95N–0295]

Prominence of Name of Distributor of Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the labeling regulations for biological products to remove the requirement that the manufacturer's name be more prominent than that of the distributor and to permit the names of distributors to be prominently displayed on biological product container labels, package labels, and labeling. This change in labeling requirements is intended to facilitate flexible manufacturing, packaging, distribution, and labeling arrangements, and to harmonize labeling regulations applicable to biologic products licensed under the Public Health Service Act (the PHS Act) with the corresponding labeling regulations for drugs approved under the Federal Food, Drug, and Cosmetic Act (the act).

EFFECTIVE DATE: November 18, 1996.

FOR FURTHER INFORMATION CONTACT: Gloria J. Hicks, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the Federal Register of September 27, 1995 (60 FR 49811), FDA published a proposed rule to amend the labeling regulations to remove the requirement that the manufacturer's name be more prominent than the distributor's and to permit the names of distributors to be prominently displayed on licensed biological product container labels, package labels, and labeling. This final rule is being issued in accordance with the principles set forth in Executive Order 12866 and the Regulatory Reinvention Initiative announced in President Clinton's memorandum of March 4, 1995. Executive Order 12866 directs Federal agencies and the Office of Information and Regulatory Affairs to implement measures that will reform and streamline the regulatory process. As part of the Regulatory Reinvention Initiative, a report entitled ''Reinventing Drug and Medical Device Regulations'' was issued in April 1995 by the President and Vice President. This final rule completes a commitment made by FDA in that report to permit greater flexibility in the appearance of distributors' names on biological product container labeling, package labels, and labeling.

Under Executive Order 12866, FDA published a notice in the Federal Register of January 20, 1994 (59 FR 3043), announcing FDA's plan to review and evaluate all significant regulations for their effectiveness in achieving public health goals and in order to reduce or eliminate unnecessary regulatory burden. In the Federal Register of June 3, 1994 (59 FR 28821 and 28822, respectively), FDA published two notices announcing the review and evaluation of certain biologic and blood and blood product regulations by the Center for Biologics Evaluation and Research (CBER). The intent of the review and evaluation was to identify those regulations that are outdated, burdensome, inefficient, duplicative, or otherwise unsuitable or unnecessary. Interested persons were given until August 17, 1994, to respond to the notices by submitting written comments to the Dockets Management Branch. In the Federal Register of August 17, 1994 (59 FR 42193), FDA extended the comment periods to November 15, 1994, in response to requests to allow for additional time for public comment. In the Federal Register of November 14, 1994 (59 FR 56448), FDA extended the comment periods to February 13, 1995, in response to requests to hold a public meeting regarding the biologics regulations under review.

FDA held a public meeting on January 26, 1995, that was announced in the Federal Register of January 9, 1995 (60 FR 2351). The notice of public meeting indicated that the public comment period was to close on February 13, 1995. The public meeting was a forum for the public to voice their comments regarding the review and evaluation of regulations being undertaken by CBER.

Some of the comments from the docket and public meeting questioned the need for the manufacturer's name to be the most prominent name on the label of a licensed biological product. FDA's regulation addressing the name of the selling agent or distributor on biological product labeling (§ 610.64 (21 CFR 610.64)) required that the name of the manufacturer of the biological product be more prominently displayed on the label than the name of the selling agent or distributor. These comments requested that CBER consider revising the labeling regulations so that developers of innovative new products could place their names prominently on the label, even if they contract out the manufacturing of the product. In response to the comments, FDA published a proposed rule (60 FR 49811) to amend the labeling regulations to permit the names of distributors to be prominently displayed on biological product container labels, package labels, and labeling.

II. Highlights of the Final Rule

The final rule is intended to facilitate flexible manufacturing, packaging, distribution, and labeling arrangements. FDA recognizes that small innovator firms may not have the facilities to manufacture commercial quantities of a biological product. Such innovator firms that do not hold the license for the product will no longer be required to feature the license holder's name more prominently on the label. Manufacturers and distributors will have the option to

negotiate with each other for the prominence of the various firm names on the label.

The final rule is also intended to reduce the regulatory burden on manufacturers who produce both biologics and other drugs by harmonizing this labeling requirement with the labeling provisions in § 201.1 (21 CFR 201.1) applicable to drugs approved under the act.

The final rule removes the requirement that the manufacturer's name be more prominent than the distributor's name on product labeling. The final rule prescribes a number of options for identifying the distributor so that the information on the label is consistent with the actual circumstances of the sale and distribution of the product. In cases where a distributor is named on the label, the final rule requires the use of a qualifying phrase to distinguish the manufacturer and distributor of the product. The requirements that the name, address, and license number of the manufacturer also appear on the container label (21 CFR 610.60) and package label (21 CFR 610.61) remain unchanged.

III. Comments on the Proposed Rule and FDA Responses

FDA received five letters of comments on the proposed rule. All of the letters were from biological product manufacturers and distributors. All letters favored the proposed rule. Two comments requested that the proposed rule be broadened to further harmonize the biologics labeling regulations with requirements applicable to drugs approved under the act. One comment requested clarification of the proposed rule.

1. One comment requested that FDA completely harmonize § 610.64 with § 201.1 regarding appearance of the manufacturer's name and address. The comment stated that FDA's proposal to retain the requirement that the manufacturer's name and address appear on the label of a biologic product imposes regulatory burden on manufacturers who produce both biological products and drugs approved under the act, as there is no such corresponding requirement for drugs subject to § 201.1.

FDA agrees that harmonizing the labeling requirements applicable to biological products with those applicable to drugs approved under the act is desirable, where appropriate. The PHS Act, section 351(a), requires that each package of a biological product subject to licensure be plainly marked with the name, address, and license number of the manufacturer. The agency believes that the provision in this final rule that the manufacturer's name, address, and license number must appear on the label of a biological product is a reasonable approach to address the statutory requirement. However, as part of the May 14, 1996 (61 FR 24227), final rule to eliminate the establishment license application requirement for specified biotechnology and specified synthetic biological products licensed under the PHS Act, FDA has broadened the definition of ''manufacturer'' in 21 CFR 600.3(t) to provide greater flexibility in determining who may hold a license, and consequently, who would be identified as the ''manufacturer'' in labeling.

2. A second comment requested that FDA clarify whether the deletion of the requirement that a distributor's name be less prominent than the manufacturer's name would apply to promotional labeling.

While the final rule applies by its terms to the ''label'' on a biological product and does not specifically address promotional labeling, FDA intends to apply a similar policy in its review of promotional labeling.

3. A third comment asked that consideration be given to allowing the product trademark or logo to appear on the labeling in larger type than the product name.

The requirement that the proper name be at least as prominent as the trademark and trade name is included in 21 CFR 610.62. Labeling requirements other than in § 610.64 are not addressed in this rulemaking. In the Federal Register of June 3, 1994 (58 FR 28821), FDA announced that it was undertaking the review of the general biologics and licensing regulations, including labeling regulations. FDA will consider the comment regarding the prominence of the product trademark or logo as part of the general review of the regulations.

FDA has considered all comments received in response to the proposed rule and has determined that the proposed rule should be issued as a final rule. Accordingly, FDA is issuing as a final rule a revised § 610.64 to provide greater flexibility in displaying the prominence of the name of a product distributor on the product label.

IV. Effective Date

The final rule is effective November 18, 1996. As provided under 5 U.S.C. 553(d) and § 10.40(c)(4) (21 CFR 10.40(c)(4)), the effective date of a final rule may not be less than 30 days after date of publication, except for, among other things, ''a regulation that grants an exemption or relieves a restriction'' (§ 10.40(c)(4)(i)). Because, as described in section V. of this document, this final rule will provide greater flexibility in labeling to manufacturers and distributors of biological products, FDA believes that an effective date shorter than 30 days is appropriate.

V. Analysis of Impacts

FDA has examined the impact of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). 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 impact; 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.

Under the Regulatory Flexibility Act, FDA must analyze regulatory options that would minimize any significant economic impact of the rule on small entities. This amendment provides labeling alternatives by allowing the names of distributors to be as (or more, or less) prominent than names of manufacturer(s) on the label. It does not require any entity to change its current procedures. At this time FDA cannot quantify the benefits of the rule, although it may benefit manufacturers or distributors by allowing greater flexibility in labeling. Therefore, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), FDA certifies that this rule will not have a significant economic impact on a substantial number of small entities, and no further analysis is required.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(10) 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.

Lists of Subjects in 21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority

delegated to the Commissioner of Food and Drugs, 21 CFR part 610 is amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

1. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (41 U.S.C. 216, 262, 263, 263a, 264).

2. Section 610.64 is revised to read as follows:

§ 610.64 Name and address of distributor.

The name and address of the distributor of a product may appear on the label provided that the name, address, and license number of the manufacturer also appears on the label and the name of the distributor is qualified by one of the following phrases: ''Manufactured for_____'', ''Distributed by _____'', ''Manufactured by _____ for _____'', ''Manufactured for _____ by _____'', ''Distributor: _____'', or ''Marketed by _____''. The qualifying phrases may be abbreviated.

Dated: October 28, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–28530 Filed 11–5–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 640

[FHWA Docket No. 95–19]

RIN 2125–AD62

Certification Acceptance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA, in an interim final rule published in the Federal Register on September 13, 1995, adopted a policy that allows State highway agencies (SHAs) to use the certification acceptance (CA) procedures for non-Interstate projects to supplement the administrative flexibility provided in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914. This final rule contains one minor modification to the CA policy to clarify that certain project actions do not require FHWA approval.

EFFECTIVE DATE: This regulation is effective December 6, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Félix Rodríguez-Soto, Federal-Aid and Design Division, Office of Engineering, (202) 366–1564, or Mr. Wilbert Baccus, Office of the Chief Counsel, (202) 366–0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On September 13, 1995, the FHWA published an interim final rule (60 FR 47480) establishing the procedures to be followed by SHAs for the processing of transportation projects under CA. A 90-day period for agencies, firms, or individuals to provide comments was allowed. The changes made to the CA regulation by the interim final rule are discussed below.

The interim final rule eliminated the mandatory requirement for evaluation of the CA program in each State every four years. The requirement that the State's laws, regulations, directives, and standards must accomplish the policies and objectives contained in title 23, U.S.C., was retained. In keeping with the streamlining effort, specific requirements of the States for CA, including reports, were deleted because title 23, U.S.C., requirements will be subject to periodic changes. The revised CA regulation provided that States may be requested to furnish reports and information at the discretion of the FHWA. All references to the Secondary Road Plan (SRP) were removed because the SRP program was eliminated under the ISTEA restructuring.

The CA procedures were not completely eliminated because, even in light of the additional flexibility provided by the ISTEA and, in particular, 23 U.S.C. 106, National Highway System (NHS) projects may be administered under CA and may not be administered under 23 U. S. C. 106. In addition, some SHAs continue to use CA notwithstanding the more flexible options available under 23 U. S. C. 106.

Discussion of Comments

This section addresses the comments received on the interim final rule. The FHWA received comments from six SHAs and one organization.

General Comments

Five States supported the regulation (two as published in the interim final rule and three with minor modifications).

One State commented that CA has worked successfully in that State. This State was concerned that partial or full revocation by the FHWA of a State's CA plan could be based on process review findings which may not be part of a State's CA plan. This State also recommended that the final rule establish the nature of the process reviews and other evaluations and that an appeal process be established in case of partial or full revocation. In response, the FHWA maintains that the revisions to the CA regulation were meant to update the regulation to conform to new program provisions, to simplify the existing regulation by eliminating unnecessary and prescriptive requirements, and to allow for the use of process reviews which are already the primary form of program oversight by the FHWA. The use of process reviews is not unique for CA projects and the FHWA's methods of conducting process reviews should be familiar to SHA's. The States' right to appeal was not changed by the interim final rule.

The one organization that commented contends that an interim rule, without previous issuance of a notice of proposed rulemaking, inhibits public participation and debate on a proposed regulation and causes reliance by States on interim policy which may subsequently change as result of public comments. In addition, it alleges that the supplementary information section in the preamble to the interim rule, as published in the Federal Register (60 FR 47480), is inaccurate when it characterizes a State CA procedure as legally acceptable if it merely ''aims to comply'' with title 23, U. S. C., policies, and that ''streamlining'' of CA is a full retreat from Federal monitoring of the use of Federal highway construction dollars.

In response to this organization's contention concerning the use of an interim rule, the FHWA maintains that the interim rule merely updated the CA regulation, removed unnecessary prescriptive requirements as part of the government regulatory review effort, provided more administrative flexibility in the use of the regulation, and did not impose any additional restrictions on the public. The FHWA intends that a State accomplish title 23, U.S.C., policies through its CA procedures. The FHWA also maintains that the ''streamlining'' is not a ''retreat'' from FHWA oversight, but an acknowledgment that the use of process reviews and evaluations is the current and primary method of project oversight by the FHWA and that it accomplishes the same objective as the former project specific reviews. In addition, the

interim rule with request for comments allowed SHAs who choose to participate in the CA program and others adequate opportunity to comment on the interim rule. The FHWA, based on an analysis of public comments received, has re-examined its decision to go forward with the interim final rule as the basis for CA and has determined that an interim rule was the appropriate choice in this case. The FHWA also determined that prior notice and opportunity for comment were not required under the Department of Transportation's Regulatory Policies and Procedures because it was not anticipated that such action would result in the receipt of useful information.

Specific Comments

No specific comments were received for §§ 640.107, 640.109, 640.111, 640.115, and 640.117 and these sections are unchanged.

Section 640.113 is being revised to conform to comments received. Comments from the States included: (1) one State recommended removal of paragraph (e) to be consistent with the removal of 23 CFR 140, Subpart A, formerly titled ''Reimbursable Vouchers''; and (2) two States suggested removal of the reference to FHWA approval of exceptions in paragraph (e) to be consistent with 640.113(b) which only requires the States to justify and document the approval of the exceptions. In the final rule, the requirements of FHWA approval of exceptions and the submission of final vouchers to the FHWA in paragraph (e) are removed and the remaining text in paragraph (e) is merged into paragraph (d). Paragraph (f) is redesignated as paragraph (e) in the final rule.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation Regulatory Policies and Procedures. As stated, this regulation merely streamlines and updates the current CA regulation by giving added flexibility to the States in their use of CA. It is anticipated that the economic impact of the rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. The FHWA made this determination based on the fact that the final rule for CA is an update of a current regulation and will provide greater flexibility in using the CA alternate procedures in the administration of projects consistent with the provisions of ISTEA.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This rule does not impose additional costs or burdens on the States, including the likely source of funding for the States nor does it affect the ability of the States to discharge traditional State government functions. The intent of this rule is to provide the States with additional administrative flexibility in the use of the regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 640

Government procurement, Grant programs-transportation, Highways and roads.

Issued on: October 28, 1996.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the interim rule published at 60 FR 47480 on September 13, 1995, title 23, Code of Federal Regulations, Part 640 is adopted as a final rule with the following changes:

PART 640—CERTIFICATION ACCEPTANCE

1. The authority citation continues to read as follows:

Authority: 23 U.S.C 101(e), 117, and 315; 49 CFR 1.48.

2. Section 640.113 is amended by revising paragraph (d), by removing paragraph (e), and by redesignating paragraph (f) as paragraph (e) to read as follows:

§ 640.113 Procedures.

* * * * *

(d) The FHWA may accept projects based on inspections of a type and frequency necessary to ensure the projects are completed in accordance with appropriate standards. The State is to notify the FHWA when a project is complete and/or ready for such inspection and will certify that the plans, design, and construction for the project were in accord with the laws, regulations, directives, and standards contained in the State certification or such project exceptions as were approved by the State.

* * * * *

[FR Doc. 96–28577 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV–029–0001; FRL–5644–8]

Clean Air Act Reclassification; Nevada-Clark County Nonattainment Area; Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA finds that the Clark County, Nevada carbon monoxide (CO) nonattainment area has met the criteria

in section 186(b)(4) of the Clean Air Act (CAA): it exceeded the CO National Ambient Air Quality Standard (NAAQS) once in 1995; it has adopted and implemented the CAA required moderate nonattainment area control measures; and, it has demonstrated progress towards attaining the CO NAAQS. As a result of this finding, EPA grants a one-year extension of Clark County's moderate area attainment date from December 31, 1995 to December 31, 1996. EPA's finding is based on a review of monitored air quality data for compliance with the CO NAAQS, as well as the air quality planning progress of Clark County. With EPA's extension of the CAA mandated attainment date for one year, the Clark County CO nonattainment area remains classified as a moderate CO nonattainment area. The intended effect of EPA's attainment date extension is to allow Nevada and Clark County either to fully implement and strengthen current CO control measures, or to adopt additional control measures prior to the 1996–97 winter CO season in an effort to attain the CO NAAQS.

EFFECTIVE DATE: This action is effective on December 6, 1996.

FOR FURTHER INFORMATION CONTACT: Jerry Wamsley, A–2–2, Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1226.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements and EPA Actions Concerning Designation and Classifications

In 1990, under section 107(d)(1)(C) of the Clean Air Act Amendments (CAA), each carbon monoxide (CO) area designated nonattainment prior to enactment of the 1990 Amendments was designated nonattainment by operation of law. Under section 186(a) of the CAA, each CO area designated nonattainment under section 107(d) was also classified by operation of law as either ''moderate'' or ''serious'' depending on the severity of the area's air quality problem. CO areas with design values between 9.1 and 16.4 parts per million (ppm) were classified as moderate. States containing areas that were classified as moderate nonattainment by operation of law under section 107(d) were required to submit State implementation plans (SIPs) designed to attain the CO national ambient air quality standard (NAAQS) as expeditiously as practicable but no later than December 31, 1995.

On November 6, 1991, Clark County was designated nonattainment for CO and was classified as a ''high'' moderate area given its design value of 14.4 ppm (parts per million) (See 56 FR 56694 published in the Federal Register on November 6, 1991 and 40 CFR 81.329.) The moderate area SIP requirements are set forth in section 187(a) of the CAA and differ depending on whether the area's design value is below or above 12.7 ppm. Clark County is required to meet the ''high'' moderate nonattainment area requirements, because of its 14.4 ppm design value, and attain the CO NAAQS by December 31, 1995.

B. Reclassification to a Serious Nonattainment Area

EPA has the responsibility, pursuant to sections 179(c) and 186(b)(2) of the CAA, of determining within six months of the applicable attainment date, December 31, 1995, whether a moderate area has attained the CO NAAQS. Under section 186(b)(2)(A), if EPA finds that a moderate area has not attained the CO NAAQS, it is reclassified as serious by operation of law. Pursuant to section 186(b)(2)(B) of the Act, EPA must publish a document in the Federal Register identifying areas which failed to attain the standard and therefore must be reclassified as serious by operation of law.

EPA makes attainment determinations for CO nonattainment areas based upon whether an area has two years (or eight consecutive quarters) of clean air quality data. Section 179(c)(1) of the Act states that the attainment determination must be based upon an area's ''air quality as of the attainment date.'' Consequently, EPA will determine whether an area's air quality has met the CO NAAQS by December 31, 1995 based upon the most recent two years of air quality data entered into the Aerometric Information Retrieval System (AIRS) data base.

The reader should consult EPA's notice of proposed rulemaking for this action for a more detailed discussion of the applicable CAA requirements and EPA guidance on those requirements and the method of calculating CO NAAQS violations for reclassification purposes. Please see 61 FR 41759 (August 12, 1996).

C. Attainment Date Extensions

If a state does not have the two consecutive years of clean data necessary to show attainment of the CO NAAQS, it may apply, under section 186(a)(4) of the CAA, for a one year attainment date extension. At its discretion, EPA may grant an extension if the area has: (1) Measured no more than one exceedance of the CO NAAQS at any monitoring site in the nonattainment area in the year preceding the extension year; and (2) complied with the requirements and commitments pertaining to the applicable implementation plan for the area. Consequently, EPA will examine the moderate area's air quality planning progress and will be disinclined to grant an attainment date extension unless a State has, in substantial part, addressed its moderate area CO planning obligations. To determine if the State has substantially met these planning requirements, EPA will review the State's attainment date extension application to assess whether the State has: (1) Adopted and substantially implemented control measures to satisfy the requirements for a moderate CO nonattainment area; and (2) that reasonable further progress is being met for the area.

If the State cannot make a sufficient demonstration that the area has met the extension criteria described above and EPA determines that the area has not demonstrated attainment of the CO NAAQS, then the area will be reclassified as serious by operation of law pursuant to section 186(b)(2) of the Act. If an extension is granted, then, at the end of the extension year, EPA will review the area's air quality data to determine if the area has attained the CO NAAQS.

Under section 186(a)(4), EPA may grant up to two one year extensions if these conditions have been met. However, if the area measures a violation of the CO NAAQS during the extension year, the area will be unable to qualify for a second one year extension. Then, once EPA makes a finding of failure to attain the CO NAAQS, the moderate area will be reclassified as serious by operation of law.

D. EPA's Proposed Attainment Date Extension for Clark County

On August 12, 1996, EPA proposed to find that the Clark County, Nevada carbon monoxide (CO) nonattainment area has met the criteria in section 186(b)(4) of the Clean Air Act (CAA): it exceeded the CO National Ambient Air Quality Standard (NAAQS) once in 1995; it has adopted and implemented the CAA required moderate nonattainment area CO control measures; and, it has demonstrated progress towards attaining the CO NAAQS. As a result of this finding, EPA proposed to grant a one-year extension of Clark County's moderate area attainment date from December 31, 1995 to December 31, 1996. EPA's proposed finding was based on a review of monitored air quality data from 1994

and 1995 for compliance with the CO NAAQS, as well as the air quality planning progress of Clark County.

The reader should consult EPA's notice of proposed rulemaking for a more detailed discussion of monitored air quality in Clark County, especially CO values observed in 1995 and 1996, and for EPA's review of Clark County's attainment date extension application. Please see 61 FR 41759 (August 12, 1996).

II. Response to Comments on Proposed Finding

During the public comment period on EPA's proposed finding, EPA received no comments.

III. Today's Final Action

EPA takes final action on its proposal and finds that the Clark County CO nonattainment area has met the criteria in section 186(b)(4) of the CAA. As a result of this finding, EPA grants a one-year extension of Clark County's moderate area attainment date from December 31, 1995 to December 31, 1996. This finding is based on both EPA's review of 1994 and 1995 monitored air quality data for compliance with the CO NAAQS and EPA's review of Clark County's application for an attainment date extension. With this final action, Clark County remains classified as a moderate CO nonattainment area.

After December 31, 1996, EPA will again review the air quality data for Clark County to determine if it has attained the CO NAAQS. If Clark County measures violations of the CO NAAQS during 1996, the area will be unable to qualify for a second one year extension. Then, after an EPA finding of failure to attain the CO NAAQS, Clark County would be reclassified as a serious carbon monoxide nonattainment area by operation of law.

IV. Regulatory Process

A. Executive Order (EO) 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may ''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.''

The Agency has determined that extending attainment dates would not result in the effects identified in section 3(f). Under section 186(a)(4) of the CAA, attainment date extensions are based upon air quality conditions and planning considerations and are either administrative in nature, or must occur by operation of law in light of certain air quality conditions. They do not, in-and-of-themselves, impose any new requirements on any sectors of the economy.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

As discussed in section IV. of this document, attainment date extensions under section 186(a)(4) of the CAA do not create any new requirements. Therefore, I certify that today's proposed action does not have a significant impact on small entities.

C. Unfunded Mandates

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local or tribal governments in the aggregate. EPA believes, as discussed above, that the finding that Clark County nonattainment area meets the criteria in section 186(a)(4) and thereby qualifies for an attainment date extension is a factual determination based upon air quality considerations and must occur by operation of law and, hence, does not impose any Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitionsfor judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 6, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not post pone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce it requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 17, 1996.

Felicia Marcus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart DD—Nevada

2. Subpart DD is amended by adding § 52.1478 to read as follows:

§ 52.1478 Extensions.

The Administrator, by the authority delegated under section 186(a)(4) of the Clean Air Act as amended in 1990, hereby extends for one year, until December 31, 1996, the attainment date for the Clark County (Las Vegas Valley), Nevada carbon monoxide nonattainment area.

[FR Doc. 96–28478 Filed 11–5–96; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 261

[FRL–5646–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion; Correction.

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: On July 18, 1996, the Environmental Protection Agency (EPA or Agency) published a final rule granting a petition submitted by United Technologies Automotive, Inc. (UTA), Dearborn, Michigan, to exclude (or ''delist''), conditionally, on a one-time, upfront basis, a certain solid waste generated by UTA's chemical stabilization treatment of lagoon sludge at the Highway 61 Industrial Site in Memphis, Tennessee, from the lists of hazardous wastes in §§ 261.31 and 261.32. Based on careful analyses of the waste-specific information provided by the petitioner, the Agency concluded that UTA's petitioned waste will not adversely affect human health and the environment. Delisting levels for cadmium, chromium, lead, nickel, and cyanide which would be protective of human health and the environment were calculated and promulgated. This action addresses the fact that the actual volume of waste to be disposed is 35,000 cubic yards, instead of the 20,500 cubic yards estimated by the petitioner prior to publication of the final rule. Therefore, today's document corrects the delisting levels for the constituents of concern by using the dilution attenuation factor (DAF) of 84 for 35,000 cubic yards, instead of the DAF of 96 for 20,500 cubic yards.

EFFECTIVE DATE: July 18, 1996.

ADDRESSES: The RCRA regulatory docket for the final rule and today's document is located at the EPA Library, U.S. Environmental Protection Agency, Region 4, 100 Alabama Street, S.W., Atlanta, Georgia 30303, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays.

The reference number for this docket is R4–96–UTEF. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies. For copying at the Tennessee Department of Environment and Conservation, please see below.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this document, contact Judy Sophianopoulos, Enforcement and Compliance Branch, (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, 100 Alabama Street, S.W., Atlanta, Georgia 30303–3104, (404) 562–8604, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Sophianopoulos to return your call. You may also contact Wayne Gregory, Tennessee Department of Environment and Conservation (TDEC), 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535, (615) 532–0847. If you wish to copy documents at TDEC, please contact Mr. Gregory for copying procedures and costs.

SUPPLEMENTARY INFORMATION:

I. Reasons and Basis for Today's Document

Each delisting level in the final rule was calculated by multiplying the health-based level for each constituent of concern by the dilution attenuation factor (DAF) of 96 for a one-time disposal of an estimated volume of 20,500 cubic yards of petitioned waste. See 61 FR 37399, July 18, 1996. The petitioner reported that the actual volume to be disposed is 35,000 cubic yards. The DAF for this volume is 84. See the proposed rule for this petitioned waste at 61 FR 14703, April 3, 1996.

Therefore, today's document corrects the delisting level for each constituent of concern by multiplying each health-based level by 84.

II. Corrections to the Preamble of Final Rule

On page 37399, of the Federal Register of July 18, 1996, Table 1 of the Preamble:

The delisting level for chromium is corrected to read: ''8.4; delisting level is set at less than 5.0, the toxicity characteristic level.''

The delisting level for cyanide is corrected to read: ''16.8; (cyanide extraction must be conducted using deionized water.)''

The delisting levels for cadmium, lead, and nickel are corrected to read: ''0.42,'' ''1.26,'' and ''16.8,'' respectively.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: October 25, 1996.

Jewell A. Harper,

Deputy Director, Waste Management Division.

Correction to Final Rule

PART 261—[CORRECTED]

Appendix IX—[Corrected]

On page 37402, of the Federal Register of July 18, 1996, in appendix IX to part 261, in the third column of table 1, condition (3) is corrected to read as follows: Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility address	Waste description
* * * * *	
	(3) *Delisting Levels:* All leachable concentrations for these constituents must not exceed the following levels (ppm): Cadmium—0.42; cyanide—16.8; lead—1.26; and nickel—8.4. The leachable concentration of chromium must be less than 5.0 ppm. Metal concentrations in the waste leachate must be measured by the method specified in 40 CFR 261.24. The cyanide extraction must be conducted using deionized water. Total cyanide concentration in the leachate must be measured by Method 9010 or Method 9012 of SW–846.
* * * * *	

[FR Doc. 96–28243 Filed 11–5–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GC Docket 96–101, FCC 96–376]

Implementation of Section 34(a)(1) of the Public Utility Holding Company Act of 1935, as Added by the Telecommunications Act of 1996; Correction

AGENCY: Federal Communications Commission.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (FCC 96–376) which were published Wednesday, October 9, 1996 (61 FR 52887).

EFFECTIVE DATE: November 8, 1996.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Spiwak, Competition Division, Office of General Counsel, at (202) 418–1870.

SUPPLEMENTARY INFORMATION:

Background

The final regulations implement new section 34(a)(1) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79 *et seq.* as added by Section 103 of the Telecommunications Act of 1996 (Public Law 104–104, 110 Stat 56).

Need for Correction

As published, a database error assigned the same subpart heading to two different sets of FCC rules. This Errata is required to rectify this database error.

Correction of Publication

Accordingly, the publication on October 9, 1996 of the final regulations (GC Docket 96–101, FCC 96–376), which were the subject of FR Doc. 61–52887, is corrected as follows:

Subpart S—[Corrected]

1. On page 52899, column 1, amendatory instruction 2, is corrected to read as follows:

''A new subpart T, consisting of Sections 1.5000 through 1.5007, is added to part 1 to read as follows:''.

2. On page 52899, column 1, all references to subpart S are corrected to read subpart T.

3. On page 52899, columns 1, 2 and 3, all references to sections 1.4000 through 1.4007 are correctly designated as sections 1.5000 through 1.5007, respectively.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–28439 Filed 11–5–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

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

EFFECTIVE DATE: November 6, 1996.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted October 18, 1996, and released October 25, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 239B1 and adding Channel 239B at Carlsbad.

3. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 224A and adding Channel 224C at Glenwood Springs.

4. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 221A and adding Channel 221C3 at Belleville.

5. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 268A and adding Channel 268C3 at St. James.

6. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 296A and adding Channel 296C3 at Belzoni and by removing Channel 282C3 and adding Channel 282C2 at Greenwood.

7. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 296A and adding Channel 296C3 at Coleman, by removing Channel 241A and adding Channel 241C3 at Edna, by removing Channel 240A and adding Channel 240C3 at Goliad, by removing Channel 263A and adding Channel 263C3 at Madisonville, by removing Channel 247C and adding Channel 247C1 at Pecos, and by removing Channel 221A and adding Channel 221C2 at Stamford.

8. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 229A and adding Channel 230C3 at Nekoosa.

Federal Communications Commission

John A. Karousos,

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

[FR Doc. 96–28436 Filed 11–5–96; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 96–155; RM–8828]

Radio Broadcasting Services; Keaau, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 286C2 to Keaau, Hawaii, as that community's first local aural transmission service, in response to a petition filed by Deborah Takehiro Ombac. *See* 61 FR 40775, August 6, 1996. Coordinates used for Channel 286C2 at Keaau, Hawaii, are 19–37–30 and 155–02–24. With this action, the proceeding is terminated.

DATES: Effective December 9, 1996. The window period for filing applications for Channel 286C2 at Keaau, Hawaii, will open on December 9, 1996, and close on January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 286C2 at Keaau, Hawaii, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–155, adopted October 18, 1996, and released October 25, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at

1919 M Street, N.W., Room 246, or 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Keaau, Channel 286C2.

Federal Communications Commission

John A. Karousos,

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

[FR Doc. 96–28441 Filed 11–5–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 96–163; RM–8841]

Radio Broadcasting Services; Clifton, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of D. Mitchell Self Broadcasting, Inc., allots Channel 293A to Clifton, Tennessee, as the community's first local aural transmission service. *See* 61 FR 42230, August 14, 1996. Channel 293A can be allotted to Clifton in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.6 kilometers (6.6 miles) northwest in order to avoid a short-spacing conflict with the licensed site of Station WBTG (FM), Channel 292C3, Sheffield, Alabama. The coordinates for Channel 293A at Clifton are 35–28–01 and 88–03–11. With this action, this proceeding is terminated.

DATES: Effective December 9, 1996. The window period for filing applications will open on December 9, 1996, and close on January 9, 1997.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–163, adopted October 18, 1996, and released October 25, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding Clifton, Channel 293A.

Federal Communications Commission

John A. Karousos,

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

[FR Doc. 96–28438 Filed 11–5–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 96–156; RM–8840]

Radio Broadcasting Services; Limon, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 229A to Limon, Colorado, as that community's second local FM transmission service, in response to a petition filed on behalf of Roger L. Hoppe, II. *See* 61 FR 40774, August 6, 1996. Coordinates used for Channel 229A at Limon, Colorado, are North Latitude 39–15–36 and West Longitude 103–41–12. With this action, the proceeding is terminated.

DATES: Effective December 9, 1996. The window period for filing applications for Channel 229A at Limon, Colorado, will open on December 9, 1996, and close on January 9, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 229A at Limon, Colorado, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–156, adopted October 18, 1996, and released October 25, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, N.W., Room 246, or 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Channel 229A at Limon.

Federal Communications Commission

John A. Karousos,

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

[FR Doc. 96–28443 Filed 11–5–96; 8:45 am]

BILLING CODE 6712–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1501, 1503, 1509, 1510, 1511, 1512, 1513, 1516, 1519, 1527, 1532, 1533, 1535, 1542 and 1552

[FRL–5632–4]

Acquisition Regulation; Administrative Changes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document makes administrative changes to the EPA Acquisition Regulation (EPAAR), consistent with the Federal Acquisition Streamlining Act (FASA) and other administrative changes.

EFFECTIVE DATE: November 21, 1996.

ADDRESSES: Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Larry Wyborski, Telephone: (202) 260–6482.

SUPPLEMENTARY INFORMATION:

I. Background Information

The Federal Acquisition Streamlining Act (FASA) was implemented through several changes to the Federal Acquisition Regulation (FAR). This rule revises the Environmental Protection Agency Acquisition Regulation (EPAAR) to make it consistent with FAR changes resulting from the FASA. The changes include several redesignations of EPAAR citations, such as what was previously EPAAR Part 1511, to make them consistent with the FAR. This rule does not impose any new requirements on Agency contractors.

II. Executive Order 12866

This is not a significant regulatory action under Executive Order 12866; therefore, no review is required at the Office of Information and Regulatory Affairs, within OMB.

III. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements for the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, et. seq.

IV. Regulatory Flexibility Act

This rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq. This rule is limited to changes in EPA's internal procedures.

V. 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 their regulatory actions on State, local and tribal governments and the private sector.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

VI. Regulated Entities

There are no entities potentially regulated by this action.

List of Subjects in 48 CFR Parts

1501, 1503, 1509, 1510, 1511, 1512, 1513, 1516, 1519, 1527, 1532, 1533, 1535, 1542 and 1552 Government procurement.

For the reasons set forth in the preamble, Chapter 15 of Title 48 Code of Federal Regulations, parts 1501, 1503, 1506, 1509, 1510, 1511, 1512, 1513, 1516, 1519, 1527, 1532, 1533, 1542 and 1552 are amended as follows:

1. Authority: Sec. 205(c), 63 Stat. 390 as amended, 40 U.S.C. 486(c).

2. Section 1501.602–3(d)(1)(v) is amended by removing the words ''small purchases'' and adding in its place the words ''simplified acquisition procedures''.

PART 1503—[AMENDED]

3. Part 1503 is amended to add Subpart 1503.9 to read as follows:

Subpart 1503.9—Whistle Blower Protections for Contractor Employees

1503.905 Procedures for investigating complaints.

The Assistant Administrator for Administration and Resources Management is designated as the recipient of the written report of findings by the Inspector General. The Assistant Administrator shall ensure that the report of findings is disseminated in accordance with FAR 3.905(c).

PART 1509—[AMENDED]

4. Part 1509 is amended by removing the words ''small purchases'' and adding in its place the words ''simplified acquisition procedures'' in the following places:

(a) Section 1509.507–1(b);
(b) Section 1509.507–2(a);
(c) Section 1509.507–2(c).

5. In Part 1509 remove the words ''small purchase limitation'' and replace with the words ''simplified acquisition threshold'' in the following places:

(a) Section 1509.507–2(a);
(b) Section 1509.507–2(b);
(c) Section 1509.507–2(c).

6. Section 1509.404 is revised to read as follows:

1509.404 Parties excluded from Federal procurement and nonprocurement programs.

The Director, Office of Grants and Debarment (or designee) is responsible for notifying GSA in accordance with FAR 9.404(c).

7. In Section 1509.507–2, paragraph (d) is revised to read as follows:

1509.507–2 Contract clauses.

* * * * *

(d) The Contracting Officer shall insert the clause at 1552.209–75 in Superfund solicitations and contracts in excess of the simplified acquisition threshold, where the solicitation or contract does not include (EPAAR) 48 CFR 1552.211–74, Work Assignments, Alternate I, or a similar clause requiring conflict of interest certifications during contract performance. This clause requires an annual conflict of interest certification from contractors when the contract does not require the submission of other conflict of interest certifications during contract performance. Contracts requiring annual certifications include: Site Specific contracts, the Contract Laboratory Program (CLP), and the Sample Management Office (SMO) contracts. The annual certification requires a contractor to certify that all organizational conflicts of interest have been reported, and that its personnel performing work under EPA contracts or relating to EPA contracts have been informed of their obligation to report personal and organizational conflicts of interest to the Contractor. The annual certification shall cover the one-year period from the date of contract award for the initial certification, and a one-year period starting from the previous certification for subsequent certifications. The certification must be received by the Contracting Officer no later than 45 days after the close of the certification period covered.

PART 1510—[REMOVED]

8. Part 1510 is removed under the authority of Sec. 205(c), 63 Stat. 390 as amended, 40 U.S.C. 486(c).

9. Part 1511 is added to read as follows:

PART 11—DESCRIBING AGENCY NEEDS

1511.000 Scope of part.
1511.011 Solicitation Provisions and Contract Clauses.
1511.011–70 Reports of work.
1511.011–71 [Reserved.]
1511.011–72 Monthly progress report.
1511.011–73 Level of effort.
1511.011–74 Work assignments.
1511.011–75 Working files.
1511.011–76 Legal analysis.
1511.011–77 Final reports.
1511.011–78 Advisory and assistance services.
1511.011–79 Information resources management.

Authority: Sec. 205(c), 63 Sta. 390, as amended, 40 U.S.C. 486(c).

1511.000 Scope of part.

This Part implements FAR part 11 and provides policy and procedures for describing Agency needs.

1511.011 Solicitation Provisions and Contract Clauses.

1511.011–70 Reports of work.

Contracting Officers shall insert one of the contract clauses at 1552.211–70 when the contract requires the delivery of reports. Alternate I should be used to specify reports in contract schedule, whereas the other clause should be used when reports are specified in the contract attachment.

1511.011–71 [Reserved]

1511.011–72 Monthly progress report.

Contracting Officers shall insert a contract clause substantially the same as the clause at 1552.211–72 when monthly progress reports are required.

1511.011–73 Level of effort.

The Contracting Officer shall insert the clause at 1552.211–73, Level of Effort, in term form contracts.

1511.011–74 Work assignments.

The Contracting Officer shall insert the contract clause at 1552.211–74, Work Assignments, in cost-reimbursement type term form contracts when work assignments are used. For Superfund contracts, except for contracts which require annual conflict of interest certificates (e.g., Site Specific contracts, the Contract Laboratory Program (CLP), and Sample Management Office (SMO) contracts), the Contracting Officer shall use the clause with either Alternate I or Alternate II. Alternate I shall be used for contractors who have at least 3 years of records that may be searched for certification purposes. Alternate II shall be used for contractors who do not have at least three years of records that may be searched.

1511.011–75 Working files.

Contracting Officers shall insert the contract clause at 1552.211–75 in all applicable EPA contracts where accurate working files on all work documentation is required in the performance of the contract.

1511.011–76 Legal analysis.

Contracting Officers shall insert the clause at 1552.211–76 when it is determined that the contract involves legal analysis.

1511.011–77 Final reports.

Contracting Officers shall insert the contract clause at 1552.211–77 when a contract requires both a draft and a final report.

1511.011–78 Advisory and assistance services.

Contracting Officers shall insert the contract clause at 1552.211–78 in all contracts for advisory and assistance services.

1511.011–79 Information resources management.

The Contracting Officer shall insert the clause at 1552.211–79, Compliance with EPA Policies for Information Resource Management, in all solicitations and contracts.

PART 1512—[REMOVED]

10. Part 1512 is removed under the authority of Sec. 205(c), 63 Stat. 390 as amended, 40 U.S.C. 486(c).

11. Part 1513 is revised to read as follows:

PART 1513—SIMPLIFIED ACQUISITION PROCEDURES

1513.000 Scope of part.

Subpart 1513.1—General

1513.170 Competition exceptions and justification for sole source simplified acquisition procedures.
1513.170–1 Contents of sole source justifications.

Subpart 1513.4—Imprest Fund

1513.404 Conditions for use.

Subpart 1513.5—Purchase Orders

1513.505 Purchase order and related forms.
1513.505–2 Agency order forms in lieu of Optional Forms 347 and 348.
1513.507 Clauses.

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

1513.000 Scope of part.

This part prescribes EPA policies and procedures for the acquisition of supplies, nonpersonal services, and construction from commercial sources, the aggregate amount of which does not exceed the simplified acquisition threshold.

Subpart 1513.1—General

1513.170 Competition exceptions and justification for sole source simplified acquisition procedures.

1513.170–1 Contents of sole source justifications.

The program office submitting the procurement request must submit, as a separate attachment, a brief written statement in support of sole source acquisitions exceeding the micro-purchase threshold. The statement must cite one or more of the circumstances in FAR 6.302 and the necessary facts to support each circumstance. Although program offices may not cite the authority in FAR 6.302–7, the public interest may be used as a basis to support a sole source acquisition. If the acquisition has been synopsized as a notice of proposed sole source acquisition, the statement must include the results of the evaluation of responses to the synopsis.

Subpart 1513.4—Imprest Fund

1513.404 Conditions for use.

Imprest funds may be used when the transaction does not exceed $500 ($750 under emergency conditions).

Subpart 1513.5—Purchase Orders

1513.505 Purchase order and related forms.

1513.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

Contracting Officers may use the EPA Form 1900–8, Procurement Request/Order, in lieu of Optional Forms 347 and 348 for individual purchases prepared in accordance with the instructions printed on the reverse thereof (see 1553.213–70).

1513.507 Clauses.

(a) It is the general policy of the Environmental Protection Agency that Contractor or vendor prescribed leases or maintenance agreements for equipment shall not be executed.

(b) The Contracting Officer shall, where appropriate, insert the clause at 1552.213–70, Notice to Suppliers of Equipment, in orders for purchases or leases of automatic data processing equipment, word processing, and similar types of commercially available equipment for which vendors, as a matter of routine commercial practice, have developed their own leases and/or customer service maintenance agreements.

1516.307 [Amended]

12. Section 1516.307(c) is amended by removing ''1552.216–75'' and adding in its place ''1552.216–76''.

PART 1519—[AMENDED]

13. The heading of Part 1519 is amended by removing the words ''Small Business and Small Disadvantaged Business Concerns'' and adding in its place the words ''Small Business Programs.''

14. Part 1519 is amended by removing the words ''Small and Disadvantaged Business Utilization Specialist'' and

adding in its place the words ''Small Business Specialist'', by removing ''SDBUS'' and adding in its place ''SBS'', and by removing the words ''Small and Disadvantaged Utilization Specialists'' and adding in its place the words ''Small Business Specialists''.

15. Section 1519.201–1 is redesignated as section 1519.201–71 and section 1519.201–2 is redesignated as section 1519.201–72.

16. Section 1519.201–72 is amended by removing the sentence ''The SDBUS is not precluded from being assigned the responsibility for the labor surplus area program prescribed by FAR Part 20'' in paragraph (b).

17. Section 1519.201–72 is amended by removing the words ''small purchase limitation'' and adding, in its place the words ''simplified acquisition threshold'' in paragraph (c)(3).

1527.409 [Amended]

18. Section 1527.409 is amended by removing the words ''small purchase limitation and, as appropriate, in small purchases'' and adding in its place the words ''simplified acquisition threshold and, as appropriate, in simplified acquisition procedures.''

PART 1532—[AMENDED]

19. Part 1532 is amended to add subpart 1532.2 to read as follows:

Subpart 1532.2—Commercial Item Purchase Financing

1532.201 Statutory authority.

Authority for making the determination under FAR 32.201 is delegated to a level above the Contracting Officer.

1533.103–70 [Removed]

20. Section 1533.103–70 is removed.

1535.007–70 [Amended]

21. Section 1535.007–70, paragraph (c) is amended by adding ''(TSCA)'' after the words ''Business Information'' in the first sentence.

22. Subpart 1542.7 is amended to add Section 1542.703–2 to read as follows:

1542.703–2 Certificate of indirect costs.

The Head of the Contracting Activity may waive the certification requirement set forth in FAR 42.703–2.

23. Section 1552.209–71 is amended by revising paragraph (c) to read as follows:

1552.209–71 Organizational conflicts of interest.

* * * * *

(c) When the procurement is accomplished through simplified acquisition procedures, use of the clause is optional.

* * * * *

1552.210–70 [Amended]

24. Section 1552.210–70 is redesignated as section 1552.211–70.

1552.210–72 [Amended]

25. Section 1552.210–72 is redesignated as section 1552.211–72.

1552.210–75 [Amended]

26. Sections 1552.210–75 through 1552.210–79 are redesignated as sections 1552.211–75 through 1552.211–79.

1552.210–80 [Amended]

27. Section 1552.210–80 is redesignated as section 1552.209–75.

1552.211–78 [Amended]

28. In newly designated section 1552.211–78, remove the words ''management consulting'' and replace with the words ''advisory and assistance''.

1552.212–70 [Amended]

29. Section 1552.212–70 is redesignated as section 1552.211–73.

1552.212–71 [Amended]

30. Section 1552.212–71 is redesignated as 1552.211–74.

31. The heading of the clause in section 1552.215–70 is revised to read as follows:

1552.215–70 EPA Source Evaluation and Selection Procedures—Procurements (SEP 1996)

As prescribed in 1515.605, insert the following provision: EPA SOURCE EVALUATION AND SELECTION PROCEDURES - PROCUREMENTS (SEP 1996)

* * * * *

32. The heading of the clause and the title of the clause in section 1552.235–76 are revised to read as follows:

1552.235–76 Treatment of Confidential Business Information (TSCA) (APR 1996)

As prescribed in 1535.007–70(c), insert the following clause:

TREATMENT OF CONFIDENTIAL BUSINESS INFORMATION (TSCA) (APR 1996)

* * * * *

Dated: September 30, 1996.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 96–28424 Filed 11–5–96; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1011, 1104, 1111, 1112, 1113, 1114, 1115, and 1121

[STB Ex Parte No. 527]

Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings

AGENCY: Surface Transportation Board.

ACTION: Final rules; postponement of effective date.

SUMMARY: The Surface Transportation Board (Board) amended its *Rules of Practice* at 49 CFR 1100–1149 in a decision served October 1, 1996 and published in the Federal Register on October 8, 1996 (61 FR 52710). The rules were scheduled to become effective November 7, 1996. The Board is postponing the effective date of the rules to November 16, 1996 to allow sufficient time to consider the petitions to reopen that have been filed in this proceeding.

EFFECTIVE DATE: Effective November 6, 1996, the effectiveness of the final rules published on October 8, 1996 (61 FR 52710) is delayed until November 16, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas J. Stilling, (202) 927–7312. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The Board issued final rules in a decision in this proceeding served October 1, 1996, and published in the Federal Register on October 8, 1996 (61 FR 52710), with an effective date of November 7, 1996. Joseph C. Szabo, for and on behalf of United Transportation Union-Illinois Legislative Board, filed a petition to reopen and a petition to stay a portion of the decision pending disposition of its petition to reopen. The National Industrial Traffic League (NITL) filed a petition for reopening and reconsideration.

Under the authority of 49 U.S.C. 721(a), I am issuing a ''housekeeping'' postponement of the effective date of the final rules to November 16, 1996, so that the Board will have sufficient time to consider the issues raised in the petitions of Mr. Szabo and the NITL. The Board intends to act on those petitions by November 16, 1996.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: November 1, 1996.

By the Board, Chairman Morgan.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, the effective date of the final rules published at 61 FR 52710 (October 8, 1996) is delayed until November 16, 1996.

[FR Doc. 96–28574 Filed 11–5–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 103096A]

Atlantic Tuna Fisheries; Adjustments

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

ACTION: Fishery reopening.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (ABT) General category quota, as adjusted, has not been reached. Therefore, NMFS reopens the General category fishery for large medium and giant ABT for all areas for three days. Closure of this three day fishery will be strictly enforced. Subsequent to this closure, the General category fishery for large medium and giant ABT for areas inside the New York Bight will remain open until the set-aside quota is reached. This action is being taken to extend scientific data collection on certain size classes of ABT while preventing overharvest of the adjusted subquotas for the affected fishing categories.

EFFECTIVE DATES: The General category fishery for large medium and giant ABT will open for all areas beginning Saturday, November 2, at 1 a.m. local time and close on Monday, November 4, at 11:30 p.m. local time. The General category fishery for large medium and giant ABT for areas inside the New York Bight will remain open until further notice.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347, or Mark Murray-Brown, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

NMFS is required, under § 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota and publish a Federal Register announcement to close the applicable fishery.

General Category Reopening

Implementing regulations for the Atlantic tuna fisheries at § 285.22 provide for a quota of 541 mt of large medium and giant ABT to be harvested from the regulatory area by vessels fishing under the General category quota during calendar year 1996. The General category ABT quota is further subdivided into monthly quotas to provide for broad temporal and geographic distribution of scientific data collection and fishing opportunities.

NMFS previously adjusted the General category October subquota to 60 mt for all areas outside the New York Bight and announced a closure date of October 2, 1996 (61 FR 50765, September 27, 1996). NMFS subsequently adjusted the General category October subquota by transferring 30 mt from the Incidental longline category under the authority of implementing regulations at 50 CFR 285.22(f) (61 FR 53677, October 15, 1996). Thus, the October General category quota was adjusted to 90 mt, with an additional 10 mt reserved for the New York Bight. Since the quota adjustment, NMFS has reopened the General category fishery for areas outside the New York Bight for one day on three occasions (61 FR 53677, October 15, 1996, 61 FR 55119, October 24, 1996, and 61 FR 55926, October 30, 1996). Due to various reasons, such as weather and fishing success, the full 90 mt October General category quota still has not been taken. Therefore NMFS reopens the General category fishery for large medium and giant ABT for all areas for three days, November 2–4, 1996. Closure of this three day fishery will be strictly enforced.

The New York Bight set-aside is not affected by this action and the General category fishery for large medium and giant ABT for areas inside the New York Bight will remain open until the set-aside quota is reached. However, during this three day opening, November 2–4, 1996, large medium and giant ABT harvested and landed in the New York Bight area will not be counted against the New York Bight set-aside quota, but will be counted against the remaining quota for the General category fishery.

Analysis of landings data for 1992–1995 indicate that total landings for the Incidental Longline categories for November and December have been small. Additionally, the purse seiners have stopped fishing for ABT prior to the 251 mt Purse Seine category quota being taken. Therefore, given the above information, the reopening of the General category is not expected to result in the total 1996 ABT quota being exceeded.

Classification

This action is taken under 50 CFR 285.20(b), 50 CFR 285.22, and 50 CFR 285.24 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: November 1, 1996.

Richard Surdi,

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

[FR Doc. 96–28573 Filed 11–1–96; 2:26 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960129018–6018–01; I.D. 102996B]

Scallop Fishery Off Alaska; Shelikof District of Registration Area K

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

ACTION: Closure; inseason adjustment; request for comments.

SUMMARY: NMFS is closing the fishery for scallops in the Shelikof District of Registration Area K to prevent localized overfishing of scallops in that District. This action is necessary to prevent overfishing of scallops. It is intended to promote the goals and objectives of the Fishery Management Plan for the Scallop Fishery off Alaska.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 31, 1996, through 2359 hrs, A.l.t., June 30, 1997. Comments must be received at the following address no later than 4:30 p.m., A.l.t., November 18, 1996.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or be delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The scallop fishery off Alaska in the exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Scallop Fishery Off Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at Subpart F of 50 CFR part 600 and 50 CFR part 679.

The 1996 TAC for scallops in Registration Area K, which includes the Shelikof District, was established by the 1996–97 Harvest Specifications (61 FR 38099, July 23, 1996) as 400,000 lb (181.4 mt) of shucked scallop meat. As of October 13, 1996, 200,000 lb (90.7 mt) of shucked scallop meat have been landed from the Shelikof District.

The Alaska Department of Fish and Game, Commercial Fisheries Management and Development Division, has monitored the scallop fishery in the Shelikof District since the fishery opened on August 1, 1996. Harvest rates of scallops have declined by 50 percent, indicating that fishing mortality is exceeding the biologically acceptable catch in the Shelikof District.

The Administrator, Alaska Region, NMFS, has determined, in accordance with § 679.63(a), § 679.25(a)(1)(i) and § 679.25(a)(2)(i)(A), that on the basis of the best available scientific information, the closure of the scallop season within the Shelikof District is necessary to prevent overfishing of this stock of scallops. Therefore, NMFS is prohibiting the taking and retention of scallops in the Federal waters of the Shelikof District.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Immediate effectiveness is necessary to prevent exceeding the TAC for scallops in the Shelikof District of Registration Area K. Under § 679.25(c)(ii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until November 18, 1996.

Classification

This action is taken under § 679.63 and is exempt from OMB review under E.O. 12866.

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

Dated: October 31, 1996.

Richard W. Surdi,

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

[FR Doc. 96–28481 Filed 11–1–96; 9:20 am]

BILLING CODE 3510–22–F

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50 CFR Part 679

[Docket No. 960502124–6190–02; I.D. 103196D]

Fisheries of the Exclusive Economic Zone off Alaska; Scallop Fishery; Closure in Registration Area M

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

ACTION: Closure.

SUMMARY: NMFS is closing the scallop fishery in Registration Area M (Alaska Peninsula). This action is necessary to prevent exceeding the *Chionoecetes bairdi* (*c. bairdi*) crab bycatch limit (CBL) in this area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), October 31, 1996, through 2359 hrs, A.l.t., June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The scallop fishery in the exclusive economic zone off Alaska is managed by NMFS according to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing for scallops is governed by regulations appearing at 50 CFR parts 600 and 679.

In accordance with § 679.62(b), the 1996 *C. bairdi* CBL for Registration Area M was established by the Final 1996–97 Harvest Specifications of Scallops (61 FR 38099, July 23, 1996) as 22,800 crabs.

The Administrator, Alaska Region, NMFS, has determined, in accordance with § 679.62(c), that the *C. bairdi* CBL for Registration Area M has been reached. Therefore, NMFS is prohibiting the taking and retention of scallops in Registration Area M from 1200 hrs, October 31, 1996 through 2359 hrs, A.l.t., June 30, 1997.

Classification

This action is taken under § 679.62 and is exempt from review under E.O. 12866.

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

Dated: October 31, 1996.

Richard W. Surdi,

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

[FR Doc. 96–28480 Filed 11–1–96; 9:20 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 216
Wednesday, November 6, 1996

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–ANE–26]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. ALF502 and LF507 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to AlliedSignal Inc. (formerly Textron Lycoming) ALF502 and LF507 series turbofan engines. This proposal would require initial and repetitive on-wing eddy current or shop fluorescent penetrant inspections of fuel manifold assemblies for cracks, and replacement, if necessary, with serviceable parts. In addition, this AD presents an optional terminating action to the repetitive inspections by replacing the fuel manifold assembly with an assembly of a new, improved design. This proposal is prompted by reports of cracking of the fuel manifold assembly at the No. 5 and 6 scallop location. The actions specified by the proposed AD are intended to prevent cracking of the fuel manifold assembly, which could result in an engine fire.

DATES: Comments must be received by January 6, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–26, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: ''epd-adcomments@mail.hq.faa.gov''. All comments must contain the Docket No. in the subject line of the comment. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (310) 627–5262; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–ANE–26.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–26, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of cracking of the fuel manifold assembly at the No. 5 and 6 scallop location on AlliedSignal Inc. (formerly Textron Lycoming) ALF502 and LF507 series turbofan engines. The investigation revealed that the thermal growth mismatch of the fuel manifold has resulted in a high low cycle fatigue (LCF) stress concentration in the No. 5 and No. 6 scallop area. This condition, if not corrected, could result in cracking of the fuel manifold assembly, which could result in an engine fire.

The FAA has reviewed and approved the technical contents of the following Service Bulletins (SBs): AlliedSignal Aerospace SB No. ALF/LF 73–1002, dated December 22, 1995, that describes procedures for initial and repetitive on-wing eddy current (ECI) or shop fluorescent penetrant inspections (FPI) of fuel manifold assemblies for cracks, and replacement, if necessary, with serviceable parts; and AlliedSignal Aerospace SB No. ALF502R 73–14, Revision 1, dated September 25, 1992, and Textron Lycoming SB No. LF507–1H 73–2, dated September 10, 1992, that describe procedures for replacing the fuel manifold assembly with an assembly of a new, improved design.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require initial or repetitive on-wing ECI and shop FPI of fuel manifold assemblies for cracks, and replacement, if necessary, with serviceable parts. In addition, this AD presents an optional terminating action to the repetitive inspections by replacing the fuel manifold assembly with an assembly of a new, improved design, Part Number 2–163–620–37 or –38. The actions would be required to be accomplished in accordance with the SBs described previously.

There are approximately 1,500 engines of the affected design in the

worldwide fleet. The FAA estimates that 270 engines installed on aircraft of U.S. registry would be affected by this proposed AD; that it would take approximately 2 work hours per engine per inspection to accomplish the ECI, 4 work hours per engine per inspection to accomplish the FPI, and that the average labor rate is $60 per work hour. Based on these figures, the annual total cost impact of the proposed AD on U.S. operators is estimated to be $97,200 at the estimated rate of one inspection per year.

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:

AlliedSignal Inc.: Docket No. 96–ANE–26.

Applicability: AlliedSignal Inc. (formerly Textron Lycoming) ALF502 and LF507 series turbofan engines, installed on but not limited to British Aerospace BAe 146 and Avro International RJ–70 series, and Canadair CL–600 aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the fuel manifold assembly, which could result in an engine fire, accomplish the following:

(a) Perform initial and repetitive on-wing eddy current inspection (ECI) or shop fluorescent penetrant inspection (FPI) of fuel manifold assemblies for cracks, and replace, if necessary, with serviceable parts, in accordance with AlliedSignal Aerospace Service Bulletin (SB) No. ALF/LF 73–1002, dated December 22, 1995, as follows:

(1) For fuel manifold assemblies with 2,000 or more cycles since new (CSN), or unknown CSN, on the effective date of this AD, inspect within 1,250 cycles in service (CIS) after the effective date of this AD.

(2) For fuel manifold assemblies with less than 2,000 CSN on the effective date of this AD, inspect prior to accumulating 3,250 CSN.

(3) Thereafter, inspect at intervals not to exceed 1,250 CIS since last inspection.

(4) If a fuel manifold assembly is found cracked, prior to further flight, replace with a serviceable fuel manifold assembly, Part Number (P/N) 2–163–620–37 or –38.

(b) Installation of a new, improved fuel manifold assembly, P/N 2–163–620–37 or –38, constitutes terminating action to the inspection requirements of paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

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

Issued in Burlington, Massachusetts, on October 29, 1996.

James C. Jones,

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

[FR Doc. 96–28452 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA 056–5015; FRL–5647–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Enhanced Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim rule.

SUMMARY: EPA is proposing conditional, interim approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision establishes and requires the implementation of an enhanced inspection and maintenance (I/M) program in the following Northern Virginia localities: the Counties of Arlington, Fairfax, Fauquier, Loudoun, Prince William, and Stafford, and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

The intended effect of this action is to propose conditional interim approval of the enhanced I/M program proposed by Virginia for the Northern Virginia program area, based upon the Commonwealth's good faith estimate that the proposed test-and-repair network design is appropriate and will achieve the expected emissions reductions and that the revision is otherwise in compliance with the Clean Air Act (CAA). EPA is proposing conditional approval because the Commonwealth's SIP revision is deficient with respect to certain requirements of the CAA and/or EPA's I/M program regulatory requirements.

DATES: Comments must be received on or before December 6, 1996.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO and Mobile Sources Section, Mail code 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics

Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 566–2176, at the EPA Region III address above or via e-mail at Rehn.Brian@epmail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the EPA Region III address indicated in the Addresses section.

SUPPLEMENTARY INFORMATION:

I. Background

A. Impact of the National Highway System Designation Act on the Design and Implementation of Enhanced Inspection and Maintenance Programs under the Clean Air Act

The National Highway System Designation Act of 1995 (NHSDA) establishes two key changes to the enhanced I/M rule requirements previously developed by EPA. Under the NHSDA, EPA cannot require states to adopt or implement centralized, test-only IM240 enhanced vehicle inspection and maintenance programs as a means of compliance with section 182, 184 or 187 of the CAA. Also under the NHSDA, EPA cannot disapprove a state SIP revision, nor apply an automatic discount to a state SIP revision under section 182, 184 or 187 of the CAA, because the I/M program in such plan revision is decentralized, or a test-and-repair program. Accordingly, the so-called ''50% credit discount'' that was established by the EPA's I/M Program Requirements Final Rule, (published November 5, 1992, and herein referred to as the I/M rule) has been effectively replaced with a presumptive equivalency criteria, which places the emission reductions credits for decentralized networks on par with credit assumptions for centralized networks, based upon a state's good faith estimate of reductions as provided by the NHSDA and explained below in this section.

EPA's I/M rule established many other criteria unrelated to network design or test type for states to use in designing enhanced I/M programs. All other elements of the I/M Rule, and the statutory requirements established in the CAA continue to be required of those states submitting I/M SIP revisions under the NHSDA, and the NHSDA specifically requires that these submittals must otherwise comply in all respects with the I/M Rule and the CAA.

The NHSDA also requires states to swiftly develop, submit, and begin implementation of these enhanced I/M programs, since the anticipated start-up dates developed under the CAA and EPA's rules have already been delayed. In requiring states to submit these plans within 120 days of the NHSDA passage, and in allowing these states to submit proposed regulations for this plan (which can be finalized and submitted to EPA during the interim period) it is clear that Congress intended for states to begin testing vehicles as soon as practicable, now that the decentralized credit issue has been clarified and directly addressed by the NHSDA.

Submission criteria described under the NHSDA allows for a state to submit proposed regulations for this interim program, provided that the state has all of the statutory authority necessary to carry out the program. Also, in proposing the interim credits for this program, states are required to make good faith estimates regarding the performance of their enhanced I/M program. Since these estimates are expected to be difficult to quantify, the state need only provide that the proposed credits claimed for the submission have a basis in fact. A good faith estimate of a state's program may be an estimate that is based on any of the following: the performance of any previous I/M program; the results of remote sensing or other roadside testing techniques; fleet and vehicle miles traveled (VMT) profiles; demographic studies; or other evidence which has relevance to the effectiveness or emissions reducing capabilities of an I/M program.

This action is being taken under the authority of both the NHSDA and section 110 of the CAA. Section 348 of the NHSDA expressly directs EPA to issue this interim approval for a period of eighteen months, at which time the interim program will be evaluated in concert with the appropriate state agencies and EPA. At that time, the Conference Report on section 348 of the NHSDA states that it is expected that the proposed credits claimed by the state in its submittal, and the emissions reductions demonstrated through the program data may not match exactly. Therefore, the Conference Report suggests that EPA use the program data to appropriately adjust these credits on a program basis as demonstrated by the program data.

Furthermore, EPA believes that in also taking action under section 110 of the CAA, it is appropriate to grant a conditional approval to this submittal since there are some deficiencies with respect to CAA statutory and regulatory requirements (identified herein) that EPA believes can be corrected by the state during the interim period.

Finally, it should also be noted that Virginia has submitted a separate SIP revision addressing a ''basic'' I/M program requirement for the Richmond area. EPA is not acting upon that submittal in today's rulemaking action, and intends to act upon that submittal at a later date.

B. Interim Approvals Under the NHSDA

The NHSDA directs EPA to grant interim approval for a period of eighteen months to approvable I/M submittals under this Act. This Act also directs EPA and the states to review the interim program results at the end of eighteen months, and to make a determination as to the effectiveness of the interim program. Following this demonstration, EPA will adjust any credit claims made by the state in its good faith effort to reflect the emissions reductions actually measured by the state during the program evaluation period. The NHSDA is clear that the interim approval shall last for only eighteen months, and that the program evaluation is due to EPA by the end of that period. Therefore, EPA believes Congress intended for these programs to start-up as soon as possible, which EPA believes should be on or before November 15, 1997, so that at least 6 months of operational program data can be collected to evaluate the interim program. EPA believes that in setting such a strict timetable for program evaluations under the NHSDA, that Congress recognized and attempted to mitigate any further delay with the start-up of this program. For the purposes of this program, ''start-up'' is defined as a fully operational program which has begun regular, mandatory inspections and repairs, using the final test strategy and covering each of a state's required areas. EPA proposes that if the state fails to start its program on this schedule, the approval granted under the provisions of the NHSDA will convert to a disapproval after a finding letter is sent to the state.

The program evaluation to be used by the state during the 18-month interim period must be acceptable to EPA. EPA anticipates that such a program evaluation process will be developed by the Environmental Council of States (ECOS) group that is convening now and that was organized for this purpose. EPA further anticipates that in addition to the interim, short term evaluation, the state will conduct a long term, ongoing evaluation of the I/M program as required by the I/M Rule in §§ 51.353 and 51.366.

C. Process for Full Approvals of This Program Under the CAA

As per the NHSDA requirements, this interim rulemaking will expire within eighteen months of the final interim approval, or the date of final approval. A full approval of the state's final I/M SIP revision (which will include the state's program evaluation and final adopted state regulations) is still necessary under section 110 and under section 182, 184 or 187 of the CAA. After EPA reviews the Commonwealth's submitted program evaluation, final rulemaking on the state's SIP revision will occur.

II. EPA's Analysis of Virginia's Submittal

On March 27, 1996, the Virginia Department of Environmental Quality (DEQ) submitted a revision to its State Implementation Plan (SIP) for an enhanced I/M program to qualify under the NHSDA. That revision consists of enabling legislation that will allow the state to implement the I/M program, proposed regulations, a description of the I/M program (including a modeling analysis and detailed description of program features), and a good faith estimate that includes the state's basis in fact for emission reductions claims of the program. The state's credit assumptions are based upon the removal of the 50% credit discount for all portions of the program that are based on a test-and-repair network, and the application of the state's own estimate of the effectiveness of its decentralized test and repair program.

A. Analysis of the NHA submittal criteria

Transmittal Letter

On March 27, 1996, Virginia submitted an enhanced I/M SIP revision to EPA, requesting approval action under the NHSDA of 1995 and the CAA of 1990. The official submittal was made by the appropriate state official, Peter W. Schmidt, Director of the Department of Environmental Quality, and was addressed to the appropriate EPA official in the Region.

Enabling Legislation

The Commonwealth of Virginia has enabling legislation at the Motor Vehicle Emissions Control Law at Title 46.2, Subtitle III, Chapter 10, Article 22 of the Code of Virginia. This legislation provides for the implementation of a decentralized, test-and-repair program network utilizing ASM 5015 testing equipment, with testing on a biennial basis.

Proposed Regulations

Prior to submitting its March 27, 1996 submittal, the Commonwealth of Virginia proposed regulations before its Air Pollution Control Board in accordance with 40 CFR Part 51, establishing an enhanced I/M program. The Commonwealth anticipates fully adopting regulations by October 30, 1996.

Program Description

The Commonwealth's proposed enhanced I/M program applies to the Northern Virginia metropolitan area, and includes biennial testing of 1968 and newer gasoline powered light-duty vehicles (LDGV) and light-duty trucks (LDGT) up to 10,000 pounds gross vehicle weight rating (GVWR) in a fully test-and-repair network. Test methods are to include a two-mode acceleration simulation mode (ASM) exhaust emissions test as the primary test method for newer-technology (i.e. 1981 and newer) LDGVs. Two-speed idle testing will be performed on: LDGTs, older technology (i.e. pre-1981) LDGVs, and on any LDGV equipped with full-time four wheel drive or full-time anti-lock brake systems. Additionally, evaporative system testing is to be performed, including an evaporative system pressure test for 1973 and newer vehicles, and an evaporative system purge test (for 1981 and newer vehicles which receive ASM testing). On 1973 and newer vehicles, a visual inspection for the presence of certain emissions control components or systems will eventually be performed. The following systems will be checked: the air injection system, catalytic converter system, fuel evaporative emissions control system, positive crankcase ventilation (PCV) system, exhaust gas recirculation (EGR) system, and the thermostatic air cleaner system. Finally, a fuel filler cap check for 1973 and newer vehicles is included. Motorists will be required to pass all aspects of emissions testing prior to re-registering their vehicles. On-road testing will be used to ensure that motorists comply with testing requirements and that vehicle emissions remain below pollution standards between biennial tests.

Emission Reduction Claim and Basis for the Claim

As Virginia stated in the March 27, 1996 SIP submittal, the Commonwealth is claiming additional I/M program effectiveness for their test-and-repair network, when compared to EPA's assumed credit discount for this type of testing network. Virginia claims that its test-and-repair network will be 93.8% as effective as an equivalent test-only network, in terms of hydrocarbon and oxides of nitrogen pollutant reductions. Per the recently enacted National Highway Systems Designation Act, the Commonwealth has 18 months from the date of EPA final interim approval of the March 27, 1996 SIP revision to obtain the data on operation of its program in order to prove its effectiveness claims.

The Commonwealth's good faith estimate achieves credit through the following measures, which are part of the March 27, 1996 SIP submittal:

1. A program effectiveness demonstration of the existing Northern Virginia I/M program, compiled in conjunction with EPA, entitled ''Study to Demonstrate Increased Emissions Reduction Credit for the Northern Virginia Test-and-Repair Program'', dated December 21, 1995;
2. A more stringent on-road testing program than required by federal requirements, through remote sensing and a civil penalty system for noncompliance;
3. Implementation of a technician training and certification program and a repair facility certification program; and
4. Improved data entry automation, including bar code readers at test stations to read bar-coded registration forms to eliminate data entry errors.

B. Analysis of the EPA I/M Regulation and CAA requirements

As previously stated, the NHSDA left those elements of the I/M rule that do not pertain to network design or test type intact. Based upon EPA's review of Virginia's submittal, EPA believes the Commonwealth has not complied with all aspects of the NHSDA, the CAA and the I/M rule. For those sections of the I/M rule, or of the CAA, identified below, with which the state has not yet fully complied, EPA proposes to conditionally approve the SIP upon receipt of a commitment from the state to correct each said deficiency. Before EPA can continue with the interim rulemaking process, the Commonwealth must make a commitment within 30 days of November 6, 1996 to correct these major SIP element(s) by a date certain within 1 year of EPA interim approval.

The Commonwealth must correct these major deficiencies by the date specified in the commitment, or this approval will convert to a disapproval under CAA section 110(k)(4). EPA has also identified certain minor deficiencies in the SIP, which are itemized below. EPA has determined that delayed correction of these minor deficiencies will have a de minimis

impact on a state's ability to meet clean air goals. Therefore, the state need not commit to correct these deficiencies in the short term, and EPA will not impose conditions on interim approval with respect to these deficiencies. Virginia must correct these deficiencies during the eighteen month term of the interim approval, as part of the fully adopted rules that the Commonwealth will submit to support full approval of its I/M SIP. So long as Virginia corrects these minor deficiencies prior to final action on the I/M SIP, EPA concludes that failure to correct these minor deficiencies in the short term will not adversely affect EPA's ability to give interim approval to the proposed I/M program.

Applicability—40 CFR 51.350

Sections 182(c)(3) and 184(b)(1)(A) of the Act and 40 CFR 51.350(a) require states, or portions of states, located in the Ozone Transport Region (OTR), containing Metropolitan Statistical Areas (MSAs), or parts thereof, with a population of 100,000 or more (as of 1990) to implement an enhanced I/M program. The Northern Virginia portion of the Washington, D.C. MSA is part of the OTR and has a population of 100,000 or more. This area is also classified as a serious ozone nonattainment area and would therefore be required to implement an enhanced I/M program, per section 182(c)(3) of the CAA and 40 CFR 51.350(2).

Under the above Clean Air Act requirements, the following localities in Virginia are subject to the enhanced I/M program requirements: the Counties of Arlington, Fairfax, Loudoun, Prince William and Stafford; and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. Under the federal I/M rule, specifically 40 CFR 51.350(b), some rural counties having a population density of less than 200 persons per square mile based on the 1990 census could be excluded from program coverage provided that at least 50% of the MSA population is included in the program. No counties within the Northern Virginia MSA qualify for this low population density exemption, however. The Commonwealth's proposed I/M regulation, as submitted with the SIP, requires that the enhanced I/M program be implemented in the localities listed above, and also in Fauquier County.

Virginia's I/M legislative authority provides the legal authority to establish the proposed geographic boundaries. The program boundaries are defined in Virginia's Regulation for the Control of Motor Vehicle Emissions, located at 9 VAC 5–91–20. That portion of the regulation defines the ''Northern Virginia Program Area'' to include the counties identified above. EPA is proposing to find that the geographic applicability requirements are satisfied. The federal I/M regulation requires that the state program shall not sunset until it is no longer necessary. EPA interprets the federal regulation as stating that a SIP which does not sunset prior to the attainment deadline for each applicable area satisfies this requirement. The Virginia I/M enabling legislation and regulation provides for the program to continue past the attainment dates for all enhanced I/M program areas in the Commonwealth.

Virginia's SIP satisfies all the requirements related to 40 CFR 51.350 and is therefore approvable.

Enhanced I/M Performance Standard—40 CFR 51.351

The enhanced I/M program must be designed and implemented to meet or exceed a minimum performance standard, or ''model'' program design, on the basis of emission levels expressed in area-wide average grams per mile (gpm) for certain pollutants. The performance standard is established using local characteristics, such as vehicle mix and local fuel controls, and the following model I/M program parameters: network type, start date, test frequency, model year coverage, vehicle type coverage, exhaust emission test type, emission standards, emission control device, evaporative system function checks, stringency, waiver rate, compliance rate and evaluation date. The emission levels achieved by the state's program design shall be calculated using the most current version, at the time of submittal, of the EPA mobile source emission factor model. At the time Virginia submitted its SIP, the most current version was MOBILE5a. Subject localities shall meet the performance standard for the pollutants which necessitate the enhanced I/M requirements. In the case of ozone nonattainment areas, the performance standard must be met for both oxides of nitrogen (NO_X) and hydrocarbons (HC). Thus, the Commonwealth's submittal must meet the enhanced I/M performance standard for HC and NO_X in all subject I/M areas in the Northern Virginia area.

In enacting the NHSDA, Congress evidenced an intent to have states promptly implement I/M programs under interim approval status to gather the data necessary to support state claims of appropriate credit for alternative network design systems. By providing that such programs be submitted within four months of passage of the NHSDA, that EPA could approve I/M programs on an interim basis, solely upon proposed regulations, and that such approvals would last only for an 18-month period, it is clear that Congress anticipated both that these programs would start quickly and that EPA would act quickly to give them interim approval.

The Virginia submittal includes the following program design parameters:

Parameter	Virginia's program
Network type	Decentralized, test-and-repair, (privatized).
Start date	1983 (existing program); 1997 (new program elements).
Test frequency	Biennial (i.e. every two years).
Model year/vehicle type coverage	1968 and newer model year (1968+) vehicles/gasoline-powered vehicles (up to 10,000 lbs. gross vehicle weight rating (GVWR)).
Exhaust emissions test type	Acceleration simulation mode (ASM2)test. ‰ 1981+ vehicles: LDGV, LDGT, HDGT (i.e. under 8,500 lbs. GVWR). 2-speed idle test. ‰ 1968–1980 vehicles (all vehicles). ‰ 1968+ heavy-duty vehicles (8500–10000 lbs. GVWR). ‰ 1981+ vehicles (0–8500 lbs GVWR), with full-time four wheel drive. ‰ All vehicles having full-time traction control or ABS.
Emission standards (for 1981+ model year vehicles)	Acceleration simulation mode (ASM2) test. ‰ 0.8 gpm HC; 15 gpm CO; 2.0 gpm NO_X [equivalent]. 2-speed idle test. ‰ 220 ppm HC, 1.2 % CO.

Parameter	Virginia's program
Emission control device visual inspection	Air pump, catalyst, EGR system, evaporative emissions control system, PCV system, and gas cap check.
Evaporative system function checks	Pressure decay test ‰ 1981+ vehicles. Purge test ‰ 1981+ vehicles.
Stringency rate (pre-1981 vehicle failure)	35%.
Waiver rate	3%.
Compliance rate	96%.
Evaluation date	July 1999.

Virginia's modeling also includes credit for a mandatory emissions repair technician training and certification (TTC) program in the Northern Virginia program area.

In order to determine whether the proposed I/M program meets the enhanced performance standard, the Commonwealth needed to model its program to demonstrate that it had met the enhanced performance standard. Because of delayed I/M program start up and program reconfiguration, the existing modeling used by the state to demonstrate compliance with the performance standard is no longer accurate, as it is based on start up and phase-in of testing and cutpoints that do not reflect the current program configuration or start dates that the state will actually implement. Additionally, modeling must be performed to demonstrate compliance with the performance standard for all affected localities. Therefore, the Commonwealth must conduct new modeling to verify that the performance standard will in fact be met. For example, actual start dates corresponding to each test-type and cutpoints correct program start up dates should be included in the new modeling.

EPA proposes that interim approval of Virginia's I/M SIP be conditioned, in part, upon the requirement that the state conduct and submit the necessary new modeling to demonstrate that the program will meet the performance standard, by a fixed date within one year from final interim approval. In order to facilitate conditional approval of the Virginia SIP, Virginia must submit to EPA a commitment, within 30 days of publication of this notice, to perform this modeling within the time frame set forth above. If the state fails to commit to perform this re-modeling, EPA proposed in the alternative to disapprove the SIP. If the state fails to perform and submit the new modeling by the date committed to, EPA proposes that the interim approval will convert to a disapproval upon a letter from EPA indicating that the state has failed to meet the conditions of approval by failing to timely submit the modeling and to demonstrate compliance with the performance standard.

Network Type and Program Evaluation—40 CFR 51.353

The enhanced program shall include an ongoing evaluation to quantify the emission reduction benefits of the program, and to determine if the program is meeting the requirements of the Act and the federal I/M rule. The SIP shall include details on the program evaluation and shall include a schedule for submittal of biennial evaluation reports, data from state monitored or administered mass-based, transient emissions testing of at least 0.1% of the vehicles subject to inspection each year, a description of the sampling methodology, the data collection and analysis system, and the legal authority enabling the evaluation program. Virginia's SIP provides for a decentralized, test-and-repair network design, which will be operated in multiple private inspection stations. Testing will be required on a biennial basis.

In addition, the federal I/M rule requires the state to demonstrate that the program meets the performance standard by fixed evaluation dates. The first such date is January 1, 2000. However, few state programs will be able to meet the performance standard by then, as a result of delays in program start-up and the phased-in nature of various testing requirements. EPA believes that based on the provisions of the NHSDA, the evaluation dates in the current I/M rule have been superseded. Congress provided in the NHSDA for state development of I/M programs that would start significantly later than the start dates in the current I/M rule. Consistent with Congress's intent exhibited in the NHSDA with regard to program start-up, such programs by definition will not achieve full compliance with the regulatory performance standard by the beginning of the year 2000.

Therefore, EPA has concluded that the NHSDA superseded the start date requirements of the I/M rule, but that states should still be required to start their programs as soon as possible, which EPA has determined would be by no later than November 15, 1997. EPA now believes that pursuant to the NHSDA, the initial evaluation date should be January 1, 2002. This evaluation date will allow states to fully implement their I/M programs and to complete one cycle of testing at full cutpoints in order to demonstrate compliance with the performance standard.

The Commonwealth's SIP contains a commitment to perform an ongoing program evaluation, consisting of administration or oversight of inspections by Department of Environmental Quality (DEQ) personnel of at least 0.1% of the annually subject vehicle population. EPA interprets this broad commitment to indicate that Virginia staff will merely oversee or conduct testing in actual test stations using state-approved I/M test methods. This program evaluation does not comply with the evaluation protocol set forth by EPA in 40 CFR 51.353(c).

The Environmental Council of States (ECOS) has formed a committee to develop an evaluation protocol to be used by states in order to evaluate overall program effectiveness. The ECOS group has agreed that states must follow the long term program evaluation defined in 40 CFR 51.353. 40 CFR 51.353 requires that mass-emission based, transient testing (METT) be performed on 0.1% of the subject fleet each year. The submittal also fails to address other program evaluation elements specified in 40 CFR 51.353(b)(1) and (c), including a program evaluation schedule, a protocol for the evaluation testing, and a system for collection and analysis of program evaluation data.

EPA, therefore, proposes to conditionally approve Virginia's SIP based on receiving the Commonwealth's commitment within 30 days to submit to EPA by a date certain within twelve months of the final interim ruling, the final Virginia I/M regulation which requires METT be performed on 0.1% of the subject fleet each year as per 40 CFR 51.353(c)(3) and meets the program evaluation elements as specified in 40 CFR 51.353(c). If this condition is not

met EPA will promptly issue a letter to the Commonwealth indicating that the conditional approval has been converted to a disapproval.

Adequate Tools and Resources—40 CFR 51.354

The federal I/M rule requires the Commonwealth to demonstrate that adequate funding of the program is available. A portion of the test fee or separately assessed per vehicle fee shall be collected, placed in a dedicated fund and used to finance the program. Alternative funding approaches are acceptable if a state demonstrates that the level of funding can be maintained. Reliance upon funding from a state or local general fund is not acceptable, unless doing otherwise would be a violation of the state's constitution. The SIP shall include a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, and purchase of equipment. The SIP shall also detail the number of personnel dedicated to the quality assurance program, data analysis, program administration, enforcement, public education and assistance and other necessary functions.

Virginia DEQ's I/M oversight program will be funded through a per vehicle I/M inspection fee, which is currently set at $20; along with a separate administrative registration fee of $2 per vehicle. The administrative fee will be deposited in a dedicated fund, to be used solely for program oversight.

The SIP contains a detailed budget synopsis describing the personnel dedicated to the quality assurance program, program oversight, data collection and analysis, enforcement, public education, and other necessary functions. Virginia's SIP indicates that this level of personnel resources is adequate to properly oversee the program, and that private contract personnel may be utilized, as needed, for special program functions (e.g. temporary audit staff, on-road testing contractors, etc).

The Virginia submittal meets the requirements for adequate tools and resources, as set forth in the federal I/M regulations. Therefore, this portion of Virginia's SIP is approvable.

Test Frequency and Convenience—40 CFR 51.355

The enhanced I/M performance standard assumes an annual testing frequency; however, alternative schedules may be approved if the performance standard is achieved. The SIP shall describe the test year selection scheme, how the test frequency is integrated into the enforcement process and shall include the legal authority, regulations or contract provisions to implement and enforce the test frequency. The program shall be designed to provide convenient service to the motorist by ensuring short wait times, short driving distances and regular testing hours.

Section 46.2–1177 of Virginia's Motor Vehicle Emissions Control Law and Virginia's proposed I/M regulation provide the legal authority to implement the program with a biennial testing frequency. Virginia's proposed enhanced I/M regulation provides for a biennial testing, with initial testing for new vehicles required two years after initial registration. The Commonwealth has submitted modeling to demonstrate this biennial program's equivalency to the performance standard. However, this modeling analysis did not fully satisfy the requirements of 40 CFR 51.351. Upon satisfaction of the re-modeling condition in today's rulemaking action pertaining to the requirements of 40 CFR 51.351, Virginia will have satisfied the equivalency of their biennial testing scheme to the annual scheme contained in the model program.

Virginia's SIP lacks a detailed description of how emissions testing is scheduled for subject vehicles and the test selection scheme for assigning testing under the biennial program. Additionally, the SIP does not describe how the test frequency will be integrated with the registration denial motorist enforcement process. These elements constitute a minor deficiency in Virginia's SIP, which must be corrected in the final I/M SIP revision submitted by the end of the 18-month interim period. This portion of Virginia's SIP otherwise satisfies the requirements of 40 CFR 51.355, and is therefore approvable.

Vehicle Coverage—40 CFR 51.356

The performance standard for enhanced I/M programs assumes coverage of all 1968 and later model year light duty vehicles and light duty trucks up to 8,500 pounds GVWR, and includes vehicles operating on all fuel types. Other levels of coverage may be approved if the necessary emission reductions are achieved. Vehicles registered or required to be registered within the I/M program area boundaries and fleets primarily operated within the I/M program area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles. Fleets may be officially inspected outside of the normal I/M program test facilities, if such alternatives are approved by the program administration, but shall be subject to the same test requirements using the same quality control standards as non-fleet vehicles and shall be inspected in the same type of test network as other vehicles in the state, according to the requirements of 40 CFR 51.353(a). Vehicles which are operated on federal installations located within an I/M program area shall be tested, regardless of whether the vehicles are registered in the state or local I/M area.

The I/M rule requires that the SIP shall include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement, a detailed description of the number and types of vehicles to be covered by the program and a plan for how those vehicles are to be identified, including vehicles that are routinely operated in the area but not registered in the area. Additionally, the SIP must contain a description of any special testing exemptions, including the percentage and number of vehicles to be impacted by the exemption. Such exemptions shall be accounted for in the emissions reduction analysis.

The Northern Virginia enhanced I/M program requires coverage of all 1968 and newer, private or publicly owned, gasoline-powered vehicles up to 10,000 pounds gross vehicle weight rating (GVWR) which are registered or required to be registered in the I/M program area. Additionally, affected motor vehicles which are primarily operated on or commute to a state, local or federal government facility, are also subject to testing. As of the date of the SIP submittal, Virginia estimates that approximately 1.25 million vehicles will be subject to enhanced testing in the program area.

Virginia's proposed regulation exempts the following vehicles: motorcycles, diesel-fueled vehicles, electric-powered vehicles, clean-fueled vehicles (as defined by § 46.2–2 and 46.2–100 of the Code of Virginia), and vehicles registered as antiques. Additionally, Virginia SIP provides that testing may be deferred for vehicles (up to four model years old) held for sale by licensed car dealers, for up to one year from the date of sale. Section 46.2–1178 of the Virginia Motor Vehicle Control Law authorizes testing for the vehicles covered by Virginia's regulation, and § 46.2–1180 of the Motor Vehicle Control Law provides for the exemptions in the regulation, as listed above. This level of vehicle coverage is approvable, provided the performance standard can be demonstrated to have been met with this level of exemptions.

Virginia's SIP requires fleet vehicles, both public and privately owned, to be

tested. Virginia's regulation allows fleet owners having 20 or more vehicles to self test, provided they are licensed to do so by the Commonwealth. These fleet testing stations are subject to the same testing procedures and the same quality control procedures as official public testing stations. The fleet testing program is approvable, as it meets the requirements of 40 CFR 51.356(a).

Virginia has not fully accounted for all of its testing exceptions, as a percentage of the entire subject fleet, in the SIP. Any exceptions to testing requirements must be accounted for in the emissions reductions analysis. Virginia has committed to better account for the number of excepted vehicles after the program commences operation. Since the exceptions are not expected to comprise a significant portion of the subject fleet, this is considered by EPA to be a minor deficiency. The state must better estimate these exceptions and account for them in their performance standard modeling demonstration prior to the end of the 18-month interim approval period.

This portion of Virginia's SIP otherwise satisfies the requirements of 40 CFR 51.356, and is approvable.

Test Procedures and Standards—40 CFR 51.357

Written test procedures and pass/fail standards shall be established and followed for each model year and vehicle type included in the program. Test procedures and standards are detailed in 40 CFR 51.357 and in the EPA documents entitled ''High-Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications'', EPA–AA–EPSD–IM–93–1, dated April 1994 and ''Acceleration Simulation Mode Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications'', EPA–AA–RSPD–IM–96–2, dated July 1996. The federal I/M rule also requires vehicles that have been altered from their original certified configuration (i.e. engine or fuel switching) to be subject to the requirements of section 51.357(d).

For the Northern Virginia enhanced program, Virginia has proposed a two-mode acceleration simulation mode (ASM2) exhaust test as its primary test method for newer-technology (i.e. 1981 and newer) light-duty vehicles. This test actually consists of two separate tests, referred to as ASM 5015 and ASM 2525. Two-speed idle testing will be performed on subject heavy-duty vehicles, older technology (i.e. pre-1981) light-duty vehicles, and on vehicles with full-time four wheel drive or full-time anti-lock brake systems. Additionally, evaporative system testing consisting of pressure testing (for 1973 and newer vehicles) and purge testing (for 1981 and newer vehicles receiving ASM testing) are included in the SIP. Virginia's regulation also calls for a visual inspection for the presence, on 1973 and newer vehicles, of certain emissions control components or systems, including the: air injection system, catalytic converter system, fuel evaporative emissions control system, positive crankcase ventilation (PCV) system, exhaust gas recirculation (EGR) system, and the thermostatic air cleaner system. Finally, the SIP calls for a fuel filler cap check for 1973 and newer vehicles.

The Commonwealth's regulation requires vehicles that have been altered from the original certified configuration to which they were manufactured (i.e. vehicles in which the engine or fuel type has been switched) to be tested to their originally certified design.

The Commonwealth's SIP does not contain detailed ASM2 test procedures that are acceptable to EPA. The Commonwealth's regulation incorporates by reference the appropriate section of the Code of Federal Regulations (CFR) for I/M test procedures for 2-speed idle testing and for evaporative pressure and purge testing. However, the Virginia SIP allows for possible alternative evaporative system tests to those referenced by the Commonwealth's regulation. No test procedures are specified for any alternative evaporative system test, with the exception of a fuel filler cap check procedure. In order for the Commonwealth to include alternative evaporative tests in the performance standard demonstration and to require testing with these tests, the SIP must contain EPA approved test procedures for such tests. The final SIP must include detailed, approvable test procedures for all test methods to be utilized in the enhanced I/M program.

The SIP includes hydrocarbon (HC), carbon monoxide (CO), and oxide of nitrogen (NO_X) pass/fail standards (or ''cutpoints'') for the ASM2 test for each subject model year and vehicle type. HC and CO cutpoints are provided in Virginia's regulation for the 2-speed idle test procedure for all subject model year and types of vehicles. Standards will be phased-in over one biennial testing cycle, with final standards to apply at that time. EPA must receive all test procedures, specifications and standards before EPA can proceed with a final interim rulemaking action. EPA recently (August, 1996) released ASM test procedures, specifications and standards. In light of the finalization of these standards, EPA expects the Commonwealth to submit its ASM test procedures, specifications and standards in the near future.

If within 30 days of the proposed interim rulemaking, the Commonwealth submits to EPA a commitment to adopt approvable test procedures for its two-mode ASM test, accompanied by a draft procedures document or a revised proposed regulation referencing or containing approved procedures, then EPA proposes to conditionally approve this portion of the SIP. The Commonwealth's commitment must include a date certain (prior to the date by which testing is to commence), within twelve months of the final interim ruling, by which the final Virginia I/M regulation or test procedure document will be formally submitted. If within 30 days of the proposed interim ruling, the above submittal/commitment requirement has not been met, then this notice proposes in the alternative to disapprove the Virginia I/M SIP. If the condition to submit the final regulation or test procedures document which incorporates an approvable ASM2 test procedure is not met by the date committed to by the Commonwealth from the final interim ruling, then EPA will promptly issue a letter to the Commonwealth indicating that the conditional approval has been converted to a disapproval.

Finally, Virginia's regulation must require that retests conducted after the performance of repairs shall include the performance of all emissions tests and for all pollutants for which the vehicle was originally subject, not merely the test and pollutant for which the vehicle initially failed. This is a minor deficiency, and must be corrected prior to the end of the 18-month interim approval period.

Test Equipment—40 CFR 51.358

Computerized test systems are required for performing any emission measurement on subject vehicles. The federal I/M rule requires that the state SIP submittal include written technical specifications for all test equipment used in the program. The specifications shall describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The Commonwealth's submittal lacks written technical specifications for all test equipment to be used in the program. The Commonwealth's regulation incorporates by reference 40 CFR part 51, subpart S (i.e., the I/M program requirements rule) and 40 CFR

part 85, subpart W (i.e., emissions performance warranty short tests rule). However, the regulation does not specifically include or reference EPA approved I/M test equipment specifications. Neither, does the SIP does not contain specifications to address performance features and functional characteristics of the computerized test systems. The Commonwealth's rule does, however, require the use of computerized test systems.

Virginia must submit written test equipment specifications for the ASM2 test equipment and 2-speed idle test equipment, as well as the specifications for the necessary pressure and purge, and fuel filler cap check equipment. In light of the recent release of ASM test equipment specifications, in August 1996, EPA expects that the Commonwealth will adopt final test specifications in the near term.

If within 30 days of the proposed interim rulemaking, the Commonwealth submits to EPA a commitment to adopt approvable test equipment specifications for all the I/M test procedures contained in its regulation, accompanied by draft specifications documents or by a revised proposed regulation referencing or containing approved test equipment specifications, then EPA proposes to conditionally approve this portion of the SIP. The Commonwealth's commitment must include a date certain (prior to the date by which testing is to commence), within twelve months of the final interim ruling, by which the final Virginia I/M regulation or test equipment specifications documents will be formally submitted. If within 30 days of the proposed interim ruling, the above submittal/commitment requirement has not been met, then this notice proposes in the alternative to disapprove the Virginia I/M SIP. If the condition to submit the final regulation or test procedure document which incorporates approvable test equipment specifications is not met by the date certain within twelve months (by which the Commonwealth commits to submit final test procedures) from the final interim ruling, EPA will promptly issue a letter to the Commonwealth indicating that the conditional approval has been converted to a disapproval.

Quality Control—40 CFR 51.359

Quality control measures shall insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained. The Virginia submittal lacks a description of quality control measures for the emission measurement equipment, record keeping requirements and measures to maintain the security of all documents used to establish compliance with the inspection requirements.

Virginia has committed in its SIP to develop and submit to EPA quality control procedures to ensure that the Commonwealth provides its motorists with accurate emissions test results. Some aspects of record keeping and document security are addressed in Virginia's regulation. However, the SIP presently does not satisfy quality control requirements.

This is considered a minor deficiency, which must be corrected prior to expiration of the 18-month interim approval period. Virginia must develop quality control procedures, to be addressed within the Commonwealth's I/M regulation, test equipment specifications, quality control procedures manual, or other ordinance or documents to satisfy all the quality control requirements of 40 CFR 51.359.

Waivers and Compliance Via Diagnostic Inspection—40 CFR 51.360

The federal I/M rule allows for the issuance of a waiver, which is a form of compliance with the program requirements that allows a motorist to comply without meeting the applicable test standards. For enhanced I/M programs, an expenditure of at least $450 in repairs, adjusted annually to reflect the change in the Consumer Price Index (CPI) as compared to the CPI for 1989, is required in order to qualify for a waiver. EPA recently amended the I/M rule to allow waivers to be phased-in after commencement of testing, but no later than January 1, 1998 and to allow repairs conducted by recognized repair technicians up to 60 days prior to testing to apply towards the waiver expenditures.

Waivers may only be issued after a vehicle has failed a retest performed after all qualifying repairs have been made. Any available warranty coverage must be used to obtain repairs before expenditures can be counted toward the cost limit. Tampering related repairs shall not be applied toward the cost limit. Repairs must be appropriate to the cause of the test failure. Repairs for 1980 and newer model year vehicles must be performed by a recognized repair technician. The federal regulation provides states the option to allow for compliance via a diagnostic inspection after failing a retest on emissions and requires quality control of waiver issuance. The SIP must set a maximum waiver rate and must describe corrective action that would be taken if the waiver rate exceeds that committed to in the SIP.

Virginia's Motor Vehicle Emissions Control Law and the Commonwealth's proposed I/M regulation provide the necessary authority to issue waivers, set and adjust cost limits, administer and enforce the waiver system, and to set a $450 waiver cost limit (adjusted annually by the CPI, as compared to the CPI in 1989).

Virginia's regulation phases in the waiver limits, beginning with the commencement of testing, over one biennial test cycle, to the federal limit by July 1, 1998. EPA is approving this phase-in schedule, because the commencement of I/M testing was delayed by the deadlines set forth in the NHSDA. EPA contends that this is consistent with its interpretation that start dates and evaluation dates may be extended by approximately two years under authority of the NHSDA, and phasing in the waiver over a similar time period is appropriate. Also, EPA's I/M rule provides one cycle to phase in the waiver after the start of testing, so it is acceptable for Virginia to phase in the waiver over one cycle after the start date set forth by the NHSDA.

The Commonwealth's proposed regulation allows emission inspection station inspectors to issue waivers. The I/M rule, 40 CFR 51.360(c)(1), only allows the state or a single contractor to issue waivers. This is a minor deficiency and must be corrected in the final I/M SIP revision submitted by the end of the 18-month interim period.

The Commonwealth has set a 3% maximum waiver rate, as a percentage of failed vehicles, for both pre-1981 and 1981 and later vehicles. The Commonwealth has committed, per 40 CFR 51.360, to take corrective action if the waiver rate exceeds 3%. This waiver rate was used in the Commonwealth's existing performance standard modeling demonstration, and should be maintained in the new performance standard modeling demonstration.

Otherwise, the Commonwealth's SIP satisfies the waiver requirements of 40 CFR 51.360, and is approvable.

Motorist Compliance Enforcement—40 CFR 51.361

The federal I/M rule requires that compliance be ensured through the denial of motor vehicle registration in enhanced I/M programs, unless an exception for use of an existing alternative is approved. The SIP shall provide information concerning the enforcement process, legal authority to implement and enforce the program, and a commitment to a compliance rate

to be used for modeling purposes and to be maintained in practice.

Chapter 10, § 46.2–1183 of the Motor Vehicle Emissions Control Law provides the legal authority to implement registration denial motorist enforcement. Virginia's I/M regulation requires that motorists obtain an emissions certificate demonstrating that they have passed a test or received a waiver in order to obtain a vehicle registration from the Department of Motor Vehicles (DMV). The Virginia SIP commits to maintain a compliance rate of 96%, which was used in the performance standard modeling demonstration.

The motorist compliance enforcement program is to be implemented in part by the DMV, which is the lead agency for registration issuance. The Department of State Police and local police authorities are charged with enforcement against motorists who fail to comply with registration requirements.

The Virginia SIP does not address mechanisms by which motorists will be notified of testing, readily visible means of determining compliance with the I/M program, penalties for motorists failing to comply with motor vehicle testing and registration, or mechanisms to prevent vehicle owners from avoiding testing by manipulating registrations. These, along with all other requirements of 40 CFR 51.361 must be addressed in the SIP. Virginia has committed in the SIP to prepare a registration procedures manual to govern registration aspects of this portion of the program. It is expected that some of these requirements will be addressed in that procedures document.

The requirements listed above are relatively minor in nature. These requirements must be satisfied prior to the end of the 18-month interim approval period. Virginia's SIP otherwise satisfies the requirements of 40 CFR 51.361, and is approvable.

Motorist Compliance Enforcement Program Oversight—40 CFR 51.362

The federal I/M rule requires that the enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary. The SIP must include quality control and quality assurance procedures to be used to insure the effective overall performance of the enforcement system. An information management system must be established which will characterize, evaluate and enforce the program.

Virginia has not developed its procedures manual for its oversight program to ensure motorist compliance. Virginia must submit a procedures manual which satisfies the quality control and information management responsibilities of the motorist compliance enforcement oversight program section of the federal I/M rule, at 40 CFR 51.363.

For a complete list of specific deficiencies with respect to 40 CFR 51.362, refer to the technical support document (TSD) for this action, found in the EPA docket. These deficiencies are minor in nature, and must be addressed prior to the end of the 18-month interim approval period.

Other than the deficiencies noted above, this portion of Virginia's SIP satisfies the requirements of 40 CFR 51.362, and is approvable.

Quality Assurance—40 CFR 51.363

An ongoing quality assurance program shall be implemented to discover, correct and prevent fraud, waste, and abuse in the program. The program shall include covert and overt performance audits of the inspectors, audits of station and inspector records, equipment audits, and formal training of all state I/M enforcement officials and auditors. A description of the quality assurance program which includes written procedure manuals on the above discussed items must be submitted as part of the SIP.

Virginia's SIP contains a detailed description of the elements of the quality assurance program and an appendix describing quality assurance and audit procedures. Virginia commits to conduct at least one covert audit per year per inspection bay, and at least two overt audits per year per inspection bay. However, the procedures manuals for use by Commonwealth quality assurance auditors have not yet been completed. These manuals must include detailed covert and overt audit procedures to be used by the Commonwealth for program oversight purposes. Virginia has committed to complete these audit manuals by December 1, 1996.

This lack of detailed audit procedures manuals is a minor deficiency, and therefore the Commonwealth must complete and submit these manuals by the end of the 18-month interim approval period.

The Virginia SIP otherwise meets the quality assurance requirements of section 40 CFR 51.363, and is approvable.

Enforcement Against Contractors, Stations and Inspectors—40 CFR 51.364

Enforcement against licensed stations, contractors and inspectors shall include swift, sure, effective, and consistent penalties for violation of program requirements. The federal I/M rule requires the establishment of minimum penalties for violations of program rules and procedures which can be imposed against stations, contractors and inspectors. The legal authority for establishing and imposing penalties, civil fines, license suspensions and revocations must be included in the SIP. State quality assurance officials shall have the authority to temporarily suspend station and/or inspector licenses immediately upon finding a violation that directly affects emission reduction benefits, unless constitutionally prohibited. An official opinion explaining any state constitutional impediments to immediate suspension authority must be included in the submittal. The SIP shall describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts and jurisdictions are involved, who will prosecute and adjudicate cases and the resources and sources of those resources which will support this function.

Virginia's regulations establish a general enforcement process, including: issuance of notices of violation (NOVs), hearing processes, and avenues of appeal. Virginia has several avenues for adjudicating violation cases—including formal fact findings, formal DEQ hearings, and the ability to suspend stations or inspectors without a hearing, in certain instances. Virginia's regulation provides that penalties may be imposed against station owner permittees or against stations, as well as against inspectors.

In the cases where testing privileges are suspended, inspectors must demonstrate their ability to properly perform test procedures before testing privileges may be restored. Suspended inspectors are barred from participating in inspection operations during the term of the suspension.

Virginia's SIP includes provisions to maintain and submit to EPA records of all enforcement actions, including: warnings, violations, civil fines, suspensions, and license revocations, and violations. The DEQ will maintain this information in a ''Violation History Report'' for each station and each inspector.

The Virginia SIP includes legal authority to establish and impose penalties against stations and inspectors participating in the enhanced I/M program. The Commonwealth has not yet adopted and submitted a penalty schedule for inspectors and test stations in the SIP, however the SIP contains a commitment to do so prior to program

start-up. The lack of a penalty schedule is a minor deficiency, and Virginia must adopt and submit an acceptable penalty schedule prior to the end of the 18-month interim approval period.

With the exception of the lack of a penalty schedule, this submittal meets the enforcement requirements of this section of the I/M rule.

Data Collection—40 CFR 51.365

Accurate data collection is essential to the management, evaluation and enforcement of an I/M program. The federal I/M regulation requires data to be gathered on each individual test conducted and on the results of the quality control checks of test equipment required under 40 CFR 51.359.

Virginia's I/M regulation does not indicate specific data elements to be entered by inspectors and reported to the Commonwealth. However, the regulation does require the inspector to accurately identify and enter vehicle and owner information for the specific test.

The Commonwealth does commit to submit annual reports containing summaries of test data, quality assurance, and quality control information based upon program test data. A commitment to submit biennial reports to EPA which adequately address reporting requirements set forth in 40 CFR 51.366(e) is also included in the SIP.

The submittal does not require that the specific data elements identified in 40 CFR 51.365(a) be collected and reported to the Commonwealth. This is a minor deficiency which must be corrected prior to the end of the 18-month interim approval period. This requirement can be satisfied by Virginia requiring these data elements to be collected. Two avenues for this requirement are via the regulation, or through the test equipment specifications (i.e. by requiring the test equipment to prompt the inspector to enter these elements and by blocking testing if the data is not entered).

With the exception of a requirement for collection of the specific data elements, described above, the Virginia SIP meets the data analysis and reporting requirements of this section of the I/M rule.

Data Analysis and Reporting—40 CFR 51.366

Data analysis and reporting are required to allow for monitoring and evaluation of the program by the state and EPA. The federal I/M rule requires annual reports to be submitted which provide information and statistics and summarize activities performed for each of the following programs: testing, quality assurance, quality control, and enforcement. These reports are to be submitted by July and shall provide statistics for the period of January to December of the previous year. A biennial report shall be submitted to EPA which addresses changes in program design, regulations, legal authority, program procedures and any weaknesses in the program found during the two year period and how these problems will be or were corrected.

Virginia's SIP commits to submit annual statistical data summaries of activities related to testing, quality assurance, quality control, and enforcement programs, beginning January 1, 1998, containing data from the previous calendar year. Since Virginia's program is scheduled to begin in the month of July, not January, this reporting schedule is acceptable. Virginia's SIP contains an appendix (Appendix 12) which describing program statistics specific data elements in these annual reports. The data elements specified comply with the requirements of 40 CFR 51.366.

For a list of the specific data elements to be submitted in each of the annual reports, refer to the TSD for this rulemaking action.

Inspector Training and Licensing or Certification—40 CFR 51.367

The federal I/M rule requires all inspectors to be formally trained and licensed or certified to perform inspections.

Virginia's SIP contains regulatory authority requiring that program inspectors complete DEQ-approved formal training courses and then pass a qualification test, prior to becoming a licensed inspector. A description of the written and hands-on tests that inspectors are required to pass are described in Virginia's regulation and in Appendix 13 of the SIP. The SIP also addresses requirements for obtaining an inspector's license and describes the licensing process. A list of elements to be covered by Virginia's inspector training program is included in Virginia's I/M rule, and is detailed in the TSD for this action.

Virginia's regulation requires inspectors to be relicensed every three years, and requires inspectors to undergo the same training and hands-on testing required to initially obtain a license, in order to be relicensed. EPA rules require relicensing every two years, however, since Virginia's requirements are stricter than federal rules require, EPA considers the Commonwealth's three-year license period to be acceptable.

The Virginia SIP satisfies the inspector training and licensing requirements of 40 CFR 51.367, and is approvable.

Public Information and Consumer Protection—40 CFR 51.368

The federal I/M rule requires the SIP to include public information and consumer protection programs.

Virginia's plan to develop public information and consumer protection plans is described in SIP, and elements to be included in those plans are listed in a ''Public Information Plan'' contained in Appendix 15 of the SIP. Virginia commits in the SIP to complete development of the actual plan by January 1, 1997.

The Commonwealth intends to operate public referee stations, where testing disputes can be resolved. Additionally, the Commonwealth intends to operate consumer complaint hotline services to subject motorists. Additionally, Virginia describes strategies to educate the public on the I/M program in a public awareness plan contained in the SIP. Finally, Virginia intends to make statistical information available to the public regarding the repair performance effectiveness of repair facilities within the program area, per 40 CFR 51.369. For details regarding elements to be included in the ''Public Information Plan'', refer to the TSD for this action or to the SIP narrative document contained in the SIP.

The Virginia SIP submittal meets the public information and consumer protection requirements of the I/M rule, however, Virginia must finalize and formally submit its ''Public Information Plan''. This is a minor deficiency, which must be corrected prior to the end of the 18-month interim approval period. Other than the deficiency cited above, Virginia's SIP satisfies the requirements of 40 CFR 51.368, and is approvable.

Improving Repair Effectiveness—40 CFR 51.369

Effective repairs are the key to achieving program goals. The federal I/M rule requires states to take steps to ensure that the capability exists in the repair industry to repair vehicles. The SIP must include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements required in the federal regulation, and a description of the repair technician training resources available in the community.

Virginia's SIP commits to track the effectiveness of repair facilities in the conducting emissions repairs under the enhanced I/M program. The SIP also contains a commitment to provide to the affected public the minimum performance monitoring information required by 40 CFR 51.369. A completed repair form, will be required prior to motorist's receipt of a retest. However, the SIP does not contain a detailed plan for performance monitoring, per 40 CFR 51.369(b).

Virginia has established in its SIP that insufficient emissions repair training exists and commits to work with vocational schools to provide for availability of better training. Virginia also commits in its SIP to establish or operate a repair technician hotline to assist repair technicians and to provide technical repair information for emissions-related repairs. A description of repair training available in the community must be submitted.

The Virginia SIP meets the requirements for improving repair effectiveness, with the exception of a repair performance monitoring program, per 40 CFR 51.369(b) and a description of available training, per 40 CFR 51.369(c). However, this is a minor deficiency and must be corrected prior to the end of the 18-month interim approval period in order for EPA to fully approve the I/M SIP revision.

Other than the minor deficiencies cited above, this requirement satisfies the requirements of 40 CFR 51.369, and is approvable.

Compliance With Recall Notices—40 CFR 51.370

The federal I/M rule requires states to establish methods to ensure that vehicles that are subject to enhanced I/M and are included in an emission related recall receive any recall related repairs prior to receiving an emission test and renewing vehicle registration.

Virginia's I/M regulation requires that motor vehicles show proof of compliance with emissions-related recalls prior to receiving an emissions inspection under the enhanced I/M program. Per EPA's I/M rule, Virginia must maintain a database of outstanding emissions-related recalls for vehicles registered in the I/M program area. Motorists having vehicles which are subject to an outstanding recall must show proof of compliance with the recall in order to obtain an emissions test.

Virginia has not yet completed its recalls compliance procedures, since EPA has not completed its guidance on emissions recall compliance. The Commonwealth has committed in its SIP to complete its recall procedures within six months of EPA's completion of recall guidance. These procedures must address a process for notifying motorists of outstanding recalls, a means of identifying vehicles having an unresolved recall at I/M testing stations, quality control methods to ensure recall compliance, and a database system to identify and track vehicles subject to outstanding recalls. Additionally, Virginia must prepare and submit annual reports with statistical information regarding compliance with emissions recalls in the enhanced I/M program area.

Virginia lacks only detailed recall compliance procedures and a commitment to annually report recall compliance information to EPA, therefore, this is a minor deficiency. However, Virginia must correct this deficiency prior to the end of the 18-month interim approval period. Otherwise, Virginia's SIP satisfies the requirements of 40 CFR 51.370.

On-Road Testing—40 CFR 51.371

On-road testing is required in enhanced I/M areas. The use of either remote sensing devices (RSD) or roadside pullovers including tailpipe emission testing can be used to meet the federal regulations. The program must include on-road testing of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, in the enhanced I/M program area. Motorists that have passed an emission test and are found to be high emitters as a result of an on-road test shall be required to pass an out-of-cycle test.

Section 46.2–1178.1 of the Virginia Motor Vehicle Emissions Control Law provides Virginia legal authority to conduct on-road testing and to assess civil penalties against motorists whose vehicles emit over regulatory standards set by the Commonwealth for on-road testing, unless the vehicle passes or is waived under an out-of-cycle emissions test.

Virginia's I/M regulation sets forth a description of the on-road testing program and the emissions standards cars must meet to pass this testing. On-road testing in Virginia's program will be conducted via either remote sensing equipment, or by roadside pullover and a two-speed idle test. Vehicles must comply with standards set by Virginia for relevant pollutants, including CO for remote sensing tests, and HC and CO for two-speed idle tests. Virginia will engage a contractor, as needed, to conduct roadside testing to satisfy the requirements of 40 CFR 51.371.

Under Virginia's proposed program, vehicles which fail on-road testing standards may be retested (outside of the normal biennial cycle) and repaired, or waived, to avoid civil penalties. Motorists' vehicles that receive a waiver from regularly scheduled I/M testing are exempt from civil penalties related to on-road testing. Motorists having vehicles that fail an on-road test, who either do not obtain a follow-up test, or whose vehicles fail the test and are not repaired to pass an emissions test are subject to the penalties set forth in Virginia's regulation.

The Commonwealth's SIP submittal does not, however, contain sufficient information regarding on-road testing resource allocations, including information on staffing requirements for both the Commonwealth and the private testing vendor. Additionally, the SIP lacks methods for analyzing and reporting the results of on-road testing. These are, however, minor deficiencies and must be corrected in the final I/M SIP revision submitted by the end of the 18-month interim period, either by submitting an on-road testing procedures manual or the request for proposals (RFP) for the contractor hired to operate the on-road testing program.

Otherwise, this submittal satisfies the requirements of 40 CFR 51.371, and is approvable.

State Implementation Plan Submissions/Implementation Deadlines—40 CFR 51.372–51.373

The federal I/M rule requires states to provide in their I/M SIP a schedule for implementation of the enhanced I/M program described in the SIP, including interim milestone dates leading to mandatory testing. A list of milestones which must be included, at a minimum, is contained in 40 CFR 51.372. Additionally, 40 CFR 51.373 sets deadlines by which I/M programs must be adopted and put in place. However, language in the recently enacted National Highway Systems Designation Act, granted states additional time to adopt and submit I/M SIPs to satisfy the requirements of the Clean Air Act. States were to submit SIPs, including proposed regulations if necessary, to EPA by March 27, 1996, and were granted eighteen months from the date of EPA interim approval to establish the effectiveness of the program. The NHSDA deadlines supersede any program implementation deadlines contained in 40 CFR 51.373.

Virginia's SIP contains a list of milestones and associated dates. Under this schedule, testing to include all aspects of the new enhanced I/M program, using phase-in test standards and a phased in waiver limit, is to commence on July 1, 1997. Final test

procedures and test equipment specifications are to be adopted by October 1, 1996. All official testing inspectors and stations are to be licensed by June 1, 1997. Virginia's waiver cost limit will be fully phased in over one biennial test cycle, to be at the full federal limit by July 1, 1998. Final testing standards, or cutpoints, will replace the phase-in standards at the beginning of the second biennial test cycle, July 1, 1999.

Virginia has not listed dates by which all outstanding procedures documents are to be finalized and submitted to EPA. Virginia has made commitments to complete many of these procedures throughout the SIP. Milestones and dates for completion of any outstanding procedures documents should be listed in this portion of the SIP. This is however, a minor deficiency, which the Commonwealth must complete prior to the end of the 18-month interim approval period.

Otherwise, Virginia's SIP satisfies the requirements of 40 CFR 51.372 and 51.373, and is therefore approvable.

III. Discussion for Rulemaking Action

Today's notice of proposed rulemaking begins a 30 day clock for the state to make a commitment to EPA to correct the major elements of the SIP that EPA considers deficient. These elements include the: enhanced I/M performance standard modeling demonstration, program evaluation methodology, I/M test procedures, and I/M test equipment specifications. If the Commonwealth does not make such commitments within 30 days, EPA today is proposing in the alternative that this SIP revision be disapproved.

Within 30 days, the Commonwealth must make a commitment to EPA to correct these deficiencies by a date certain within 1 year of the interim approval date, or in certain cases a date certain prior to the commencement of testing.

If the Commonwealth makes the commitment within 30 days, EPA's conditional approval of the plan will last until the date by which the state has committed to cure all of the deficiencies. EPA expects that within this period Virginia will not only correct the deficiencies as committed to by the Commonwealth, but that Virginia will also begin program start-up within 12 months of the final interim rulemaking. If the state does not correct deficiencies and implement the interim program by November 15, 1997, EPA is proposing in this notice that the interim approval will convert to a disapproval after a finding letter is sent to the state.

IV. Explanation of the Interim Approval

At the end of the 18-month interim period, the approval status for this program will automatically lapse pursuant to the NHSDA. It is expected that the Commonwealth will at that time be able to make a demonstration of the program's effectiveness using an appropriate evaluation criteria. As EPA expects that these programs will have started on or before November 15, 1997, the Commonwealth will have at least six months of program data that can be used for the demonstration. If the Commonwealth fails to provide a demonstration of the program's effectiveness to EPA within eighteen months of the final interim rulemaking, the interim approval will lapse, and EPA will be forced to disapprove the state's permanent I/M SIP revision. If the Commonwealth's program evaluation demonstrates a lesser amount of emission reductions actually realized than were claimed in the state's previous submittal, EPA will adjust the Commonwealth's credits accordingly, and use this information to act on the state's permanent I/M program.

V. Further Requirements for Permanent I/M SIP Approval

At the end of the 18-month period, final approval of the Commonwealth's plan will be granted based upon the following criteria:

1. Virginia has complied with all the conditions of its commitment to EPA,
2. EPA's review of the Commonwealth's program evaluation confirms that the appropriate amount of program credit was claimed by the state and achieved with the interim program,
3. Final program regulations are submitted to EPA, and
4. The Virginia I/M program meets all of the requirements of EPA's I/M rule, including those deficiencies found minor, or *de minimis*, for purposes of interim approval.

VI. EPA's Evaluation of the Interim Submittal

EPA's review of the Commonwealth's SIP indicates that with satisfaction of the conditions described above, the Commonwealth will have adopted an enhanced I/M program in accordance with the requirements of the NHSDA. EPA is proposing conditional, interim approval of the Virginia SIP revision for an enhanced I/M program, which was submitted on March 27, 1996. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final interim action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

Proposed Action

EPA is proposing conditional interim approval of this revision to the Virginia SIP for an enhanced I/M program if a commitment is received from the Commonwealth within 30 days of the date of this proposal, to correct the identified deficiencies by a date certain within one year from the date of the final interim approval action.

The conditions for approvability are as follows:

(1) Virginia must formally submit, by a date certain within one year from interim conditional approval, new modeling to demonstrate that the program will meet the enhanced I/M performance standard by the first program evaluation date, for all localities which are part of the enhanced I/M program. The Commonwealth's revised modeling must correspond to the actual I/M program configuration, including actual test methods and start dates for all I/M program tests, actual cutpoints to be in-place for the evaluation year, and all other program assumptions as they exist in the SIP.

(2) The Commonwealth must submit to EPA as a SIP amendment by a date certain within twelve months of the final interim ruling, the final Virginia I/M regulation which requires that mass-based emission, transient cycle testing be performed on 0.1% of the subject fleet each year, per 40 CFR 51.353(c)(3). This program evaluation scheme must satisfy the program evaluation elements specified in 40 CFR 51.353(c), including a program evaluation schedule, a protocol for the testing, and a system for collection and analysis of program evaluation data;

(3) The Commonwealth must submit to EPA a commitment (along with a draft procedures document or revised draft regulation containing these procedures) to adopt approvable test procedures for its two-mode ASM test, within 30 days. Then by a date certain within one year and prior to the start of enhanced testing, the Commonwealth must submit the final Virginia I/M regulation or test procedures document which satisfies this requirement. If any alternative evaporative system test procedures are to be utilized, testing procedures for those tests must also be formally submitted at that time;

(4) The Commonwealth must submit to EPA, within 30 days, a commitment

(along with a draft test equipment specifications or revised draft regulation containing draft test equipment specifications) to adopt final test equipment specifications. Then by a date certain within one year and prior to the start of enhanced testing, the Commonwealth must submit the final test equipment specifications for all test equipment to be used in the program. This includes specifications for equipment to perform the following tests: ASM2, two-speed idle, evaporative system pressure testing, and evaporative system purge testing. These specifications must be EPA-approved and satisfy the requirements of 40 CFR 51.358.

If the Commonwealth fails to satisfy the above conditions by a date certain within one year, EPA proposes that the conditional interim approval will convert to a disapproval upon a letter from EPA indicating that the Commonwealth has failed to meet its conditions for interim approval.

The following minor deficiencies must be corrected in the final I/M SIP revision submitted by the end of the 18 month interim period:

(1) The SIP lacks a detailed description of the elements to satisfy the test frequency requirements required under 40 CFR 51.355(a), particularly regarding scheduling of vehicles for testing and the selection scheme for the biennial program inspections, as well as a description of how test frequency will be integrated with the registration denial motorist enforcement process;

(2) The SIP does not fully account for all exceptions from testing in the emissions reductions analysis. The state must account for testing exceptions and account for them in their performance standard modeling demonstration, per 40 CFR 51.356(b)(2);

(3) Virginia must develop quality control procedures, test equipment specifications, quality control procedures manual, or other ordinance or documents to satisfy all the quality control requirements of 40 CFR 51.359;

(4) Virginia must amend its regulation to allow that waivers be issued only by a single contractor or by the Commonwealth, per 40 CFR 51.360(c)(1);

(5) The final SIP submittal must include the procedures document that adequately addresses the means by which the Commonwealth will comply with all the motorist compliance enforcement program oversight requirements set forth at 40 CFR 51.362;

(6) Virginia must complete and submit as a SIP revision to EPA procedures manuals for use by the Commonwealth's quality assurance auditors to conduct covert and overt audits for program oversight purposes, per 40 CFR 51.363(e);

(7) The Commonwealth must adopt, and submit as a SIP revision, a penalty schedule for inspectors and inspection stations, per 40 CFR 51.364(a) and (d);

(8) Virginia's SIP, either the regulation or the test equipment specifications, must require that the specific data elements identified in 40 CFR 51.365(a) be collected and reported to the Commonwealth on a real-time basis;

(9) Virginia must finalize and submit the final ''Public Information Plan'' described in the SIP, to satisfy the requirements of 40 CFR 51.368(a) and (b);

(10) Virginia must formally submit the procedures and criteria to be used in meeting the repair performance monitoring requirements set forth in 40 CFR 51.369(b) and a description of the repair technician training resources available in the community (when available), per 40 CFR 51.369(c);

(11) Virginia must submit detailed recall compliance procedures and a commitment to annually report recall compliance information to EPA, per the requirements of 40 CFR 51.370;

(12) Virginia must amend the SIP to include information regarding resource allocation for the on-road testing program, as well as methods for analyzing and reporting the results of on-road testing, per 40 CFR 51.371. This may entail submittal of an on-road testing procedures manual or the request for proposals (RFP) for the contractor to be hired to operate the on-road testing program;

(13) Virginia must list in its schedule of implementation milestones deadlines by which all procedures documents not yet part of the SIP are to be finalized and submitted to EPA.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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 impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

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

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

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The Administrator's decision to approve or disapprove the Virginia

enhanced I/M SIP revision will be based on whether it meets the requirements of section 110(a) (2)(A)–(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: October 24, 1996.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 96–28543 Filed 11–5–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 152 and 156

[OPP–36190A; FRL–5572–6]

RIN 2070-AC46

Pesticides and Ground Water State Management Plan Regulation; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal; extension of comment period.

SUMMARY: In the Federal Register of June 26, 1996, EPA announced proposed key components of the Agency's 1991 *Pesticides and Ground Water Strategy*. Through the development and use of State Management Plans (SMPs), EPA is proposing to restrict the use of certain pesticides by providing States with the flexibility to protect the ground water in the most appropriate way for local conditions. This document announces an extension of the comment period for an additional 30 days.

DATES: Comments must be submitted on or before December 6, 1996.

ADDRESSES: Submit written comments identified by the docket control number OPP–36190A by mail to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments directly to the OPP docket which is located in Rm. 1132 of Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form or encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number ''OPP–36190A.'' No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Roelofs, Policy and Special Projects Staff, Office of Pesticide Programs, Environmental Protection Agency, Mail Code (7501C), 401 M St., SW., Washington, DC 20460, Telephone: (703) 308-2964, e-mail: roelofs.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 26, 1996 (61 FR 33260) (FRL–4981–9), EPA announced proposed key components of the Agency's 1991 *Pesticides and Ground Water Strategy*.

Although the comment period on the proposed rule announced in the proposed rule was for 120 days, the Agency has received a number of requests for an extension of time in which to submit comments. All of these requests are from organizations representing various commodity growers, for example, corn growers and grain sorghum producers. The requests generally note that the original comment period coincides with the busiest time of year for farmers, including the harvest time for these crops, and that the organizations representing these people feel they need more time to educate their members about the proposed rule, and give them an opportunity to comment to the Agency. Some of the requests specify a 90–day extension. All of these requests have been placed in the public docket for the proposed rule.

The Agency does want to encourage growers and commodity organizations to comment on the proposed rule, but believes that 90 days would unreasonably disrupt the rulemaking process and not be equitable for the many other commenters who have worked to submit comments by the original deadline. Therefore, the Agency is announcing a 30–day extension for the comment period, and encourages commodity organizations and their individual members to take this opportunity to submit comments.

List of Subjects

40 CFR Part 152

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

40 CFR Part 156

Environmental protection, Labeling, Occupational safety and health, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 31, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 96–28548 Filed 11–5–96; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[OPP–300440; FRL–5572–2]

RIN 2070–AC18

Sodium Bicarbonate and Potassium Bicarbonate; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA proposes to establish exemptions from the requirement of a tolerance for residues of the biochemical pesticides sodium bicarbonate and potassium bicarbonate in or on all raw agricultural commodities (RACs), when applied as fungicides or post-harvest fungicides in accordance with good agricultural practices. EPA is proposing this regulation on its own initiative.

DATES: Comments, identified by the docket number [OPP–300440], must be received on or before December 6, 1996.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460. In person deliver comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Information

submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number, [OPP–300440]. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Denise Greenway, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 5–W57, CSI, 2800 Crystal Drive, Arlington, VA 22202. (703) 308–8263; e-mail: greenway.denise@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 25, 1995 (60 FR 54689), EPA issued a notice (FRL–4982–4) that the Meiji Milk Products Co., Ltd., 2-Chome, Kyabashi Chuoku, Tokyo, Japan 250 (represented by Stewart Pesticide Registration Associates, Inc. of 1901 North Moore Street, Suite 603, Arlington, VA 22209), had submitted pesticide petition (PP) 5F4481 to EPA proposing to amend 40 CFR part 180 by establishing a regulation pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to exempt from the requirement of a tolerance the residues of the biochemical pesticide sodium bicarbonate in or on citrus when applied as a fungicide in accordance with good agricultural practices. There were no comments received in response to this notice of filing. Another company, Church and Dwight Co., Inc., obtained registration of the active ingredients sodium bicarbonate and potassium bicarbonate on December 20, 1994 as manufacturing products for formulating into fungicides to control powdery mildew and other fungal diseases of food and non-food crops. The Agency concluded that the historical knowledge of the effects of sodium bicarbonate and potassium bicarbonate on humans and the environment was adequate to allow the waiver of all data requirements. The Meiji Milk Products Co., Ltd. Pesticide Petition (PP 5F4481) was filed because associated registration applications from that company represent the first fungicidal food use sodium bicarbonate end-use products.

The Agency is making this proposal upon its own initiative to expand the tolerance exemption originally sought by Meiji Milk Products Co., Ltd. to 1) include the related compound, potassium bicarbonate, and 2) to permit pre-harvest and post-harvest use of both active ingredients in or on all raw agricultural commodities. This document represents an EPA-initiated proposal to establish exemptions from the requirement of a tolerance for residues of the biochemical pesticides sodium bicarbonate and potassium bicarbonate in or on all raw agricultural commodities (RACs), when applied as fungicides or post-harvest fungicides in accordance with good agricultural practices. EPA is proposing this regulation on its own initiative pursuant to section 408(e)(1)(B) of FFDCA.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170, 110 Stat. 1489) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures.

New section 408(c)(2)(A)(i) allows EPA to establish an exemption from the requirement of a tolerance only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water, but does not include occupational exposure. Section 408(c)(2)(B) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...'' and specifies factors EPA is to consider in establishing an exemption. Section 408(c)(3)(B) provides for circumstances when no need exists for a practical method for detecting and measuring levels of pesticide chemical residue in or on food.

In light of FQPA, EPA is engaged in an intensive process, including consultation with registrants, States, and other interested stakeholders, to make decisions on the new policies and procedures that will be appropriate as a result of enactment of FQPA. This process will generally delay the review of food use applications, particularly those involving exposure to children. EPA will publish a notice in the Federal Register soon summarizing the requirements of FQPA, indicating how EPA intends to meet those requirements, and describing actions necessary to assure that EPA complies with the law. However, EPA also intends to continue to issue tolerances and exemptions in the interim pending publication of that notice. EPA also intends to issue interim guidance to States and others on how EPA will implement section 408 in the near future.

In deciding to issue tolerances and exemptions early in the process of FQPA implementation, EPA recognizes that it will be necessary to make decisions about the new FFDCA section 408, including the new safety standard. In establishing tolerances and exemptions during this interim period before EPA makes its broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on tolerances and exemptions that clearly qualify under the law.

II. Risk Assessment and Statutory Findings

Consistent with section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. Sodium bicarbonate and potassium bicarbonate are already registered by EPA as manufacturing use products for formulating into fungicides for food and non-food plants. Sodium bicarbonate is exempted from the requirement of a tolerance when used in accordance with good agricultural practice as an inert (or occasionally active) ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest (40 CFR 180.1001(c)). As a minimal risk inert ingredient (List 4A) in pesticide products (59 FR 49400, September 28, 1994), sodium bicarbonate is recognized as safe for use in pesticide products based upon its known properties. Sodium bicarbonate is a permitted inert for formulating with the minimum risk active ingredients exempted from regulation (61 FR 8876, March 6, 1996)(FRL–4984–8) under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). EPA has concluded that exemption of such products will not pose unreasonable risks to public health or the environment. The Food and Drug Administration (FDA) includes sodium bicarbonate and potassium bicarbonate in its listing of substances added directly to human food which have been found to be generally recognized as safe. (21 CFR 184.1736 and 184.1613).

EPA has assessed the toxicology data base for sodium bicarbonate and potassium bicarbonate and has sufficient data to assess the hazards of both and to make a determination on aggregate exposure, consistent with section 408(c)(2), for the exemptions from the requirement of a tolerance. EPA's assessment of the exposures, including dietary exposure, and risks associated with establishing these exemptions follows.

A. Toxicological Profile

The data submitted in the Meiji Milk Products Co., Ltd. petition and all other relevant material have been evaluated. The mammalian toxicological data considered in support of the exemption from the requirement of a tolerance for sodium bicarbonate include: an acute oral toxicity study in rats, an acute dermal toxicity study in rabbits, an acute inhalation data waiver request, a primary eye irritation study in rabbits, a primary dermal irritation study in rabbits, and a dermal sensitization study in guinea pigs.

The results of these studies indicated that sodium bicarbonate has an acute oral LD_{50} greater than 5,000 mg/kg body weight in rats, an acute dermal LD_{50} greater than 2,000 mg/kg body weight in rabbits, causes minimal eye irritation and slight dermal irritation in rabbits, and is a dermal non-sensitizer in guinea pigs (based on the modified Beuhler Assay). The acute inhalation waiver request was granted; data available to the Agency (from the earlier Church and Dwight Co., Inc. submission) indicate that 100 percent sodium bicarbonate has an LC_{50} greater than 4.74 mg/l in rats.

The acute mammalian toxicological data submitted by Church and Dwight Co., Inc. indicated that sodium bicarbonate has an acute oral LD_{50} greater than 5,000 mg/kg body weight in rats, an acute inhalation LC_{50} greater than 4.74 mg/l in rats, and causes minimal eye irritation and slight dermal irritation in rabbits. They further indicate that potassium bicarbonate has an acute oral LD_{50} of 2,825 mg/kg body weight in rats, an acute dermal LD_{50} greater than 2,000 mg/kg body weight in rabbits, an acute inhalation LC_{50} of 4.96 mg/l in rats, causes slight eye irritation and slight skin irritation in rabbits, and is a dermal non-sensitizer in guinea pigs.

B. Aggregate Exposure

For the purposes of assessing the potential dietary exposure under this exemption, EPA considered that under this exemption sodium bicarbonate and potassium bicarbonate could be present in all RACs. Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. Based on the available studies used in EPA's assessment of environmental risk, EPA does not anticipate exposure residues of sodium bicarbonate or potassium bicarbonate in drinking water. The potential for non-occupational, non-dietary exposure to the general population is, thus, not expected to be significant.

EPA also considered the potential for cumulative effects of sodium bicarbonate or potassium bicarbonate and other substances that have a common mechanism of toxicity. EPA concluded that consideration of a common mechanism of toxicity is not appropriate at this time. EPA has not concluded that toxic effects produced by sodium bicarbonate or potassium bicarbonate would be cumulative with those of any other chemical compounds; thus EPA is considering only the potential risks of sodium bicarbonate and potassium bicarbonate in its aggregate exposure assessment.

C. Safety Determinations

1. *U.S. population in general.* Sodium bicarbonate and potassium bicarbonate are naturally occurring substances which are required for normal homeostatic mechanisms in humans, plants and the environment. The Food and Drug Administration has listed both sodium and potassium bicarbonate on its GRAS list (GRAS=generally recognized as safe). These compounds are extensively used in pharmaceuticals, foods, and medical devices and they have a wide distribution in commerce with no reported adverse effects. The low toxicity of the subject active ingredients is demonstrated by the data summarized above. Based on this information, EPA has concluded that aggregate exposure to sodium bicarbonate or potassium bicarbonate over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to sodium bicarbonate or potassium bicarbonate residues. Accordingly, EPA determines that exempting sodium bicarbonate and potassium bicarbonate from the requirement of a tolerance is safe.

2. *Infants and children.* EPA has determined that the toxicity and exposure data are sufficiently complete to adequately address the potential for additional sensitivity of infants and children to residues of sodium bicarbonate or potassium bicarbonate. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to sodium bicarbonate or potassium bicarbonate residues.

D. Other Considerations

The Agency proposes to establish exemptions from the requirement of a tolerance without any numerical limitation; therefore, the Agency has concluded that analytical methods are not required for enforcement purposes for either sodium bicarbonate or potassium bicarbonate.

E. Conclusion

Based on the information and data considered, EPA proposes that the exemptions from the requirement of a tolerance be established as set forth below.

III. Comments

Under FFDCA section 408(e)(2), EPA must provide for a public comment period before issuing a final tolerance or tolerance exemption under section

408(e)(1). The public comment period is to be for 60 days unless the Administrator for good cause finds that it is in the public interest to reduce that comment period. Based on several factors, EPA believes there is good cause for reducing the comment period on these exemptions. First, notice was already provided, in accordance with the FFDCA prior to its recent amendment, for the exemption for sodium bicarbonate. No comments were received in response to that notice. Second, there is no question here regarding the safety of these compounds. Sodium bicarbonate and potassium bicarbonate are substances needed for normal homeostatic mechanisms and are now widely used in pharmaceuticals and foods. Residues of these substances in foods from their use as pesticides will be insignificant in comparison. Third, the low toxicity of sodium bicarbonate and potassium bicarbonate represents a safer alternative to traditional chemical fungicides currently available to the public. In the FQPA, Congress urged EPA to give priority to tolerance or exemption petitions for such safer pesticides. See section 408 (d)(4)(B). Therefore, the Agency is allowing a 30 day instead of a 60 day public comment period for these proposed tolerance exemptions.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP–300440]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch at the address given above from 8 a.m. to 4:30 p.m. Monday through Friday, except legal holidays.

IV. Public Docket

A record has been established for this rulemaking under docket number [OPP–300440] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Electronic comments can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

V. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement explaining the factual basis for this determination was published in the Federal Register of May 4, 1981 (46 FR 24950).

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted 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 General Accounting Office prior to publication in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

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

Dated: October 28, 1996.

Penelope A. Fenner-Crisp,

Acting Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Chapter I be amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 is revised to read as follows:

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

2. By adding new §§ 180.1176 and 180.1177 to subpart D to read as follows:

§ 180.1176 Sodium bicarbonate; exemption from the requirement of a tolerance.

The biochemical pesticide sodium bicarbonate is exempted from the requirement of a tolerance in or on all raw agricultural commodities when applied as a fungicide or post-harvest fungicide in accordance with good agricultural practices.

§ 180.1177 Potassium bicarbonate; exemption from the requirement of a tolerance.

The biochemical pesticide potassium bicarbonate is exempted from the requirement of a tolerance in or on all raw agricultural commodities when applied as a fungicide or post-harvest fungicide in accordance with good agricultural practices.

[FR Doc. 96–28421 Filed 11–5–96; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–217, RM–8880]

Radio Broadcasting Services; Humboldt, Kansas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Michael Sutcliffe proposing the allotment of Channel 232C3 to Humboldt, Kansas, as the community's first local FM service. Channel 232C3 can be allotted to Humboldt in compliance with the

Commission's minimum distance separation requirements with a site restriction of 19.5 kilometers (12.1 miles) southwest to avoid a short-spacing conflict with the licensed site of Station KFKF(FM), Channel 231C, Kansas City, Kansas. The coordinates for Channel 232C3 at Humboldt are 37–39–50 and 95–33–31.

DATES: Comments must be filed on or before December 16, 1996, and reply comments on or before December 31, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Michael Sutcliffe, 127 South Grant, Chanute, Kansas 66720 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 96–217, adopted October 18, 1996, and released October 25, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

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

[FR Doc. 96–28442 Filed 11–5–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–216, RM–8895]

Radio Broadcasting Services; Portsmouth, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Peter L. Cea seeking the allotment of Channel 298A to Portsmouth, OH, as the community's third local commercial FM transmission service. Channel 298A can be allotted to Portsmouth in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 38–44–00 North Latitude; 82–59–56 West Longitude.

DATES: Comments must be filed on or before December 16, 1996, and reply comments on or before December 31, 1996.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter L. Cea, 707 Green Cook Road, Sunbury, OH 43074 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 96–216, adopted October 18, 1996, and released October 25, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

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

[FR Doc. 96–28440 Filed 11–5–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 96–215, RM–8898]

Radio Broadcasting Services; Anamosa, IA.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Susan I. Coloff proposing the allotment of Channel 239A to Anamosa, Iowa, as the community's first local FM service. Channel 239A can be allotted to Anamosa in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 239A are 42–06–30 and 91–17–06.

DATES: Comments must be filed on or before December 16, 1996, and reply comments on or before December 31, 1996.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Susan I. Coloff, 506 North Clark, Forest City, Iowa 50436 (petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No.96–215, adopted October 18, 1996, and released October 25, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

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

[FR Doc. 96–28437 Filed 11–5–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285, 630, 644, and 678

[Docket No. 960808219–6219–01; I.D. 051096E]

RIN 0648–AI28

Atlantic Highly Migratory Species Fisheries; Consolidation of Regulations

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to consolidate four CFR parts containing regulations for the conservation and management of Atlantic highly migratory species (HMS) in the U.S. Exclusive Economic Zone (EEZ) into one CFR part. Atlantic HMS include Atlantic tunas, swordfish, billfishes, and sharks. The consolidation would reorganize the existing regulations in a more logical and cohesive order, eliminate duplicative and outdated provisions, and make editorial changes to achieve readability, clarity, and uniformity. A number of substantive changes are proposed to achieve consistency among common elements such as permits and reporting. The purpose of this proposed rule is to make the regulations more concise, better organized and, therefore, easier for the public to use. This proposed action is part of the President's Regulatory Reinvention Initiative.

DATES: Comments must be received on or before December 23, 1996.

ADDRESSES: Comments should be sent to Chris Rogers, Office of Fisheries Conservation and Management, NMFS, 1315 East-West Highway, Silver Spring, MD 02910. Comments regarding burden-hour estimates or other aspects of the collection-of-information requirement contained in this proposed rule should be sent to Chris Rogers at the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Chris Rogers, 301–713–2347.

SUPPLEMENTARY INFORMATION:

Background

In March 1995, President Clinton issued a directive to Federal agencies regarding their responsibilities under his Regulatory Reinvention Initiative. This initiative is part of the National Performance Review and calls for comprehensive regulatory reform. The President directed all agencies to undertake a review of all their regulations, with an emphasis on eliminating or modifying those that are obsolete, duplicative, or otherwise in need of reform. This proposed rule is intended to carry out the President's directive with respect to those regulations for the conservation and management of Atlantic HMS in the EEZ, and, as applicable, regulatory areas beyond the U.S. EEZ.

Consolidation of Regulations Into One CFR Part

Currently, regulations pertaining to management of Atlantic HMS are contained in four separate parts of title 50 of the CFR. NMFS is proposing to remove three of the parts (parts 285 (Atlantic Tuna Fisheries), 644 (Atlantic Billfishes), and 678 (Atlantic Sharks)), and to consolidate the regulations contained therein with the existing regulations in part 630 (Atlantic Swordfish). These consolidated regulations would provide the public with a single reference source for the regulations applying to Atlantic HMS, which is more concise, clearer, and easier to use than the existing regulations.

Reorganization and Removal of Obsolete or Duplicative Provisions

NMFS proposes to simplify and shorten the existing Atlantic HMS regulations. Because portions of the existing regulations contain identical or nearly identical provisions, this rule would restructure text and eliminate the duplicative provisions. Regulatory language would be revised to improve clarity and consistency. In addition, obsolete provisions would be removed.

No substantive changes, except for those specifically identified below, are intended:

1. Reporting requirements would be extended to apply to all tournaments involving any Atlantic HMS, if selected for reporting by the Regional Director. This change reflects the fact that catch by anglers participating in tournaments may comprise any regulated HMS.

2. The incidental catch permit category for Atlantic tunas would be eliminated and redefined as ''longline'' and ''drift gillnet'' to reflect the existing authorization of directed longline and gillnet fisheries for tunas other than bluefin tuna. Also, existing regulations regarding incidental catch of bluefin tuna are unclear, causing some fishermen to believe that target catch requirements can be met using one gear while bluefin tuna is caught with another or to believe incorrectly that certain types of gear are authorized for incidental take of bluefin tuna. As a consequence of this reorganization, and to address enforcement issues concerning unauthorized landing of bluefin tuna under the bycatch quota, the allowance for incidental catch of Atlantic bluefin tuna by vessels using fixed gear and traps would be removed. In 1996, only 1 metric ton (less than 10 fish) was allocated to this category; thus, eliminating the landing allowance for fixed gear and traps would not have a significant impact.

3. Due to compliance and enforcement problems resulting from misidentification of juvenile tunas, the applicability of Atlantic tunas regulations would be extended to include blackfin tuna.

4. To achieve consistency between regulations applicable to all HMS, the definition of rod and reel gear would be modified to include the use of electrically operated reels. Although electric reels are permitted under current billfish regulations, conflicts with the consolidated regulations would arise when fishing for, or incidentally taking, Atlantic tunas. Therefore, the broader definition would be made applicable to all HMS.

5. To improve quota monitoring and catch data collection, the exemption for holders of shark and swordfish permits from vessel and dealer Atlantic tunas permit and reporting requirements, and the handgear exemption for fishing vessels and dealers of Atlantic tunas, shark and swordfish permits in Puerto Rico and the U.S. Virgin Islands, would be eliminated. These exemptions were created because it was presumed catch data could be accessed from other information collection programs. However, it has not been possible to access this information in a timely manner. Given the likelihood of continuing restricted quotas for tunas, swordfish and sharks, accurate and timely reporting of catch is necessary.

6. The permit category for bluefin tuna buy-boats would be eliminated as obsolete. For the last several years, the catch limit for General category vessels has been set at one fish per day, thus precluding the need to offload bluefin tuna at sea. In addition, compliance with applicable vessel and dealer reporting requirements would be difficult to achieve under at-sea transfer conditions.

7. Current regulations allow applicants for swordfish or shark permits up to 90 days to submit required information not supplied with original applications. Such allowance is limited to 15 days for tuna permits. To achieve consistency under this proposed consolidation, the time period for consideration of incomplete Atlantic shark and swordfish permit applications as abandoned would be reduced from 90 days to 15 days.

8. The time limit for submission of information changes for Atlantic shark and swordfish permits would be reduced from 30 days to 15 days to achieve consistency with tuna permit regulations.

9. The 30-day allowance for swordfish and shark dealers to operate under the permit of the previous business owner would be removed to achieve consistency with tuna dealer permit regulations.

10. Regulations that are no longer necessary on tuna vessel reporting, as approved under OMB control number 0648–0168, would be replaced by the vessel logbook requirements approved under OMB control number 0648–0016.

11. To facilitate enforcement and to achieve consistency with regulations applicable to all HMS, the allowance to transfer HMS at sea would be removed. This allowance was originally implemented for purse seiners using transport vessels for cannery deliveries, a practice that no longer occurs in the Atlantic Ocean. The allowance for at-sea transfer of bluefin tuna among permitted purse seine vessels would remain.

12. The distinction between selected and non-selected vessels for the purposes of shark logbooks would be dropped, because all vessels have been selected in recent years under the previously implemented mandatory reporting requirement.

13. The time frame for reporting and submission of the biweekly bluefin tuna dealer report would be adjusted to the time frame applicable for the biweekly dealer report for swordfish, sharks, and other Atlantic tunas.

14. The requirements for purse seine notification and request for inspection would be standardized to achieve consistency with requirements for bluefin tuna and other Atlantic tunas. Notification would be set at 48 hours prior to sailing or landing, with automatic waiver of inspection requirements if not undertaken within 48 hours of notification.

15. Current regulations that prohibit sale of billfish are unclear with respect to sale of related species (striped marlin, black marlin, shortbill spearfish). The consolidation would clarify the regulatory text to achieve consistency with the prohibition on sale as implemented through the certificate of eligibility requirements for sale of billfish and related species.

16. Regulations applicable to the swordfish donation program would be removed as unnecessary codified text. Donation programs, for swordfish or any of the regulated HMS, could be established and adequately enforced under a specific letter of authorization.

17. The base level angling catch limit would be reduced to one per angler per day for school/large school bluefin tuna and one per vessel per day for small medium bluefin tuna. The authority to make inseason adjustments to such limits would remain. Given fluctuations in annual abundance and fishing effort, such a limit would have greater applicability across years and would reduce the need for inseason adjustments.

18. To reduce regulatory text that is often outdated and of limited applicability, quotas and, as applicable, gear/time/area allocations for HMS would no longer be codified but would be set and adjusted as necessary in one or more annual notices. NMFS would follow the procedures of the Shark Fishery Management Plan regarding adjustment of management measures; quotas and TAC would be established by the annual specifications procedure, whereas other measures would be established by regulatory amendment.

19. Current regulations preclude a change of tuna permit category after May 15. This restriction was imposed so that a vessel could not fish in more than one quota category subsequent to the June 1 commencement of the Harpoon Boat and General category bluefin tuna fishing seasons. Existing regulations have not prevented some vessel operators from fishing under the bluefin tuna Incidental category prior to May 15 and in the General category after June 1. Under this proposed rule, Atlantic Tunas permit category changes would be limited to one change each year, between January 1 and May 15. No permit changes would be permitted from May 16 through December 31, regardless of sale of a vessel. This would prevent commercial vessel operators from fishing for bluefin tuna in more than one commercial quota category in a single year.

Because the vessel permit requirement also applies to recreational vessels and has recently been extended to include all Atlantic tunas, changes to Angling category permits would be exempt from this limitation. This exemption would prevent undue restrictions to recreational anglers purchasing vessels after May 15.

20. To facilitate enforcement of minimum size and catch limit regulations and to facilitate identification of species, it would be required that all Atlantic tunas be landed with the tail attached.

21. To prevent overharvest of swordfish in the drift gillnet fishery, advance notification of closure would be reduced to 3 days from the current 14 days applicable to the longline and swordfish fisheries. A prior rulemaking to address concerns of adequate notice to longline fishermen was inadvertently applied to the drift gillnet segment of the fishery, thus limiting NMFS' ability to monitor and close the drift gillnet fishery in a timely manner.

22. The set-aside of swordfish quota for the harpoon segment of the directed fishery would be removed, because it is unnecessary. A prior rulemaking established the swordfish fishing year and first semiannual quota period beginning June 1. When the fishing year and first semiannual period began on January 1, a set-aside was needed because the summer harpoon fishery could be precluded by a directed fishery closure at the end of the period. The change in fishing year has eliminated this problem.

23. The trip limit for vessels in a directed fishery for swordfish, previously established on an annual basis, would be made permanent.

24. Gear restrictions applicable to specific categories of tuna permits would be limited to fishing activity for bluefin tuna. In a prior rulemaking, the requirement for tuna permits was extended from bluefin tuna to all Atlantic tunas. Gear restrictions necessary to implement category quotas for bluefin tuna were carried over to apply to all Atlantic tunas. Because Atlantic tunas other than bluefin are not subject to quotas, gear restrictions are not necessary.

Though not a substantive change, much of the regulatory text regarding restrictions on imports would be removed as obsolete since the Atlantic Tunas Convention Act (ATCA) has been amended. The Department of State will be consulted during the comment period for this proposed rule, as necessary to comply with ATCA.

Request for Comments

NMFS specifically requests comments or suggestions for further consolidation or elimination of obsolete or duplicative provisions contained in the proposed revision to Atlantic HMS regulations. Comments concerning the impacts of identified and, if applicable, inadvertent substantive changes are also specifically requested (see **ADDRESSES**).

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed rule would consolidate four CFR parts containing regulations for the conservation and management of Atlantic highly migratory species in the EEZ into one CFR part. Atlantic highly migratory species include Atlantic tunas, swordfish, billfishes, and sharks. The consolidation would reorganize the existing regulations into a more logical and cohesive order, eliminate duplicative and outdated provisions, and make editorial changes to achieve readability, clarity, and uniformity. The purpose of this proposed rule is to make the regulations more concise, better organized and, therefore, easier for the public to use. The proposed consolidations and revisions to the existing regulatory text would have little or no impact on any small entities. The substantive changes proposed are minimal, primarily affecting the applicability of permitting and reporting requirements.

Notwithstanding any other provision of law, no person is required to respond to 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 (PRA) unless that collection of information displays a currently valid OMB Control Number.

This proposed rule contains collection-of-information requirements subject to the PRA. The following requirements have already been approved by OMB for U.S. fishing activities:

a. Atlantic tuna vessel permits in § 630.4(a) (approved under 0648–0202) estimated at 30 minutes per permit action; and dealer permits in § 630.4(b) (approved under 0648–0202) estimated at 5 minutes per permit action.

b. Swordfish and shark vessel permits in § 630.4(a) (approved under 0648–0205) estimated at 20 minutes per permit action; and dealer permits in § 630.4(b) (approved under 0648–0205) estimated at 5 minutes per permit action.

c. Dealer reporting and recordkeeping requirements for Atlantic tunas in § 630.5 (approved under 0648–0239) estimated at 3 minutes for daily reports, 14 minutes for Atlantic biweekly reports, and 1 minute to affix tags and label containers.

d. Dealer reporting and recordkeeping requirements for swordfish and sharks in § 630.5 (approved under 0648–0013 and 0648–0016) estimated at 15 minutes per report.

e. Vessel reporting and recordkeeping requirements for swordfish and sharks in § 630.5 (approved under 0648–0016) estimated at 15 minutes per logbook entry and 16 minutes for the attachment of tally sheets.

f. Notification of Panama Canal transit for tuna vessels in § 630.5 (approved under 0648–0168) estimated at 6 minutes per call.

g. Vessel identification requirements for permitted swordfish and shark vessels in § 630.6 (approved under 0648–0306) estimated at 45 minutes per vessel.

h. Notification for at-sea observer requirements for Atlantic tuna vessels in § 630.7 (approved under 0648–0202) estimated at 2 minutes per response.

i. Tuna gear marking requirements in § 630.21 (approved under 0648–0305) estimated at 15 minutes per action.

j. Tuna inspection requests in § 630.22 (approved under 0648–0202) estimated at 5 minutes per request.

k. Documentation requirements for sale of billfish in § 630.23 (approved under 0648–0216) estimated at 20 minutes for dealers purchasing from vessels and 2 minutes for subsequent purchasers.

l. Tuna tagging requirements in § 630.24 (approved under 0648–0239) estimated at 1 minute per occurrence.

m. Atlantic bluefin tuna catch and release program requirements in § 630.30 (approved under 0648–0247) estimated at 2 minutes per tagging card.

n. Bluefin Tuna Statistical Document in § 630.41 (approved under 0648–0040) estimated at 20 minutes per document.

In addition, this proposed rule would add, renew or expand certain collection-of-information requirements as follows:

a. OMB approval (0648–0031) for shark and billfish tournament reporting has expired. This requirement would be renewed and expanded in § 630.5 so that fishing tournament operators must report catch of all HMS, estimated at 10 minutes per report.

b. Vessel logbook requirements in § 630.5 (0648–0016) would be expanded to include Atlantic tunas, estimated at 15 minutes per logbook entry and 16 minutes for the attachment of tally sheets.

c. Notification of Panama Canal transit would be expanded to include shark and swordfish vessels in § 630.5 (approved under 0648–0168) estimated at 6 minutes per call.

d. Notification for at-sea observer requirements would be expanded to include swordfish and shark vessels in § 630.7 (approved under 0648–0202) estimated at 2 minutes per response.

e. Gear marking requirements in § 630.21 (0648–0305) would be expanded to include permitted swordfish and shark gear, estimated at 15 minutes per action.

f. Angler reporting of trophy bluefin tuna in § 629.4 is not currently approved and is being submitted for approval at 3 minutes per report.

NMFS is in the process of obtaining OMB approval for these new, renewed and expanded requirements.

Send comments regarding any of these burden estimates or any other aspect of these collection-of-information requirements including suggestions on how to reduce or eliminate these burdens to NMFS and OMB (see **ADDRESSES**).

List of Subjects

50 CFR Part 285

Fisheries, Fishing, Penalties, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

50 CFR Parts 644 and 678

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 29, 1996.

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For the reasons set out in the preamble, 50 CFR parts 285, 630, 644, and 678 are proposed to be amended as follows:

1. Under the authority of 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*, parts 285, 644, and 678 are removed.

2. Part 630 is revised to read as follows:

PART 630—ATLANTIC HIGHLY MIGRATORY SPECIES

Subpart A—General

Sec.
630.1 Purpose and scope.
630.2 Definitions.
630.3 Relation to other laws.
630.4 Permits and fees.
630.5 Recordkeeping and reporting.
630.6 Vessel identification.
630.7 At-sea observer coverage.

Subpart B—Management Measures

630.20 Fishing years and seasons.
630.21 Gear restrictions.
630.22 Purse seine vessel requirements.
630.23 Transfer, landing, and sale.
630.24 Fish marking requirements.
630.25 Size limits and size classes.
630.26 Incidental catch.
630.27 Harvest restrictions.
630.28 Quotas and closures.
630.29 Catch limits.
630.30 Catch and release.
630.31 Adjustment of management measures.
630.32 Specifically authorized activities.

Subpart C—Restrictions on Imports

630.40 Species subject to documentation requirements.
630.41 Documentation requirements.
630.42 Contents of documentation.
630.43 Validation requirements.
630.44 Ports of entry.
630.45 Other import restrictions.

Subpart D—International Port Inspection

630.50 Basis and purpose.
630.51 Authorized officer.
630.52 Vessels subject to inspection.
630.53 Reports.

Subpart E—Enforcement

630.70 Prohibitions.
630.71 Facilitation of enforcement.
630.72 Penalties.

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

Subpart A—General

§ 630.1 Purpose and scope.

The regulations in this part govern the conservation and management of Atlantic tunas, swordfish, billfishes, and sharks under authority of the Magnuson Act and Atlantic Tunas Convention Act.

(a) *Magnuson Act.* This part implements the Fishery Management Plans for Atlantic Swordfish, Atlantic Billfishes, and Atlantic Sharks.

(b) *Atlantic Tunas Convention Act.* (1) This part implements ICCAT Atlantic tunas and swordfish recommendations for persons and vessels subject to the jurisdiction of the United States.

(2) Regulations implemented under the ATCA do not apply to any person or vessel authorized by ICCAT, or in writing by the Director, or any state upon written authorization by the Director, to engage in fishing for research purposes.

(3) Under section 9(d) of the ATCA, determinations made by NMFS that the provisions of this part with respect to Atlantic tunas taken under authority of the ATCA apply within the territorial sea of the United States adjacent to, and within the boundaries of, the States of Texas, Louisiana, Alabama, Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Rhode Island, Massachusetts, New Hampshire, and the Commonwealths of Puerto Rico and the Virgin Islands, and, with the exceptions of §§ 630.22, 630.26(a) (1) and (2), and §§ 630.28(a) (3) and (4), within the territorial sea of the United States adjacent to, and within the boundaries of, the State of Maine, continue in effect.

§ 630.2 Definitions.

In addition to the definitions in the Magnuson Act, the ATCA, and § 600.10 of this chapter, the terms used in this part have the following meanings:

Angling means fishing for or catching of, or the attempted fishing for or catching of, fish by any person (angler) with a hook attached to a line that is hand held or by rod and reel made for this purpose.

ATCA means the Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971–971h.

Atlantic bluefin tuna means the subspecies of bluefin tuna *Thunnus thynnus thynnus* that is found in the Atlantic Ocean.

Atlantic bonito means *Sarda chiliensis* or *Sarda.*

Atlantic tunas means Atlantic albacore, bluefin, bigeye, skipjack, blackfin and yellowfin tunas, and Atlantic bonito.

Bandit gear means vertical hook-and-line gear with rods attached to a vessel, with no more than two hooks per line and with line retrieved by manual, electric, or hydraulic reels.

Billfish means sailfish, *Istiophorus platypterus;* white marlin, *Tetrapturus albidus;* blue marlin, *Makaira nigricans;* and longbill spearfish, *Tetrapturus pfluegeri.*

Bluefin tuna means *Thunnus thynnus* in any ocean area.

BSD means the ICCAT Bluefin Tuna Statistical Document.

Carcass or *dressed fish* means a fish that has been gilled and/or gutted and the head and some or all fins have been removed, but is otherwise in whole condition.

Charter boat or *charter vessel* means a vessel less than 100 gross tons (90.8 mt) that meets the requirements of the USCG to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year.

Cleithrum to keel (CK) measurement means a curved measurement from the cleithrum (semicircular bony structure at the posterior edge of the gill opening) to the anterior portion of the caudal keel. Measurement must be made at the point on the cleithrum that provides the shortest possible CK measurement measured along the body contour.

Commercial fishing means fishing for purposes including sale, barter or trade of any or all of the fish harvested.

Convention means the International Convention for the Conservation of Atlantic Tunas, signed at Rio de Janeiro, Brazil, on May 14, 1966, 20 U.S.T. 2887, TIAS 6767, including any amendments or protocols thereto, which are binding upon the United States.

Curved fork length (CFL) means a measurement of the length of Atlantic tuna taken in a line tracing the contour of the body from the tip of the upper jaw to the fork of the tail, which abuts the ventral side of the pectoral fin and the ventral side of the caudal keel.

Dealer means any person, other than a consumer, who engages in any activity, other than fishing, of industry, trade, or commerce, including but not limited to the buying or selling of a regulated species or parts thereof and activities conducted for the purpose of facilitating such buying and selling.

Downrigger means a rod attached to a vessel and with a weight on a cable that is in turn attached to hook-and-line gear to maintain lures or bait at depth while trolling, and that has a release system to retrieve the weight by rod and reel or by manual, electric, or hydraulic winch after a fish strike on the hook-and-line.

Dressed weight means the weight of a fish after it has been gilled, gutted, beheaded, and wholly or partially definned.

Drift gillnet, sometimes called a drift entanglement net or driftnet, means a flat net, unattached to the ocean bottom, whether or not attached to a vessel, designed to be suspended vertically in the water to entangle the head or other

body parts of fish that attempt to pass through the meshes.

Eviscerated means removal of the alimentary organs only.

Fishing or *to fish* means the catching or fishing for, or the attempted catching or fishing for, any species of fish covered by the Convention or this Part, or any activities in support of fishing. For the purposes of Atlantic billfishes and sharks, fishing under this definition does not include scientific research conducted by a scientific research vessel.

Fishing trip means the time period that begins when a fishing vessel departs from a dock, berth, beach, seawall, ramp, or port to carry out fishing operations and that terminates with a return to a dock, berth, beach, seawall, ramp, or port to offload any or all catch.

Gangion or *leader* means one of the lines that bear hooks and that is attached at intervals along the main line of a longline.

Handgear means handline, harpoon, or rod and reel.

Handline or *handline gear* means a fishing line set and pulled by hand that remains attached to a fishing vessel during fishing and that consists of one main line of variable length to which is attached one or two leaders and hooks.

Harpoon or *harpoon gear* means fishing gear consisting of a pointed dart or iron attached to a pole or stick and to the end of a line several hundred feet in length, the other end of which is attached to a floatation device, and that is propelled only by hand, not by mechanical means.

Headboat means a vessel that holds a valid Certificate of Inspection issued by the USCG to carry passengers for hire and that carries a passenger for hire at any time during the calendar year.

ICCAT means the International Commission for the Conservation of Atlantic Tunas.

Intermediate country means a country from which bluefin tuna or bluefin tuna products that were previously imported by that nation are exported to the United States. Shipments of bluefin tuna or bluefin tuna products through a country on a through bill of lading or in another manner that does not enter the shipments into that country as an importation do not make that country an intermediate country under this definition.

Land means to begin offloading fish, to offload fish, or to arrive in port or at a dock, berth, beach, seawall, or ramp.

Large coastal species means any of the shark species, or a part thereof, listed in paragraph (1)(i) of the definition of management unit in this section.

Longline or *longline gear* means fishing gear that is set horizontally, either anchored, attached to surface floats, or attached to a vessel, that consists of a main or groundline with three or more gangions and hooks and that is retrieved by hand or mechanical means.

Lower jaw-fork length (LJFL) means the straight-line measurement from the tip of the lower jaw to the fork of the caudal fin.

Management unit (1) Relative to Atlantic sharks, means the following species in the Western North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea:

(i) Large coastal species:

Basking Sharks—Cetorhinidae

Basking shark, *Cetorhinus maximus.*

Hammerhead Sharks—Sphyrnidae

Great hammerhead, *Sphyrna mokarran.*

Scalloped hammerhead, *Sphyrna lewini.*

Smooth hammerhead, *Sphyrna zygaena.*

Mackerel Sharks—Lamnidae

White shark, *Carcharodon carcharias.*

Nurse Sharks—Ginglymostomatidae

Nurse shark, *Ginglymostoma cirratum.*

Requiem Sharks—Carcharhinidae

Bignose shark, *Carcharhinus altimus.*

Blacktip shark, *Carcharhinus limbatus.*

Bull shark, *Carcharhinus leucas.*

Caribbean reef shark, *Carcharhinus perezi.*

Dusky shark, *Carcharhinus obscurus.*

Galapagos shark, *Carcharhinus galapagensis.*

Lemon shark, *Negaprion brevirostris.*

Narrowtooth shark, *Carcharhinus brachyurus.*

Night shark, *Carcharhinus signatus.*

Sandbar shark, *Carcharhinus plumbeus.*

Silky shark, *Carcharhinus falciformis.*

Spinner shark, *Carcharhinus brevipinna.*

Tiger shark, *Galeocerdo cuvieri.*

Sand Tiger Sharks—Odontaspididae

Bigeye sand tiger, *Odontaspis noronhai.*

Sand tiger shark, *Odontaspis taurus.*

Whale Sharks—Rhincodontidae

Whale shark, *Rhincodon typus.*

(ii) Small coastal species:

Angel Sharks—Squatinidae

Atlantic angel shark, *Squatina dumerili.*

Hammerhead Sharks—Sphyrnidae

Bonnethead, *Sphyrna tiburo.*

Requiem Sharks—Carcharhinidae

Atlantic sharpnose shark, *Rhizoprionodon terraenovae.*

Blacknose shark, *Carcharhinus acronotus.*

Caribbean sharpnose shark, *Rhizoprionodon porosus.*

Finetooth shark, *Carcharhinus isodon.*

Smalltail shark, *Carcharhinus porosus.*

(iii) Pelagic species:

Cow Sharks—Hexanchidae

Bigeye sixgill shark, *Hexanchus vitulus.*

Sevengill shark, *Heptranchias perlo.*

Sixgill shark, *Hexanchus griseus.*

Mackerel Sharks—Lamnidae

Longfin mako, *Isurus paucus.*

Porbeagle shark, *Lamna nasus.*

Shortfin mako, *Isurus oxyrinchus.*

Requiem Sharks—Carcharhinidae

Blue shark, *Prionace glauca.*

Oceanic whitetip shark, *Carcharhinus longimanus.*

Thresher Sharks—Alopiidae

Bigeye thresher, *Alopias superciliosus.*

Thresher shark, *Alopias vulpinus.*

(2) Relative to Atlantic swordfish, means those swordfish in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat.

(3) Relative to Atlantic billfishes means:

(i) Those blue marlin and white marlin in the waters of the North Atlantic Ocean (including the Gulf of Mexico and the Caribbean Sea) north of 5° N. lat.

(ii) Those sailfish in the waters of the North and South Atlantic Oceans (including the Gulf of Mexico and the Caribbean Sea) west of 30° W. long.

(iii) Those longbill spearfish in the waters of the entire North and South Atlantic Oceans (including the Gulf of Mexico and the Caribbean Sea).

Pectoral fin curved fork length (PFCFL) means a measurement of the length of Atlantic tuna taken in a line tracing the contour of the body along the middle of the lateral surface from the ventral insertion of the pectoral fin of the beheaded fish to the fork of the tail.

Pelagic species means any of the shark species, or a part thereof, listed in paragraph (1)(iii) of the definition of management unit in this section.

Postmark means independently verifiable evidence of the date of

mailing, such as U.S. Postal Service postmark, United Parcel Service, or other private carrier postmark, certified mail receipt, overnight mail receipt or a receipt issued upon hand delivery to an authorized representative of NMFS.

Recreational fishing means fishing for purposes not including sale or barter of any or all of the fish harvested; and for purposes of Atlantic swordfish, means the harvest of swordfish from a vessel with only rod and reel fishing gear on board.

Regional Director, unless otherwise noted, means:

(1) For purposes of Atlantic tuna vessel and dealer permits, and Atlantic bluefin tuna dealer reports, the Director, Northeast Region, NMFS.

(2) For purposes of reporting of Atlantic tunas other than bluefin, and for purposes of Atlantic swordfish, billfishes, and shark regulations, the Director, Southeast Region, NMFS.

Regulated species means Atlantic albacore, bluefin, bigeye, skipjack, blackfin and yellowfin tunas, Atlantic bonito, and the following species as included in the respective management units: Atlantic swordfish, sharks and billfishes.

Regulatory area means all waters of the Atlantic Ocean, including adjacent seas, except the waters over which the individual states exercise fishery management jurisdiction, unless NMFS has determined otherwise in accordance with this part, as noted in § 630.1(b)(3).

Related species, relative to Atlantic billfishes, means black marlin, *Makaira indica;* striped marlin, *Tetrapturus audax;* or shortbill spearfish, *Tetrapturus angustirostris.*

Reporting week means a period of time beginning at 0001 hours local time on Sunday, and ending at 2400 hours local time the following Saturday.

Rod and reel means vertical hook-and-line gear with a hand-held (includes rod holder) fishing rod and with a manually or electrically operated reel attached.

Round or *round weight* means a whole fish or the weight of a whole fish before gilling, gutting, beheading, or any definning.

Science and Research Director means:

(1) For Atlantic tunas:

(i) For areas south of Virginia, the Director, Southeast Fisheries Science Center, NMFS, or a designee.

(ii) For Virginia and areas to the north, the Director, Northeast Fisheries Science Center, NMFS, or a designee.

(2) For Atlantic swordfish, billfishes, and sharks, the Director, Southeast Fisheries Science Center, NMFS, or a designee, except as otherwise noted.

Shark means any of the species listed in paragraph (1) of the definition of management unit in this section, or a part thereof.

Small coastal species means any of the shark species, or a part thereof, listed in paragraph (1)(ii) of the definition of management unit in this section.

Tag means the numbered, flexible, self-locking ribbon issued by NMFS for the identification of bluefin tuna under § 630.24 or a tag issued by any country in conjunction with a BSD.

Total length (TL) means the straight-line measurement from the tip of the upper jaw to the plane of the more extended tip of the caudal fin when in its natural position.

Tournament means any fishing competition involving Atlantic billfishes, tunas, swordfish, or sharks in which participants must register or otherwise enter or in which a prize or award is offered for catching such fish.

Trip limit means the total allowable take of a regulated species for a single trip.

Tuna means Atlantic albacore, bluefin, blackfin, bigeye, skipjack, or yellowfin tunas, and Atlantic bonito.

Weighout slip means the document provided by the person weighing shark carcasses and fins to the owner or operator of a permitted vessel that records the weights of the shark carcasses and fins, prior to or as part of, a commercial transaction involving such shark carcasses and/or fins. Any document such as a ''tally slip,'' ''trip ticket,'' or ''sales receipt,'' that contains such information is considered a weighout slip.

§ 630.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter and paragraphs (b) and (c) of this section.

(b) In accordance with regulations issued under the Marine Mammal Protection Act of 1972, as amended, it is unlawful for a commercial fishing vessel, a vessel owner, or a master or operator of a vessel to engage in a longline or gillnet swordfish or shark fishery in the Atlantic Ocean (including the Gulf of Mexico and Caribbean Sea) unless the vessel owner or authorized representative has complied with specified requirements including, but not limited to, registration, exemption certificates, decals, and reports, as contained in part 229 of this title.

(c) Regulations governing fishing in the EEZ by vessels other than vessels of the United States appear in part 600, subpart F, of this chapter.

§ 630.4 Permits and fees.

(a) *Vessel permits*—(1) *Applicability.* (i) Consistent with the restrictions and exemptions of this section, a vessel of the United States that fishes for, takes, retains or possesses regulated species as defined in this part, or that takes such species as bycatch, regardless of whether retained, must have on board a valid vessel permit issued for that species or management unit as defined in this part. Such species or management units include Atlantic tunas, Atlantic swordfish, and Atlantic sharks.

(ii) Persons may fish for, retain or possess regulated species only under the quotas, catch limits, and size classes applicable to the species permit and permit category of the carrying vessel.

(2) *Atlantic tunas*—(i) *Permit categories.* A permit for Atlantic tunas will be issued to the owner of each vessel of the United States that fishes for Atlantic tunas in one of the following categories: General, Charter/Headboat, Angling, Harpoon Boat, Purse Seine, Longline or Drift Gillnet. A permit will not be issued for more than one category.

(ii) *Operator licenses.* When fishing for or possessing Atlantic tunas, the operator of a vessel permitted for the Charter/Headboat category must have on board a current copy of the operator's merchant marine license or the operator's uninspected passenger vessel license.

(iii) *Commercial fishing.* A vessel conducting commercial fishing for Atlantic tunas must have on board a valid vessel permit in the commercial category appropriate for the gear type or method of fishing being conducted. A vessel permitted in the Angling category is not eligible to conduct commercial fishing for Atlantic tunas and Atlantic tunas taken by anglers aboard such a vessel may not be sold.

(iv) *Closed categories.* A permit to catch and retain Atlantic tunas under § 630.28(a)(3) will be issued only to current owners of those purse seine vessels, or their replacements, that were granted allocations and landed Atlantic bluefin tuna in the fishery for Atlantic bluefin tuna during 1995.

(v) *Change of category.* Except for purse seine vessels for which a permit has been issued under paragraph (a)(2)(iv) of this section, an owner may change the commercial category of the vessel's Atlantic tunas permit to another commercial category a maximum of once per calendar year by notifying the Regional Director in writing before May 15. After May 15, the vessel's commercial permit category may not be changed to another commercial category for the remainder of the calendar year, regardless of any change in the vessel's ownership, unless there is sufficient

evidence for the Regional Director to determine that an error involving contradictory information was made on the application or renewal form for the current permit. A vessel owner may change from a commercial category to the Angling category at any time during the calendar year.

(3) *Atlantic swordfish.* The owner or operator of a vessel of the United States, other than a vessel in the recreational fishery, that fishes for or possesses swordfish in or from the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat., must obtain an Atlantic swordfish permit.

(4) *Atlantic sharks*—(i) *General.* As a prerequisite to sell shark from the management unit or to be eligible for exemption from the catch limits specified in § 630.29(b)(2), an owner or operator of a vessel that fishes in the EEZ must obtain an Atlantic sharks permit.

(ii) *Eligibility.* Shark fishery permits may be issued only to an owner or operator of a vessel who certifies that during 1 of the 3 calendar years preceding the application—

(A) More than 50 percent of his or her earned income was derived from commercial fishing or from charter or headboat operations, or his or her gross sales of fish were more than $20,000; or

(B) For a vessel owned by a corporation or partnership, the gross sales of fish of the corporation or partnership were more than $20,000.

(iii) *Operator requirement.* If the owner does not meet the earned income qualification specified in paragraph (a)(4)(ii) of this section and the operator does meet that qualification, a vessel permit issued upon the qualification of the operator is valid only when that person is the operator of the vessel.

(iv) *Jurisdiction.* An owner or operator who applies for a permit under paragraph (a)(4) of this section must agree, as a condition of such permit, that the vessel's shark fishing, catch, and gear are subject to the requirements of this part during the period of validity of the permit, without regard to whether such fishing occurs in the EEZ, landward of the EEZ, or outside the EEZ, and without regard to where such gear is possessed or used or where such shark are possessed, taken, or landed. However, when a vessel fishes in the waters of a state that has more restrictive regulations on shark fishing, those more restrictive regulations may be applied by that state to fishing, catch, and gear in its waters.

(5) *Exemptions.* (i) Anglers taking the following species for personal use and not for sale, are exempt from the permit requirements of this paragraph (a): Atlantic swordfish, Atlantic sharks, or Atlantic bonito, and no other Atlantic tunas.

(ii) There is no Federal requirement for an Atlantic shark permit for a vessel that fishes exclusively within state waters.

(b) *Dealer permits.* A dealer purchasing or attempting to purchase from a fishing vessel, or receiving from a fishing vessel by way of barter or trade, Atlantic tunas, swordfish, or sharks from a fishing vessel, and persons importing or exporting Atlantic bluefin tuna, must have a valid dealer permit for that species.

(c) *Application.* A vessel owner or dealer applying for a permit under paragraph (a) or (b) of this section must submit a completed permit application signed in ink by the owner or agent on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days before the date on which the applicant desires to have the permit made effective.

(1) *Vessel permits.* (i) Applicants must provide all information concerning vessel, gear used, fishing areas, and fisheries participation, including sworn statements relative to income requirements and permit conditions, as requested by the Regional Director and included on the application form.

(ii) Applicants must also submit a copy of the official state registration or United States Coast Guard documentation, charter/headboat license, and, if a boat is owned by a corporation or partnership, the corporate or partnership documents (copy of Certificate of Incorporation and Articles of Association or Incorporation).

(iii) The Regional Director may require the applicant to provide documentation supporting any sworn statements required under this section before a permit is issued or to substantiate why such permit should not be revoked or otherwise sanctioned under paragraph (l) of this section. Such required documentation may include copies of appropriate forms and schedules from the applicant's income tax return. Copies of income tax forms and schedules are treated as confidential.

(iv) For a vessel owned by a corporation or partnership to be eligible for a vessel permit, the earned income qualification specified in paragraph (a)(4)(ii) of this section must be met by, and the statement required by that paragraph must be submitted by, an officer or shareholder of the corporation, a general partner of the partnership, or the vessel operator.

(v) Applicants must also submit any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Director.

(2) *Dealer permits.* (i) An applicant for a dealer permit must provide information on company name, principal place of business, mailing address and telephone number as requested by the Regional Director and included on the application form.

(ii) Applicants must also submit a copy of each state wholesaler's license held by the dealer and, if a business is owned by a corporation or partnership, the corporate or partnership documents (copy of Certificate of Incorporation and Articles of Association or Incorporation).

(iii) Applicants must also submit any other information that may be necessary for the issuance or administration of the permit, as requested by the Regional Director.

(d) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit within 30 days of receipt of a completed application. An application is complete when all requested forms, information, sworn statements and supporting documentation have been received and the applicant has submitted all reports required under this part.

(2) The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(e) *Duration.* A permit issued under paragraph (a) or (b) of this section remains valid until it expires or is suspended, revoked, or modified pursuant to subpart D of 15 CFR part 904. Permits expire on the date indicated on the permit or when any of the information previously submitted on the application changes. Permits must be renewed upon expiration. Renewal applications must be submitted to the Regional Director at least 30 days before the expiration date.

(f) *Fees.* The Regional Director may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee shall be determined, at least annually, in accordance with the procedures of the NOAA Finance Handbook, available from the Regional Director, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The

appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(g) *Display.* (1) A permit issued under paragraph (a) of this section must be carried on board the vessel at all times.

(2) Permits issued under paragraph (a) or (b) of this section must be displayed for inspection upon request of an authorized officer.

(3) Upon sale of any large medium or giant Atlantic bluefin tuna, a vessel permit issued under paragraph (a)(2) of this section must be presented for inspection to the dealer issued a permit under § 630.4(b) prior to completing the landing card specified at § 630.5(b)(3)(i).

(4) A permit issued under paragraph (b) of this section must be available at the dealer's principal place of business.

(h) *Alteration.* A permit issued under paragraph (a) or (b) of this section that is altered, erased, or mutilated is invalid.

(i) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under paragraph (a) or (b) of this section, the vessel owner or dealer must report the change in writing to the Regional Director. The permit is void if any change in the information is not reported within 15 days.

(j) *Transfer.* (1) A permit issued under paragraph (a) of this section, except in the case of a purse seine permit as allowed under paragraph 630.22(c)(3) of this part, is not transferable or assignable to another vessel or owner; it is valid only for the vessel and owner to which it is issued. A person purchasing a vessel for which a permit has been issued under paragraph (a) of this section, who desires to conduct activities for which a permit is required, must apply for a permit in accordance with the provisions of paragraph (c)(1) of this section. The application must be accompanied by a copy of a signed bill of sale.

(2) A permit issued under paragraph (b) of this section is not transferable or assignable and is valid only for the dealer to whom it is issued. A person purchasing a dealership for which a permit has been issued under paragraph (b) of this section, who desires to conduct activities for which a permit is required, must apply for a permit in accordance with the provisions of paragraph (c)(2) of this section.

(k) *Replacement.* The Regional Director may issue replacement permits. An application for a replacement permit will not be considered a new application. An appropriate fee, consistent with paragraph (f) of this section, may be charged for issuance of the replacement permit.

(l) *Sanctions and denials.* A permit issued under this section may be revoked, suspended, or modified, and a permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

§ 630.5 Recordkeeping and reporting.

(a) *Vessels*—(1) *Logbooks.* The owner and/or operator of a vessel for which a permit has been issued under § 630.4(a) must ensure that a daily logbook form is maintained of the vessel's fishing effort, catch, and disposition on forms available from the Science and Research Director. Such forms must be submitted to the Science and Research Director postmarked not later than the seventh day after sale of the fish offloaded from a trip. If no fishing occurred during a month, a report so stating must be submitted in accordance with instructions provided with the forms.

(2) *Tally sheets.* The owner or operator of a vessel for which a permit has been issued under § 630.4(a) must ensure that copies of tally sheets are submitted for all fish offloaded and sold after a fishing trip. Each tally sheet must show the dealer to whom the fish were transferred, the date they were transferred, and the carcass weight of each fish for which individual carcass weights are normally recorded. For species not individually weighed, tally sheets must record total weights by market category. Copies of tally sheets must be submitted with the logbook forms required under paragraph (a)(1) of this section.

(3) *Panama Canal transit.* The master or other person in charge of a fishing vessel subject to the jurisdiction of the United States, except a vessel without fish on board, must report to the Regional Director not less than 48 hours prior to entering or leaving the Atlantic Ocean via the Panama Canal. Each report must include the name of the reporting vessel, the tonnage by species on board, and whether the fish were caught in Pacific or Atlantic waters. All such fishing vessels entering or leaving the regulatory area via the Panama Canal are subject to inspection. Official seals will be affixed to wells containing fish taken within or outside the regulatory area, as appropriate, and the same will be noted on the vessel log. The official seals may be removed only by a designated agent of NMFS upon arrival at the point of sale or delivery.

(b) *Dealers*—(1) *Reports.* Consistent with the provisions of this section, a dealer who has been issued a permit under § 630.4(b) must complete and submit a report on purchases of regulated species to the Science and Research Director twice each month. A report form is available from the Science and Research Director.

(2) *Atlantic tunas, swordfish and sharks.* (i) A report of regulated and other applicable species received by a dealer on the first through the 15th days of each month must be submitted to the Science and Research Director postmarked not later than the 20th day of that month. A report of regulated and other applicable species received by a dealer on the 16th through the last day of each month must be submitted to the Science and Research Director postmarked not later than the fifth day of the following month. If no regulated species were received during the reporting period, a report so stating must be submitted, postmarked as specified for that reporting period.

(ii) The reporting requirement of paragraph (b)(2)(i) of this section may be satisfied by providing a copy of each appropriate weighout sheet and/or sales record, provided such weighout sheet and/or sales record, by itself or combined with the form available from the Science and Research Director, includes all of the required information.

(iii) In lieu of providing a report required under paragraph (b)(2)(i) of this section to the Science and Research Director by mail, a dealer may provide the report to a state or Federal fishery port agent designated by the Science and Research Director. Reports so provided must be delivered to such port agent not later than the prescribed postmark date for submitting each such report.

(3) *Atlantic bluefin tuna.* In addition to reports required under paragraph (b)(2)(i) of this section:

(i) Any dealer purchasing or receiving an Atlantic bluefin tuna harvested by a vessel of the United States and at the point of first landing, must report as instructed by the Regional Director within 24 hours of the purchase or receipt of each fish from the person or vessel that harvested the fish. In addition, dealers must submit to the Regional Director all information as required on a reporting card provided by NMFS. The reporting card must be postmarked within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. Each vessel permit holder or vessel operator must sign each reporting card immediately upon transfer of the fish to verify the name of the vessel that landed the fish and the vessel permit number. The dealer purchasing or receiving the Atlantic

bluefin tuna must inspect the vessel permit and verify that the required vessel name and vessel permit information is correctly recorded on the reporting card.

(ii) Any dealer purchasing, receiving, or importing an Atlantic bluefin tuna must complete and submit to the Regional Director a biweekly report on forms supplied by NMFS. A report of Atlantic bluefin tuna received by a dealer on the first through the 15th days of each month must be submitted to the Regional Director postmarked not later than the 20th day of that month. A report of Atlantic bluefin tuna received by the dealer on the 16th through the last day of each month must be submitted to the Regional Director postmarked not later than the fifth day of the following month.

(c) *Tournament operators.* A person conducting a fishing tournament involving Atlantic billfish, tunas, swordfish, or sharks from a port in an Atlantic, Gulf of Mexico, or Caribbean state must notify the Science and Research Director of the purpose, dates and location of the tournament at least 4 weeks prior to commencement. Tournament operators must maintain and submit a record of catch and effort on forms available from the Science and Research Director. Completed forms must be submitted to the Science and Research Director postmarked not later than the seventh day after the conclusion of the tournament and must be accompanied by a copy of the tournament rules.

(d) *Recordkeeping.* A dealer who has been issued a permit under § 630.4(b) must retain at his/her place of business a copy of each biweekly report required under paragraph (b)(2)(i) of this section, each landing card (including proof of transmission) required under paragraph (b)(3)(i) of this section, and a copy of each biweekly report required under paragraph (b)(3)(ii) of this section for a period of 2 years from the date on which each report was required to be submitted to the Regional Director.

(e) *Inspection.* Any person authorized to carry out enforcement activities under the regulations in this part has authority, without warrant or other process, to inspect, at any reasonable time, catch on board the vessel, log books, catch reports, statistical records, sales receipts, or other records and reports required by this part to be made, kept, or furnished. An owner or operator of a fishing vessel or a dealer who has been issued a permit under § 630.4 must allow an authorized officer to inspect and/or copy any required reports and the records, in any form, on which the completed reports are based.

(f) *Additional data.* Additional data on Atlantic tunas, swordfish and sharks may be collected by authorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers.

§ 630.6 Vessel identification.

(a) *Official number.* The official number of a vessel for which a permit has been issued under § 630.4(a)(3) and/or (4) must be permanently affixed to or painted on the vessel on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft; in block arabic numerals in contrasting color to the background and at least 18 inches (45.7 cm) in height for vessels over 65 ft (19.8 m) in length and at least 10 inches (25.4 cm) in height for all other vessels.

(b) *Duties of operator.* The operator of each fishing vessel must keep the official number clearly legible and in good repair and ensure that no part of the vessel, its rigging, its fishing gear, or anything carried on board obstructs the view of the official number from any enforcement vessel or aircraft.

§ 630.7 At-sea observer coverage.

(a) *Atlantic tunas.* (1) Notwithstanding prior selection for placement, placement or authorized waiver of placement of at-sea fishery observers under the authority of any other Federal statute or fisheries regulation, NMFS may require observers for any vessel engaged in directed fishing for, or incidentally taking, Atlantic tunas at any time.

(2) Owners of vessels selected for observer coverage are required to notify the Science and Research Director before commencing any fishing trip that may result in the harvest of any Atlantic tuna. Notification procedures will be specified in selection letters to vessel owners.

(b) *Atlantic swordfish and sharks.* (1) If a vessel's trip is selected by the Science and Research Director for observer coverage, the owner or operator of such vessel must accommodate a NMFS-approved observer.

(2) When notified in writing by the Science and Research Director that his/her vessel has been selected to carry a NMFS-approved observer, an owner or operator of a vessel for which a vessel permit has been issued under § 630.4(a)(3) or (4) must notify the Science and Research Director in writing not less than 5 days in advance of each swordfish trip and not less that 10 days in advance of each shark trip of the expected port, dock, date, and time of departure and the expected port, dock, date, and time of landing.

(c) *Requirements.* An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties.

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(5) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

Subpart B—Management Measures

§ 630.20 Fishing years and seasons.

(a) *Atlantic bluefin tuna*—(1) *Commencement.* The fishing year for Atlantic bluefin tuna in the regulatory area begins—

(i) On January 1 of each year—

(A) For anglers fishing for Atlantic bluefin tuna under the quota specified in accordance with § 630.28(b)(3).

(B) For vessels for which a Longline category permit has been issued under § 630.4(a)(2) when fishing under the quota specified in accordance with § 630.28(b)(4).

(C) For anglers participating in the catch and release program under § 630.30.

(ii) On June 1 of each year—

(A) For anglers fishing for Atlantic bluefin tuna under the quota specified in accordance with § 630.28(b)(2).

(B) For vessels for which a Harpoon Boat category permit has been issued under § 630.4(a)(2) when fishing under the quota specified in accordance with § 630.28(b)(1).

(iii) On August 15 of each year for vessels for which a Purse Seine category permit has been issued under § 630.4(a)(2) when fishing under the quota specified in accordance with § 630.28(b)(1).

(2) *Adjustment.* Consistent with the Convention, the ATCA, and this part, NMFS may change the commencement date for Atlantic bluefin tuna fishing for any vessel permit or quota category

when NMFS determines that the changed date will enable scientific research on the status of the stock to be conducted more effectively and will not prevent the quotas for the affected fishery from being caught, based upon historical catch data or other relevant information. NMFS will publish notification in the Federal Register of any change in the commencement date(s) for fishing under this paragraph (a) at least 60 days before commencement of the affected fishery.

(b) *Atlantic swordfish.* The fishing year for Atlantic swordfish is June 1 through May 30 of the subsequent year.

(c) *Atlantic billfishes and sharks.* The fishing year is January 1 through December 31.

(d) *State actions.* Nothing in this section may be construed to invalidate any more restrictive commencement or closure date established by any state in waters under its jurisdiction.

§ 630.21 Gear restrictions.

(a) Persons fishing for, retaining or possessing Atlantic bluefin tuna must not possess on board or use any gear not authorized for the category for which a permit has been issued under § 630.4(a)(2) for the carrying vessel. Gear types authorized by Atlantic tunas permit category are:

(i) *General*—rod and reel (including downriggers), handline, harpoon, bandit gear.

(ii) *Charter/Headboat*—rod and reel (including downriggers), handline.

(iii) *Angling*—rod and reel (including downriggers), handline.

(iv) *Harpoon Boat*—harpoon.

(v) *Purse Seine*—purse seine nets.

(vi) *Longline*—pelagic longlines.

(b) *Float marking.* Any flotation device attached to handline or harpoon gear must have the Atlantic tuna, shark, or swordfish permit number of the vessel from which it is used permanently affixed to it in block arabic numerals at least 1 inch (2.5 cm) in height and in a color that contrasts with the background color of the flotation device.

(c) *Gillnets.* A drift gillnet with a total length of 2.5 km or more may not be used to fish for regulated species. A vessel using or having on board a drift gillnet with a total length of 2.5 km or more may not possess a regulated species.

(d) *Atlantic billfishes.* Only billfish harvested by rod and reel gear may be possessed or retained in the regulatory area. Regardless of how taken, a vessel using or having on board a pelagic longline or drift gillnet may not possess or retain Atlantic billfishes in the regulatory area.

(e) *Atlantic swordfish.* Only vessels using pelagic longline, drift gillnet or harpoon gear may conduct directed fishing for swordfish, or possess in the regulatory area swordfish in excess of the applicable bycatch allowance.

§ 630.22 Purse seine vessel requirements.

(a) *Mesh size.* (1) Any owner or operator of a vessel with a permit issued under § 630.4(a) conducting directed fishing for Atlantic tunas with a purse seine net must use a net with a mesh size equal to or smaller than 4.5 inches (11.4 cm) in the main body (stretched when wet) and that has at least 24-count thread throughout the net.

(2) The Regional Director may exempt any person from the mesh requirements in paragraph (a)(1) of this section if the Regional Director determines that the exemption will not result in significant injury or mortality to Atlantic tuna that are encircled by the net, but manage to escape.

(b) *Inspection.* A purse seine vessel conducting a directed fishery for Atlantic tunas must be inspected by an enforcement agent of NMFS prior to commencing fishing for the season in any fishery that may result in the harvest of any regulated species. The owner or operator must request such inspection at least 48 hours before commencement of the first fishing trip of the season. In addition, at least 48 hours before commencement of offloading any Atlantic tunas after a fishing trip, the owner or operator must request an inspection of vessel and catch by notifying the Regional Director. Lack of any such inspection within 48 hours of notification shall constitute a waiver of this inspection requirement.

(c) *Vessel allocations.* (1) Owners or operators of vessels for which a Purse Seine permit has been issued under § 630.4(a)(2) must apply to the Regional Director for an allocation of Atlantic bluefin tuna from the quotas specified in accordance with § 630.28(b)(1). Such application must be in writing and postmarked no later than April 15 of the fishing year.

(2) On or about May 1 of the fishing year, the Regional Director will make equal allocations of the available size classes of Atlantic bluefin tuna among purse seine vessel owners so requesting. Such allocations are freely transferrable, in whole or in part, among purse seine vessel permit holders. Any purse seine vessel permit holder intending to fish for more than one allocation in any fishing season must provide written notice of such intent to the Regional Director 15 days before commencing fishing in that season. Purse seine vessel permit holders who transfer their annual allocation to another purse seine vessel permit holder must not fish their permitted vessel in any fishery in which Atlantic bluefin tuna might be caught for the remainder of the fishing year after their allocation is transferred.

(3) Purse seine vessel owners may apply to the Regional Director to permanently consolidate vessel permits issued under § 630.4(a)(2). Upon written approval of consolidation by the Regional Director, the Atlantic tuna permit(s) of the transferring vessel(s) will be cancelled, and the holder of the consolidated permit is authorized to apply for allocations of Atlantic bluefin tuna commensurate with the number of consolidated permits. Purse seine vessel owners who cancel their permit(s) by means of consolidation must not fish their vessel in any fishery in which Atlantic bluefin tuna might be caught.

(d) *Transfer at sea.* Owners or operators of vessels for which a Purse Seine permit has been issued under § 630.4(a)(2) may transfer large medium and giant Atlantic bluefin tuna at sea from the net of the catching vessel to another vessel for which a Purse Seine permit has been issued under § 630.4(a)(2), provided the amount transferred does not cause the receiving vessel to exceed its annual vessel allocation and authorized allocation transfers.

(e) *Fishery closures.* A vessel for which a Purse Seine permit has been issued under § 630.4(a)(2) may fish under the bluefin tuna quota specified in accordance with § 630.28(b)(1), or in fisheries for Atlantic yellowfin or skipjack tuna or other fisheries where bluefin tuna might be taken as bycatch, only until the allocation of bluefin tuna assigned or transferred to that vessel under paragraph (c)(2) of this section is reached. Upon reaching its individual vessel allocation of Atlantic bluefin tuna, directed purse seine fisheries for Atlantic tunas are closed to such vessel and the vessel will be deemed to have been given notice to that effect.

§ 630.23 Transfer, landing, and sale.

(a) *Transfer at sea.* (1) Other than as authorized under § 630.22(d), an Atlantic tuna may not be transferred at sea, regardless of where the transfer takes place or where the fish was harvested.

(2) A swordfish harvested from the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat. may not be transferred at sea, regardless of where the transfer takes place; and in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat., a swordfish may not be transferred at

sea, regardless of where the swordfish was harvested.

(3) A shark from any of the three management units may not be transferred at sea from a vessel for which an Atlantic shark permit has been issued under § 630.4(a)(4) to any other vessel. A person for whom a catch limit specified in § 630.29(b) applies may not transfer at sea a shark—

(i) Taken in the EEZ, regardless of where such transfer takes place; or

(ii) In the EEZ, regardless of where such shark was taken.

(b) *Landing.* (1) A tuna possessed in the Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, must be maintained in round form, or in the alternative, eviscerated with the head and fins removed, provided one pectoral fin and the tail remain attached. A tuna may not be landed from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state in forms other than round, or in the alternative, eviscerated with the head and fins removed, provided one pectoral fin and the tail remain attached.

(2) Purse seine vessel owners must have each large medium and giant bluefin tuna in their catch weighed, measured, and the information recorded on the required landing cards at the time of offloading and prior to transporting such tuna from the area of offloading.

(3) A swordfish possessed in the North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, north of 5° N. lat. must be in whole or dressed form, and a swordfish landed from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state must be maintained in whole or dressed form through offloading, except such swordfish as are damaged by shark bites. A shark-bit swordfish for which the remainder of the carcass is less than the minimum size limit specified in § 630.25(c) may not be possessed or landed.

(4) A billfish possessed aboard a fishing vessel of the United States shoreward of the outer boundary of the EEZ must have its head, fins, and bill intact and a billfish landed from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state must have its head, fins, and bill intact through landing. Such billfish may be eviscerated, but must otherwise be maintained in a whole condition.

(c) *Sale*—(1) *Atlantic swordfish.* (i) A swordfish harvested from or possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat. may be initially sold, traded, or bartered or attempted to be sold, traded, or bartered only by an owner or operator of a vessel for which a permit has been issued under § 630.4(a)(3).

(ii) A swordfish harvested from or possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat. may be initially purchased, traded, or bartered or attempted to be purchased, traded, or bartered only by a dealer having an Atlantic swordfish dealer permit issued under § 630.4(b).

(iii) A swordfish harvested from or possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat. in the recreational fishery may not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered.

(2) *Atlantic tunas.* (i) An Atlantic tuna, or parts thereof, harvested from or possessed in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, may be initially sold (purchased), traded, or bartered or attempted to be sold (purchased), traded, or bartered only by an owner or operator of a vessel for which a permit has been issued under § 630.4(a)(2) to a dealer having an Atlantic tunas permit issued under § 630.4(b).

(ii) Any Atlantic bluefin tuna less than the large medium size class may not be, or attempted to be, purchased, bartered, traded, sold, or offered for sale, or retained or possessed by a dealer or seafood processor in any state, unless it is lawfully imported and is accompanied by a BSD (see subpart C of this part).

(iii) Except for a bluefin tuna landed in a Pacific state and remaining in the state of landing, a bluefin tuna that is possessed by a dealer or seafood processor is deemed to be a bluefin tuna harvested from the Atlantic Ocean by a U.S. vessel, unless it is accompanied by a BSD.

(3) *Billfish.* (i) A billfish harvested from its management unit or a related species harvested from the Atlantic Ocean (including the Gulf of Mexico and the Caribbean Sea), may not be purchased, bartered, traded, sold, or offered for sale in any state.

(ii) Except for a billfish or related species landed in a Pacific state and remaining in the state of landing, a billfish or related species that is possessed by a dealer or seafood processor is deemed to be a billfish harvested from its management unit or a related species harvested from the Atlantic Ocean, unless it is accompanied by documentation that the billfish was harvested from outside its management unit or the related species was harvested from other than the Atlantic Ocean. Such documentation must contain all information specified on the Certificate of Eligibility form obtainable from the Regional Director.

(4) *Atlantic sharks.* (i) Upon landing, meat or fins from a shark from the management unit may be sold, traded, or bartered, or attempted to be sold, traded, or bartered, only by an owner or operator of a vessel for which a permit has been issued under § 630.4(a)(4), unless such meat or fins are from a shark harvested by a vessel that has not been issued a permit under this part and that fished exclusively within the waters under the jurisdiction of any state.

(ii) Upon landing, meat or fins from a shark from the management unit, except a shark harvested from a vessel that has not been issued a permit under this part and that fished exclusively within the waters under the jurisdiction of any state, may be purchased, traded, or bartered, or attempted to be purchased, traded, or bartered, only from the owner or operator of a vessel for which a permit has been issued under § 630.4(a)(4).

(iii) Except for a shark harvested from a vessel that has not been issued a permit under this part and that fished exclusively within the waters under the jurisdiction of any state, a shark from the management unit may be sold, traded, or bartered, or attempted to be sold, traded, or bartered, only to a dealer having an Atlantic sharks permit under § 630.4(b).

(iv) Fins from a shark harvested in the EEZ, or by a vessel for which a permit has been issued under § 630.4(a)(4), that are disproportionate to the weight of carcasses landed may not be sold, purchased, traded, or bartered, or attempted to be sold, purchased, traded, or bartered.

§ 630.24 Fish marking requirements.

(a) *Issuance of tags.* The Regional Director will issue numbered tail tags to each person issued an Atlantic tunas dealer permit under § 630.4(b).

(b) *Transfer of tags.* Tail tags issued under this section are not transferable and are usable only by the permitted dealer to whom they are issued.

(c) *Affixing tags.* (1) A dealer or agent must affix a tail tag to each Atlantic bluefin tuna purchased or received, immediately upon its offloading from a vessel. The tail tag must be affixed to the tuna between the fifth dorsal finlet and the keel.

(2) Any person who catches a large medium or giant Atlantic bluefin tuna and does not transfer it to a dealer issued a permit under § 630.4(b) must contact the nearest NMFS enforcement

office at the time of landing said Atlantic bluefin tuna and make the tuna available so that an NMFS enforcement agent may inspect the fish and attach a tail tag to it. A list of local NMFS enforcement offices can be obtained from the Regional Director. The Regional Director may designate a person other than an NMFS agent to inspect and tag the fish. Such designation will be made in writing.

(d) *Removal of tags.* A tag affixed to any Atlantic bluefin tuna under paragraph (c)(1) of this section or under § 630.42(a)(6)(v) must remain on the tuna until the tuna is cut into portions. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag number must be written legibly and indelibly on the outside of any package or container. Tag numbers must be recorded on any document accompanying shipment of bluefin tuna for commercial use or export.

(e) *Reuse of tags.* Tags issued under this section are separately numbered and may be used only once, one tail tag per fish, to distinguish the purchase of one Atlantic bluefin tuna. Once affixed to a tuna or recorded on any package, container or report, a tail tag and associated number may not be reused.

§ 630.25 Size limits and size classes.

(a) *Atlantic bluefin tuna.* (1) Fishing for, catching, retention, or possession of Atlantic bluefin tuna in the regulatory area by persons aboard fishing vessels subject to the jurisdiction of the United States is authorized only for yellowfin or bigeye tuna measuring 27 inches (69 cm) or more in CFL.

(2) CFL is the sole criterion for determining the size class of whole (head on) Atlantic bluefin tuna. For any Atlantic bluefin tuna found with the head removed, the CFL for the purposes of determining size class when the tuna was caught, will be deemed to be PFCFL multiplied by 1.35. PFCFL is the sole criterion for determining the size class of a beheaded Atlantic bluefin tuna. Atlantic bluefin tuna are deemed to fall into a size class according to the following table; approximate round weights are given for illustrative purposes only.

TABLE 1 TO § 630.25(a)(2).—ATLANTIC BLUEFIN TUNA REGULATORY SIZE CLASSES

Size category	Total curved fork length (CFL)	Pectoral fin curved fork length (PFCFL)	Approx. round weight
Young School	Less than 27 inches	Less than 20 inches	Less than 14 lb.
	Less than 69 cm	Less than 51 cm	Less than 6.4 kg.
School	27 to <47 inches	20 to <35 inches	14 to <66 lb.
	69 to <119 cm	51 to <89 cm	6.4 to <30 kg.
Large School	47 to <59 inches	35 to <44 inches	66 to <135 lb.
	119 to <150 cm	89 to <112 cm	30 to <61 kg.
Small Medium	59 to <73 inches	44 to <54 inches	135 to <235 lb.
	150 to <185 cm	112 to <137 cm	61 to <107 kg.
Large Medium	73 to <81 inches	54 to <60 inches	235 to <310 lb.
	185 to <206 cm	137 to <152 cm	107 to <141 kg.
Giant	81 inches or greater	60 inches or greater	310 lb or greater.
	206 cm or greater	152 cm or greater	141 kg or greater.

(b) *Atlantic yellowfin and bigeye tunas.* (1) Fishing for, catching, retention, or possession of Atlantic yellowfin and bigeye tunas in the regulatory area by persons aboard fishing vessels subject to the jurisdiction of the United States is authorized only for yellowfin or bigeye tuna measuring 27 inches (69 cm) or more in CFL.

(2) CFL is the sole criterion for determining the size class of whole (head on) Atlantic yellowfin and bigeye tuna.

(c) *Atlantic swordfish.* The minimum allowable size for possession on board a fishing vessel of the United States for a swordfish taken from the management unit or for a swordfish landed from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state is 29 inches (73 cm) CK or, if swordfish are weighed, 33 lb (15 kg) dressed weight.

(d) *Atlantic billfishes.* The following minimum size limits, expressed in terms of LJFL, apply to possession of the following species of billfish shoreward of the outer boundary of the EEZ, regardless of where caught:

(1) Blue marlin—86 inches (218 cm).

(2) White marlin—62 inches (157 cm).

(3) Sailfish—57 inches (145 cm).

§ 630.26 Incidental catch.

(a) *Atlantic bluefin tuna*—(1) *Longline.* Subject to the quotas specified in accordance with § 630.28(b)(4), any person operating a vessel using longline gear for which a permit has been issued under § 630.4(a)(2) may retain or land large medium and giant Atlantic bluefin tuna as incidental catch. The amount of Atlantic bluefin tuna retained or landed may not exceed:

(i) One fish per vessel per fishing trip landed south of 34°00′ N. lat., provided that for the months of January through April at least 1,500 lb (680 kg), and for the months of May through December at least 3,500 lb (1,588 kg), either dressed or round weight, of species other than Atlantic bluefin tuna are legally caught, retained, and offloaded from the same trip and are recorded on the dealer weighout as sold.

(ii) Two percent by weight, either dressed or round weight, of all other fish legally landed, offloaded and documented on the dealer weighout as sold at the end of each fishing trip, north of 34°00′ N. lat.

(2) *Purse Seine.* When fishing for Atlantic yellowfin or skipjack tuna, vessels for which an Atlantic bluefin tuna Purse Seine category permit has been issued under § 630.4(a)(2) are allowed a 1-percent per trip (by weight) incidental take of bluefin less than the large medium size class. Any landings of these incidental catches may not be sold and will be counted against the Purse Seine category quota allocation for bluefin tuna.

(b) *Atlantic swordfish*—(1) *Bycatch limits during a directed-fishery closure.* (i) During a closure of the drift gillnet fishery, a person aboard a vessel using or having on board a drift gillnet may not fish for swordfish from the management unit and no more than two swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat., or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

(ii) During a closure of the directed fishery, a person aboard a vessel using or having on board a longline may not fish for swordfish from the management unit and no more than 15 swordfish per

trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat., or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state. NMFS may modify or change the bycatch limits applicable during a directed longline fishery closure upon publication of a notice in the Federal Register. The effective date of such notice will be at least 14 days after the date such notice is filed at the Office of the Federal Register. Changes in the bycatch limits will be based upon the length of the directed longline fishery closure, as well as the estimated catch per vessel in the non-directed fishery.

(iii) During a closure of the directed fishery, a person aboard a vessel using or having on board harpoon gear may not harpoon for swordfish from the management unit and no harpooned swordfish may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat., or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

(2) *Bycatch limits in the non-directed fishery.* (i) Aboard a vessel using or having on board gear other than drift gillnet, harpoon, or longline, other than a vessel in the recreational fishery, a person may not fish for swordfish from the management unit.

(ii) Except as specified in paragraph (b)(2)(iii) of this section, no more than two swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat., or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

(iii) Aboard a vessel in the squid trawl fishery, no more than five swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat., or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state. For the purposes of this paragraph (b)(2)(iii), a vessel is considered to be in the squid trawl fishery when it has no commercial fishing gear other than trawl gear on board and squid constitute not less than 75 percent by weight of the total fish on board or offloaded from the vessel.

(3) *Limits during a bycatch closure.* During a closure of the bycatch fishery under § 630.28(e)(2)(ii), the provisions of paragraphs (b)(2) (ii) and (iii) of this section notwithstanding, a person aboard a fishing vessel, other than a vessel in the recreational fishery, may not fish for swordfish from the management unit and no swordfish may be possessed on other than a recreational fishing vessel in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. lat., or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

§ 630.27 Harvest restrictions.

(a) *Atlantic swordfish.* A vessel for which a swordfish permit has been issued under § 630.4(a)(3) may land from or possess during a single trip no more than 31,600 lb (14,334 kg) dressed weight of swordfish, unless a closure has been effected under § 630.28(e)(2), in which case bycatch limits specified under § 630.26(b) apply.

(b) *Atlantic sharks*—(1) *Trip limit.* A vessel for which a permit has been issued under § 630.4(a)(4) may not land from or possess during a single trip more than 4,000 lb (1,814 kg), dressed weight, of large coastal species, unless a closure has been effected under § 630.28(e)(3).

(2) *Fins.* (i) The practice of ''finning,'' that is, removing only the fins and returning the remainder of the shark to the sea, is prohibited in the EEZ and on board any vessel for which a permit has been issued under § 630.4(a)(4).

(ii) Shark fins that are possessed aboard or offloaded from a fishing vessel must not exceed 5 percent of the weight of the shark carcasses. All fins must be weighed in conjunction with the weighing of the carcasses at the vessel's first point of landing and such weights of the fins landed must be recorded on the weighout slips submitted by the vessel owner or operator under § 630.5(a).

(iii) Shark fins may not be possessed aboard a fishing vessel after the vessel's first point of landing.

§ 630.28 Quotas and closures.

(a) *Annual specifications.* See § 630.31(a).

(b) *Atlantic bluefin tuna.* (1) Consistent with ICCAT recommendations, the total annual (January 1–December 31) amount of Atlantic bluefin tuna that may be caught, retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction in the regulatory area will be subdivided among the General, Harpoon Boat, Purse Seine, Longline, and Angling quota categories. In addition, a portion of the annual quota of Atlantic bluefin tuna will be held in reserve for inseason adjustments and to compensate for overharvest in any category.

(2) *General category.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by vessels for which General or Charter/Headboat category permits have been issued under § 630.4(a)(2) may be apportioned to specified fishing periods and/or specified geographic areas. Such apportionment shall be consistent with the criteria listed under paragraph (b)(5) of this section.

(3) *Angling category.* The total annual amount of Atlantic bluefin tuna that may be caught, retained, possessed or landed in the regulatory area by anglers aboard vessels for which Angling, Charter/Headboat or General category permits have been issued under § 630.4(a)(2) may be apportioned to specified fishing periods, specified geographic areas and/or specified regulatory size classes. Such apportionment shall be consistent with the criteria listed under paragraph (b)(5) of this section.

(4) *Longline category.* The total annual amount of large medium and giant Atlantic bluefin tuna that may be caught, retained, possessed, or landed in the regulatory area by vessels for which Longline category permits have been issued under § 630.4(a)(2) may be apportioned to specified fishing periods and/or specified geographic areas. Such apportionment shall be consistent with the criteria listed under paragraph (b)(5) of this section.

(5) *Inseason adjustments.* NMFS may allocate any portion of the reserve held for inseason adjustments to any category of the fishery, or to account for harvest by persons conducting research activities authorized under § 630.1(b)(2) in accordance with § 630.32. NMFS will publish notification of allocation of any inseason adjustment amount in the Federal Register. Before making any such allocation, NMFS will consider the following factors:

(i) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock.

(ii) The catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made.

(iii) The projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season.

(iv) The estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

(6) *Annual adjustments.* If NMFS determines, based on landing statistics and other available information, that an annual quota in any category, or as appropriate, subcategory, has been exceeded or has not been reached, NMFS will subtract the overharvest

from, or add the underharvest to, that quota category for the following year; provided that the total of the adjusted quotas and the reserve is consistent with a recommendation of ICCAT regarding country quotas. NMFS will publish any amounts to be subtracted or added and the basis for the quota reductions or increases in the notice of annual quota specifications.

(c) *Atlantic swordfish*—(1) *Annual.* Consistent with the requirements of this part, the total annual amount of swordfish from the North Atlantic swordfish stock that may be caught, retained, possessed, or landed in the regulatory area by vessels for which a permit has been issued under § 630.4(a)(3) may be apportioned to specified fishing periods, gear categories, and geographic areas. Such specifications shall indicate harvest authorized for directed fisheries and harvest authorized as bycatch.

(2) *Directed fishery.* Harvest of swordfish by a vessel of the United States in other than the recreational fishery is counted against the directed-fishery gear quota or the bycatch quota. A swordfish harvested by drift gillnet, longline, or harpoon and landed before the effective date of a closure for that gear is counted against the applicable directed-fishery gear quota.

(3) *Bycatch fishery.* (i) After a gear closure, a swordfish landed by a vessel using or possessing gear for which bycatch is allowed under § 630.26(b)(1) is counted against the bycatch allocation identified for that gear in the annual quota specification.

(ii) Notwithstanding paragraph (e)(3)(i) of this section, a swordfish harvested by a vessel using or possessing gear other than drift gillnet, longline, harpoon, or rod and reel is counted against the bycatch quota identified in the annual quota specification at all times.

(4) *Gillnet harvest.* A swordfish will be deemed to have been harvested by a drift gillnet when it is on board, or offloaded in an Atlantic, Gulf of Mexico, or Caribbean coastal state from, a vessel using or having on board a drift gillnet; or when it is on board, or offloaded in an Atlantic, Gulf of Mexico, or Caribbean coastal state from, a vessel that used or had on board a drift gillnet during its current or most recent fishing trip.

(5) *Inseason adjustments.* (i) NMFS may adjust, through notification filed with the Office of the Federal Register, applicable semiannual directed or bycatch fishery quotas and gear quotas to reflect actual catches during the prior semiannual period, provided that the annual directed or bycatch fishery and gear quotas are not exceeded.

(ii) If NMFS determines that the annual bycatch quota will not be taken before the end of the fishing year, the excess quota may be allocated to the directed-fishery quotas in the same gear quota proportions as the annual specifications in effect.

(iii) If NMFS determines that it is necessary to close the directed fishery, any overharvest or underharvest of the directed-fishery quota will be used to adjust the annual bycatch quota accordingly, in the same gear quota proportions as the annual specifications in effect.

(d) *Atlantic sharks*—(1) *General.* The total annual amount of Atlantic sharks that may be caught, retained, possessed, or landed in the regulatory area by vessels for which permits have been issued under § 630.4(a)(4) may be apportioned to specified fishing periods and species groups. Such specifications shall indicate harvest authorized for directed fisheries and harvest authorized as bycatch.

(2) *Applicability.* Persons fishing aboard vessels for which permits have been issued under § 630.4(a)(4), except for persons aboard vessels that are operating as charter vessels or headboats, are limited to the quotas specified annually pursuant to the provisions of this section. Persons aboard vessels that are operating as charter vessels or headboats are limited to the catch limits in § 630.29(b). Large coastal or pelagic species sharks that are sold are counted against the appropriate quota for their species group.

(3) *Inseason adjustments.* NMFS may adjust, through notification filed with the Office of the Federal Register, applicable semiannual directed or bycatch fishery quotas and gear quotas to reflect actual catches during the prior semiannual period, provided that the annual directed or bycatch fishery quotas are not exceeded.

(e) *Closures*—(1) *Atlantic bluefin tuna.* NMFS will monitor catch and landing statistics, including catch and landing statistics from previous years and projections based on those statistics, of Atlantic bluefin tuna by vessels other than those permitted in the Purse Seine category. On the basis of these statistics, NMFS will project a date when the catch of Atlantic bluefin tuna will equal any quota established under this section, and will file notification with the Office of the Federal Register stating that fishing for or retaining Atlantic bluefin tuna under the quota must cease on that date at a specified hour.

(2) *Atlantic swordfish*—(i) *Directed fishery.* When a directed-fishery annual, semi-annual, or gear quota established under this section is reached, or is projected to be reached, NMFS will file a notice with the Office of the Federal Register closing the entire directed fishery for fish from the North Atlantic swordfish stock, the drift gillnet fishery, or the harpoon and longline fisheries, as appropriate. For the harpoon and longline fisheries, notice of closure shall be effective at least 14 days after the date such notice is filed. For the drift gillnet fishery, notice of closure shall be effective at least 3 days after the date such notice is filed. The closure will remain in effect until an additional directed-fishery or gear quota becomes available. During a closure of a directed fishery, the bycatch limits specified in § 630.26(b) are effective.

(ii) *Bycatch fishery.* When the bycatch quota established under this section is reached, or is projected to be reached, NMFS will file a notice with the Office of the Federal Register prohibiting further possession or retention of Atlantic swordfish by vessels of the United States, to be effective no sooner than 14 days after the date such notice is filed. The closure will remain in effect until a new annual bycatch quota becomes available.

(3) *Atlantic sharks.* (i) When a commercial quota established under this section is reached, or is projected to be reached, NMFS will file a notice with the Office of the Federal Register prohibiting further possession or retention of Atlantic sharks by vessels for which a permit has been issued under § 630.4(a)(4), to be effective no sooner than 5 days after the date such notice is filed.

(ii) On the effective date of such notification, for the remainder of the semi-annual period—

(A) A person aboard a vessel for which a permit has been issued under § 630.4(a)(4) may not retain shark of the species group for which the commercial quota has been reached, except as provided in paragraph (e)(3)(ii)(C) of this section.

(B) The sale, purchase, trade, or barter, or attempted sale, purchase, trade, or barter of a shark carcass or fin of that species group harvested by a person aboard a vessel for which a permit has been issued under § 630.4(a)(4) is prohibited.

(C) A person aboard a charter vessel or headboat for which a permit has been issued under § 630.4(a)(4) may retain, subject to the catch limits specified in § 630.29(b), shark of the species group for which the commercial quota has been reached, provided the vessel is

operating as a charter vessel or headboat. However, the prohibition of paragraph (e)(3)(ii)(B) of this section regarding sale, purchase, trade, or barter, or attempted sale, purchase, trade, or barter, apply to such shark.

§ 630.29 Catch limits.

(a) *Atlantic bluefin tuna*—(1) *General category.* (i) From the start of each fishing year, except on designated restricted fishing days, only one large medium or giant Atlantic bluefin tuna may be caught and landed per day from a vessel for which a General category permit has been issued under § 630.4(a)(2). On designated restricted fishing days, persons aboard such vessels may not possess, retain, or land any large medium or giant Atlantic bluefin tuna. NMFS will publish in the Federal Register a schedule of designated restricted fishing days applicable for that fishing season.

(ii) NMFS may increase or reduce the catch limit over a range from zero (restricted fishing days) to a maximum of three large medium or giant Atlantic bluefin tuna per day per vessel based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota. NMFS will publish notification in the Federal Register of any adjustment in the allowable daily catch limit made under this paragraph (a)(1)(ii). Such notification shall be filed at the Office of the Federal Register at least 3 calendar days prior to the change becoming effective.

(iii) Large medium and giant Atlantic bluefin tuna may be possessed or retained aboard a vessel for which a General category permit has been issued under § 630.4(a)(2), if the amount does not exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit for General category vessels in effect on that day.

(iv) Anglers aboard vessels for which General category permits have been issued under § 630.4(a)(2) may possess school, large school, and small medium Atlantic bluefin tuna in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit for the Angling category in effect on that day. School, large school, and small medium bluefin tuna landed by anglers aboard vessels for which a General category permit has been issued under § 630.4(a)(2) are counted against the Angling category quota. Once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained on authorized commercial fishing days, persons aboard vessels for which a General category permit has been issued under § 630.4(a)(2) must cease fishing and the vessel must proceed to port.

(2) *Harpoon Boat category.* Vessels for which a Harpoon Boat category permit has been issued under § 630.4(a)(2) may catch multiple giant bluefin tuna, but only one large medium bluefin tuna per day per vessel may be caught.

(3) *Purse Seine category.* Large medium bluefin tuna may be caught from a vessel for which a Purse Seine category permit has been issued under § 630.4(a)(2), provided that the total amount of large medium bluefin landed per trip does not exceed 15 percent by weight of the total amount of giant Atlantic bluefin tuna landed on that trip, and the total annual amount of large medium bluefin landed does not exceed 10 percent by weight of the total amount of giant Atlantic bluefin tuna allocated to that vessel for that fishing season.

(4) *Angling category.* (i) Each angler aboard a vessel for which an Angling category permit has been issued under § 630.4(a)(2) may catch and retain each day no more than one Atlantic bluefin tuna that may be from the school or large school size class. In addition to the per angler limits, one small medium size class bluefin tuna may be retained each day, per angling category vessel.

(ii) When fishing outside the Gulf of Mexico, in addition to the daily catch limit for school, large school, and small medium bluefin tuna, a vessel for which an Angling category permit has been issued under § 630.4(a)(2) may catch and retain annually one large medium or giant Atlantic bluefin tuna, to be counted against the Angling category quota specified in accordance with § 630.28(b)(3). Once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained under the Angling category quota, fishing by persons aboard Angling category vessels must cease and the vessel must proceed to port. The owner or operator of the vessel must report to the nearest NMFS enforcement office within 24 hours of landing any large medium or giant bluefin, and must make the tuna available to NMFS for inspection and attachment of a tag. No such large medium or giant Atlantic bluefin tuna may be sold or transferred to any person for a commercial purpose, except for taxidermic purposes. A list of local NMFS enforcement offices may be obtained from the Regional Director.

(iii) For vessels for which an Angling category permit has been issued under § 630.4(a)(2), NMFS may increase or reduce the per angler catch limit for any size class bluefin tuna or may change the per angler limit to a per boat limit or a per boat limit to a per angler limit based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota spread over the longest possible period of time. NMFS will publish notification in the Federal Register of any adjustment in the allowable daily catch limit made under this paragraph (a)(4)(iii). Such notification shall be filed at the Office of the Federal Register at least 3 calendar days prior to a change in daily catch limit becoming effective.

(iv) Anglers aboard vessels for which an Angling category permit has been issued under § 630.4(a)(2) may possess school, large school, and small medium Atlantic bluefin tuna in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit for the Angling category in effect on that day.

(v) At any time when fishing in the Gulf of Mexico, operators of vessels for which Angling category permits have been issued under § 630.4(a)(2) must not fish for, catch, retain or possess bluefin tuna except that large medium and giant bluefin tuna taken incidental to fishing for other species may be retained subject to the annual vessel limit and reporting requirement for non-commercial take of large medium or giant Atlantic bluefin tuna as specified in paragraph (a)(4)(ii) of this section.

(5) *Charter/Headboat category.* (i) Anglers aboard vessels for which a Charter/Headboat category permit has been issued under § 630.4(a)(2) are subject to the daily catch limits for school, large school, and small medium Atlantic bluefin tuna applicable to the Angling category. School, large school, and small medium bluefin tuna landed by anglers aboard Charter/Headboat category vessels are counted against the Angling category quota.

(ii) When the General category fishery is closed, except when fishing in the Gulf of Mexico, operators of vessels for which a Charter/Headboat category permit has been issued under § 630.4(a)(2) are subject to the annual vessel limit and reporting requirement for non-commercial take of large medium or giant Atlantic bluefin tuna as specified in paragraph (a)(4)(ii) of this section. Such large medium and giant bluefin tuna landed by anglers aboard Charter/Headboat category vessels are counted against the Angling category quota. Once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained under the Angling category quota, fishing by

persons aboard Charter/Headboat category vessels must cease and the vessel must proceed to port.

(iii) When commercial fishing by vessels for which General category permits have been issued under § 630.4(a)(2) is authorized, except when fishing in the Gulf of Mexico, operators of vessels for which a Charter/Headboat category permit has been issued under § 630.4(a)(2) are subject to the daily catch limit in effect for the General category for large medium or giant Atlantic bluefin tuna as specified in paragraph (a)(1) of this section. Once the applicable catch limit for large medium or giant bluefin tuna is possessed or retained on authorized commercial fishing days, persons aboard vessels for which Charter/Headboat category permits have been issued under § 630.4(a)(2) must cease fishing and the vessel must proceed to port. On authorized commercial fishing days, large medium or giant bluefin tuna landed by Charter/Headboat vessels operating outside the Gulf of Mexico may be sold and are counted against the quota for the General category.

(iv) Anglers aboard vessels for which Charter/Headboat category permits have been issued under § 630.4(a)(2) may possess school, large school, and small medium Atlantic bluefin tuna in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit for the Angling category in effect on that day. Vessels for which a Charter/Headboat category permit has been issued under § 630.4(a)(2) may possess large medium and giant Atlantic bluefin tuna in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit in effect on that day.

(v) At any time when fishing in the Gulf of Mexico, operators of vessels for which Charter/Headboat category permits have been issued under § 630.4(a)(2) may not fish for, catch, retain or possess bluefin tuna except that large medium and giant bluefin tuna taken incidental to fishing for other species may be retained subject to the annual vessel limit and reporting requirement for non-commercial take of large medium or giant Atlantic bluefin tuna as specified in paragraph (a)(5)(ii) of this section.

(b) *Atlantic sharks*—(1) *Applicability*. Catch limits apply to a person who fishes in the EEZ or possesses a shark in or from the EEZ aboard a vessel—

(i) When the vessel does not have on board a permit issued under § 630.4(a)(4); or

(ii) When the vessel is operating as a charter vessel or headboat. For the purposes of this paragraph (b), a charter vessel or headboat for which a permit has been issued under § 630.4(a)(4) is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

(2) *Catch limits*—(i) Large coastal species and pelagic species, combined—four per fishing vessel per trip.

(ii) Small coastal species—five per person per day.

(3) *Combination of catch limits.* A person to whom the catch limits apply may not combine a catch limit specified in paragraph (b)(2) of this section with a catch or possession limit applicable to state waters.

(4) *Responsibility for catch limits.* The operator of a vessel for which the catch limits apply is responsible for the vessel trip limit applicable to large coastal species and pelagic species combined, and for the cumulative catch limit applicable to small coastal species based on the number of persons aboard.

§ 630.30 Catch and release.

(a) *Atlantic bluefin tuna.* (1) Notwithstanding other provisions of this part, an angler may fish for Atlantic bluefin tuna under a tag and release program, provided the angler tags all Atlantic bluefin tuna so caught with tags issued or approved by NMFS under this section, and releases and returns such fish to the sea immediately after tagging and with a minimum of injury. If NMFS-issued or NMFS-approved tags are not on board a vessel, all anglers aboard that vessel are deemed to be ineligible to fish under the provisions of this section.

(2) NMFS-issued tags, reporting cards, and detailed instructions for their use may be obtained from the Cooperative Tagging Center (contact Director, Southeast Fisheries Science Center, NMFS). Tags obtained from sources other than NMFS may be used to tag Atlantic bluefin tuna, provided the angler has registered each year with the Cooperative Tagging Center and the NMFS program manager has approved the use of tags from that source. Anglers using an alternative source of tags wanting to tag bluefin tuna can contact the Director, Southeast Fisheries Science Center, NMFS.

(3) Anglers registering for the Atlantic bluefin tagging program are required to provide their name, address, phone number, and, if applicable, identify the alternate source of tags.

(b) *Atlantic yellowfin and bigeye tuna.* Persons or fishing vessels subject to the jurisdiction of the United States must release, in a manner to promote survival, any yellowfin tuna or bigeye tuna less than the minimum size specified in § 630.25(b)(1) taken incidental to authorized fishing in the regulatory area.

(c) *Atlantic billfishes.* (1) Billfish harvested by gear other than rod and reel shoreward of the outer boundary of the EEZ must be released in a manner that will ensure maximum probability of survival.

(2) Billfish caught by a pelagic longline shoreward of the outer boundary of the EEZ must be released by cutting the line near the hook without removing the fish from the water.

(3) A billfish under the minimum size limit specified in § 630.25(d), caught shoreward of the outer boundary of the EEZ, must be released by cutting the line near the hook without removing the fish from the water.

(d) *Atlantic Sharks.* A shark that is harvested in the EEZ or harvested by a vessel for which a permit has been issued under § 630.4(a)(4) that is not retained—

(1) Must be released in a manner that will ensure maximum probability of survival.

(2) If caught by hook and line, must be released by cutting the line near the hook without removing the fish from the water.

§ 630.31 Adjustment of management measures.

(a) *Annual specifications.* (1) NMFS will annually establish or, as necessary, adjust quota specifications for the commercial and recreational fisheries for regulated species, other than billfishes, by publishing one or more notifications in the Federal Register. Quota specifications may include, TAC, directed and incidental harvest levels, catch limits, and allocations to gear categories, time periods, and management areas. Specifications for each fishery must be consistent with the provisions of this section.

(2) Proposed specifications will be filed for publication with the Office of the Federal Register at least 60 days prior to commencement of the applicable fishing season, unless NMFS determines, for good cause, that a deviation from the 60-day schedule must occur. Public comment will be invited and appropriate analyses will be available to the public during the comment period.

(3) Final annual quota specifications will be published in the Federal Register and will be effective upon filing, unless a later time is specified.

(4) Final annual quota specifications will be effective until the effective date

of the subsequent fishing year's specifications as published in the Federal Register.

(b) *Atlantic bluefin tuna.* See §§ 630.20(a), 630.28(b), and 630.29(a).

(c) *Atlantic swordfish.* See § 630.28(c).

(d) *Atlantic sharks.* See § 630.28(d). In addition to the annual specifications described in paragraph (a) of this section, and in accordance with the framework regulatory adjustment procedures specified in the Fishery Management Plan for Atlantic Sharks, NMFS may establish or modify for species or species groups in the shark fishery the following: MSY, TAC, quotas, trip limits, catch limits, size limits, the fishing year or fishing season, the species of sharks managed and the specification of the species groups to which they belong, and permitting and reporting requirements.

§ 630.32 Specifically authorized activities.

Upon written request, NMFS may authorize, for the acquisition of information and data and to reduce waste, activities otherwise prohibited by the regulations in this part. Such activities may include, but are not limited to, scientific research for regulated species other than sharks, exempted fishing consistent with the provisions of 50 CFR 600.745, or programs under which regulated species retained in contravention to otherwise applicable regulations may be donated through approved foodbank networks. Such activities must be authorized in writing and will be subject to all conditions specified in the letter of authorization or exempted fishing permit.

Subpart C—Restrictions on Imports

§ 630.40 Species subject to documentation requirements.

Imports into the United States and exports or re-exports from the United States of all bluefin tuna or bluefin tuna products, regardless of ocean area of catch, are subject to the documentation requirements of this subpart.

(a) Documentation is required for bluefin tuna identified by the following item numbers from the Harmonized Tariff Schedule:

(1) Fresh or chilled bluefin tuna, excluding fillets and other fish meat, No. 0302.39.00.20.

(2) Frozen bluefin tuna, excluding fillets, No. 0303.49.00.20.

(b) In addition, bluefin tuna products in other forms (e.g., chunks, fillets, canned) listed under any other item numbers from the Harmonized Tariff Schedule are subject to the documentation requirements of this subpart, except that fish parts other than meat (e.g., heads, eyes, roe, guts, tails) may be allowed entry without said statistical documentation.

§ 630.41 Documentation requirements.

(a) *Bluefin tuna imports.* (1) Imports of all bluefin tuna products into the United States must be accompanied at the time of entry by an original completed approved BSD with the information and exporter's certification specified in § 630.42(a) (1) through (7). Such information must be validated as specified in § 630.42(a)(8) by a responsible government official of the country whose flag vessel caught the tuna (regardless of where the fish are first landed), unless NMFS has waived validation requirements for the country pursuant to § 630.43.

(2) Bluefin tuna imported into the United States from a country requiring a tag on all such tuna available for sale must be accompanied by the appropriate tag issued by that country, and said tag must remain on any tuna until it reaches its final import destination. If the final import destination is the United States, the tag must remain on the tuna until it is cut in to portions. If the tuna portions are subsequently packaged for domestic commercial use or export, the tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(3) Dealers selling bluefin tuna that was previously imported into the United States for domestic commercial use must provide on the original BSD that accompanied the import shipment the correct information and importer's certification specified in § 630.52(a)(9). The original of the completed BSD must be postmarked and mailed by said dealer to the Regional Director within 24 hours of the time the tuna was imported into the United States.

(b) *Bluefin tuna exports.* (1) Dealers exporting bluefin tuna that was harvested by U.S. vessels and first landed in the United States must complete an original numbered BSD issued to that dealer by the Regional Director. Such an individually numbered document is not transferable or reusable and may be used only once by the dealer to which it was issued to report on a specific export shipment. Dealers must provide on the BSD the correct information and exporter certification specified in § 630.42(a) (1) through (7). As required under § 630.43, the BSD must be validated as specified in § 630.42(a)(8) by an official of the U.S. Government or, if authorized by NMFS, an official of an accredited institution. A list of such officials may be obtained by contacting the Director, or the nearest NMFS Enforcement Office. A list of local NMFS enforcement offices can be obtained by contacting the Regional Director. Dealers requesting Government validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export shipment.

(2) Dealers re-exporting bluefin tuna that was previously imported into the United States must provide on the original BSD that accompanied the import shipment the correct information and intermediate importer's certification specified in § 630.42(a)(9).

(3) Dealers must submit the original of the completed BSD to accompany the shipment of bluefin tuna to its export or re-export destination. A copy of the BSD completed as specified under paragraph (b)(1) or (2) of this section must be postmarked and mailed by said dealer to the Regional Director within 24 hours of the time the tuna was exported or re-exported from the United States.

(c) *Recordkeeping.* Dealers must retain at their principal place of business a copy of each BSD required to be submitted to the Regional Director pursuant to this section for a period of 2 years from the date on which it was submitted to the Regional Director.

§ 630.42 Contents of documentation.

(a) A BSD, to be deemed complete, must:

(1) Have a document number assigned as prescribed by the country issuing the document.

(2) State the name of the country issuing the document, which is the country whose flag vessel harvested the bluefin tuna, regardless of where the tuna is first landed.

(3) State the name of the vessel that caught the fish and the vessel's registration number, if applicable.

(4) State the name of the owner of the trap that caught the fish, if applicable.

(5) State the point of export, which is the city, state or province, and country from which the bluefin tuna is first exported.

(6) State the following specified information about the shipment:

(i) The product type (fresh or frozen) and product form (round, gilled and gutted, dressed, fillet, or other).

(ii) The method of fishing used to harvest the fish (e.g., purse seine, trap, rod and reel).

(iii) The ocean area from which the fish was harvested (western Atlantic, eastern Atlantic, Mediterranean, or Pacific).

(iv) The weight of each fish (in kilograms for the same product form previously specified).

(v) The identifying tag number, if landed by vessels from countries with tagging programs.

(7) State the name and license number of, and be signed and dated in the exporter's certification block by, the exporter.

(8) If applicable, state the name and title of, and be signed and dated in the validation block by, a responsible government official of the country whose flag vessel caught the tuna (regardless of where the tuna are first landed) or by an official of an institution accredited by said government, with official government or accredited institution seal affixed, thus validating the information on the BSD.

(9) As applicable, state the name(s) and address(es), including the name of the city and state or province of import, and the name(s) of the intermediate country(ies) or the name of the country of final destination, and license number(s) of, and be signed and dated in the importer's certification block by, each intermediate and the final importer.

(b) An approved BSD may be obtained from the Regional Director to accompany exports of bluefin tuna from the United States. Bluefin tuna dealers in countries that do not provide an approved BSD to exporters may obtain an approved BSD from the Regional Director to accompany exports to the United States.

(c) Dealers from a country exporting bluefin tuna to the United States may use the approved BSD obtainable from the Regional Director or documents developed by the country of export, if that country submits a copy to the ICCAT Executive Secretariat and NMFS concurs with the ICCAT Secretariat's determination that the document meets the information requirements of the ICCAT recommendation. In such case, NMFS shall provide a list of countries for which BSDs are approved, together with examples of such documents to the appropriate official of the U.S. Customs Service. Effective upon the date indicated in such notice to the U.S. Customs Service, shipments of bluefin tuna or bluefin tuna products offered for importation from said country(ies) may be accompanied by either that country's approved BSD or by the BSD provided to the foreign country exporter by the Regional Director.

§ 630.43 Validation requirements.

(a) *Imports.* The approved BSD accompanying any import of bluefin tuna, regardless of whether the issuing country is a member of ICCAT, must be validated by a government official from the issuing country, unless NMFS waives this requirement for that country following a recommendation to do so by the ICCAT Secretariat. NMFS shall furnish a list of countries for which government validation requirements are waived to the appropriate official of the U.S. Customs Service. Such list shall indicate the circumstances of exemption for each issuing country and the non-government institutions, if any, accredited to validate BSDs for that country.

(b) *Exports.* The approved BSD accompanying any export of bluefin tuna from the United States must be validated by a U.S. Government official, except pursuant to a waiver, if any, specified on the form and accompanying instructions, or in a letter to permitted dealers from the Regional Director. Any waiver of government validation shall be consistent with ICCAT recommendations concerning validation of BSDs. If authorized, such waiver of government validation may include:

(1) Exemptions from government validation for fish with individual tags affixed pursuant to § 300.26 of this chapter or § 630.24; or

(2) Validation by non-government officials authorized to do so by the Regional Director under paragraph (c) of this section.

(c) *Authorization for non-government validation.* Institutions or associations seeking authorization to validate BSDs accompanying exports from the United States, must apply in writing to the Regional Director. A letter of application must indicate the procedures to be used for verification of information to be validated, must list the names, addresses, and telephone/fax numbers of individuals to perform validation, and must provide an example of the stamp or seal to be applied to the BSD. Upon finding the institution or association capable of verifying the information required on the BSD, the Regional Director will issue, within 30 days, a letter specifying the duration of effectiveness and conditions of authority to validate BSDs accompanying exports from the United States. The effectiveness of such authorization will be delayed as necessary for NMFS to notify the ICCAT Secretariat of non-government institutions and associations authorized to validate BSDs.

§ 630.44 Ports of entry.

NMFS shall monitor the importation of bluefin tuna into the United States. If it is determined that the diversity of handling practices at certain ports at which bluefin tuna is being imported into the United States allows for circumvention of the BSD requirement, NMFS may designate, after consultation with the U.S. Customs Service, those ports at which Pacific or Atlantic bluefin tuna may be imported into the United States. NMFS shall announce in the Federal Register the names of ports so designated and the effective dates of entry restrictions.

§ 630.45 Other import restrictions.

(a) *Determinations.* If it is determined that species of fish subject to regulation or under investigation by ICCAT, as the case may be, are ineligible for entry into the United States under 16 U.S.C. 971d(c)(4) or 971d(c)(5), the Assistant Administrator, with the approval of the Secretary and the concurrence of the Secretary of State, will publish a finding to that effect in the Federal Register. Effective upon the date of publication of such finding in the Federal Register, every shipment of fish in any form of the species found to be ineligible will be denied entry, unless it is established by satisfactory proof pursuant to paragraph (f) of this section that a particular shipment of such fish is not ineligible for entry, provided that entry will not be denied and no such proof will be required for any such shipment that, on the date of such publication, was in transit to the United States on board a vessel operating as a common carrier.

(b) *Proof of admissibility.* (1) For the purposes of paragraph (d) of this section and section 6(c) of the ATCA, a shipment of fish in any form of the species under regulation or under investigation by ICCAT offered for entry, directly or indirectly, from a country named in a finding published under paragraph (a) of this section is eligible for entry, if the shipment is accompanied by a certificate of eligibility, obtained from the Regional Director and completed and attached to the invoice, certifying as may be appropriate, that the fish in the shipment:

(i) Are not of the species specified in the published finding;

(ii) Are of the species named in the published finding, but were not taken in the regulatory area; or

(iii) Are of the species named in the published finding, but are products of an American fishery lawfully taken in conformity with applicable conservation laws and regulations and landed in the country named in the published finding solely for transshipment.

(2) If the fish are offered for entry under paragraphs (b)(1) (i) or (ii) of this section, the certificate must be executed

by a duly authorized official of the country named in the published finding and the certificate must be authenticated, on a form obtained from the Regional Director, with respect to the signature and official position of the person executing the same by a consular officer or consular agent of the United States. Such certificate of authentication shall be attached to the Certificate of Eligibility.

(3) If the fish are offered for entry under paragraph (b)(1)(iii) of this section, the certificate must be executed by a consular officer or consular agent of the United States and be accompanied by the declaration(s) required by 19 CFR 10.79. The ''Declaration of Master and Two Members of Crew on Entry of Products of American Fisheries'' required by 19 CFR 10.7 must contain a further statement as follows: ''We further declare that the said fish were caught by us in full compliance with part 630, title 50, Code of Federal Regulations, and such other conservation laws and regulations as were applicable at the time the fishing operation was in progress.''

(c) *Removal of import restrictions.* Upon a determination by the Assistant Administrator that the conditions no longer exist that warranted the imposition of import restrictions in the finding published pursuant to paragraph (a) of this section, the Assistant Administrator, with the approval of the Secretary and the concurrence of the Secretary of State, will publish a finding to such effect in the Federal Register. Effective upon the date of publication of such finding, the prior existing import restrictions against the country designated therein will terminate, provided that for one year from such date of publication, every shipment of fish in any form that was subject to the finding published pursuant to paragraph (a) of this section will continue to be denied entry, unless the shipment is accompanied by a certification executed by an authorized official of the country of export and authenticated by a consular officer or consular agent of the United States, certifying that no portion of the shipment is comprised of fish taken prior to or during the import restriction.

Subpart D—International Port Inspection

§ 630.50 Basis and purpose.

The regulations in this subpart have been adopted by the United States to implement the ICCAT port inspection scheme, to assist in the enforcement of ICCAT's recommendations. The text of the ICCAT port inspection scheme may be obtained from the Director.

§ 630.51 Authorized officer.

For the purposes of this subpart, an authorized officer is a person appointed by an ICCAT contracting party that has accepted the port inspection scheme to serve as an authorized inspector for ICCAT, and who possesses an identification card so stating. A list of such contracting parties may be obtained from the Director.

§ 630.52 Vessels subject to inspection.

(a) All U.S. fishing vessels, or vessels carrying regulated species, and their catch, gear, and records are subject to inspection under this subpart by an authorized officer when landing or transshipping regulated species or when making a port call at a port of any ICCAT contracting party that has accepted the port inspection scheme.

(b) All tuna vessels, or vessels carrying tuna, that are registered by any of the ICCAT contracting parties that have accepted the port inspection scheme, and their catch, gear and records are subject to inspection under this subpart when landing or transshipping tuna or when making a port call in the United States.

(c) A vessel entering a port because of force majeure shall be exempt from inspection by an authorized officer of any of the ICCAT contracting parties that have accepted the port inspection scheme.

§ 630.53 Reports.

(a) Inspections must be reported on a standardized ICCAT form and signed by the authorized officer. The master is entitled to add or have added to the report any observation that the master thinks suitable. If the master adds information to the report, he/she also must sign the report. The authorized officer will note in the vessel's log that the inspection has been made. A copy of the report will be given to the vessel master and a copy sent to the authorized officer's national authority.

(b) The master must allow the authorized officer to examine any portion of the catch and gear and provide any relevant documents as the authorized officer deems necessary to verify compliance with the regulations in this part.

Subpart E—Enforcement

§ 630.70 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter—

(a) It is unlawful for any person or vessel subject to the jurisdiction of the United States to do any of the following:

(1) Land, transship, ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control:

(i) Any fish that the person knows, or should have known, was taken, retained, possessed, or landed contrary to this part, without regard to the citizenship of the person or registry of the fishing vessel that harvested the fish.

(ii) Any regulated species that was harvested, retained, or possessed in a manner contrary to the regulations of another country.

(2) Import from any country any regulated species in any form subject to regulation under a recommendation of ICCAT, or any fish in any form not under regulation but under investigation by ICCAT, during the period such fish have been denied entry under this part.

(3) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person has committed any act prohibited by this part.

(4) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act or the ATCA.

(5) Falsify information required on an application for a permit submitted under § 630.4.

(6) Fish for, catch, possess, retain, or land Atlantic tunas, swordfish, or shark without a valid permit required under § 630.4(a) and carried on board the vessel, unless specifically exempted.

(7) Engage in fishing with a vessel issued a permit under § 630.4(a)(1), unless the vessel travels to and from the area where it will be fishing under its own power and the person operating that vessel brings any Atlantic bluefin tuna under control (secured to the catching vessel or on board) with no assistance from other vessels, except in circumstances where the safety of the vessel or its crew is jeopardized or due to other circumstances beyond the control of the operator.

(8) Fish for, catch, possess, or retain any Atlantic bluefin tuna less than the large medium size class from a vessel other than one issued a permit for the Angling, General, or Charter/Headboat categories under § 630.4(a)(2)(i), or a permit for the Purse Seine category under § 630.4(a)(2)(i) as authorized under § 630.26(a)(2).

(9) Fish for or catch any Atlantic tuna with gear that is not authorized under § 630.4(a)(1)(ii) or § 630.21(b), or to retain or land Atlantic tunas taken with unauthorized gear.

(10) Possess any Atlantic tuna aboard a vessel subject to the jurisdiction of the United States that has gear on board that is not authorized under § 630.4(a)(1)(ii) or § 630.21(b), unless authorized under § 630.31.

(11) Sell, offer for sale, or transfer any Atlantic bluefin tuna to any person or vessel other than to a person or vessel with a dealer permit issued under § 630.4(a)(2).

(12) Purchase, receive, or transfer Atlantic bluefin tuna from any person or vessel without a valid dealer permit issued under § 630.4(a)(2).

(13) Purchase, receive, or transfer any Atlantic bluefin tuna at sea from a person or vessel engaged in fishing for such tuna without a valid dealer permit for buy-boat operations issued under § 630.4(a)(2)(iii), unless between purse seine vessels for which permits have been issued under § 630.4(a)(2) as authorized under § 630.22(e).

(14) Sell, offer for sale, or transfer for commercial purposes any Atlantic tunas landed by owners or operators of a vessel for which a permit has not been issued under § 630.4(a)(2) or to any person or vessel without a valid Atlantic Tunas dealer permit issued under § 630.4(b).

(15) Purchase, receive, or transfer for commercial purposes any Atlantic tunas landed by owners or operators of vessels for which a permit has not been issued under § 630.4(a)(2), or purchase, receive, or transfer for commercial purposes any Atlantic tunas without a valid Atlantic Tunas dealer permit issued under § 630.4(b).

(16) Fish for, catch, possess, retain, or land Atlantic swordfish without a valid permit on board a vessel when such permit is required under § 630.4(a)(3).

(17) Purchase, sell, barter, or trade or attempt to purchase, sell, barter, or trade a swordfish taken by a vessel for which a permit has not been issued under § 630.4(a)(3) and as specified in § 630.23(b)(3).

(18) Sell, barter, or trade or attempt to sell, barter, or trade a swordfish to a dealer who does not have an annual swordfish dealer permit issued under § 630.4(b).

(19) As a dealer, purchase, barter, or trade or attempt to purchase, barter, or trade a swordfish without a dealer permit issued under § 630.4(b) and as specified in § 630.23(b)(3).

(20) Purchase, trade, or barter, or attempt to purchase, trade, or barter, a shark from the management unit without an Atlantic sharks dealer permit issued under § 630.4(b).

(21) Fail to display a permit, as required by § 630.4(g).

(22) Falsify or fail to provide information required to be maintained, submitted, or reported, as specified in this part.

(23) Refuse to provide information requested by NMFS personnel or anyone collecting information for NMFS, under an agreement or contract, relating to the scientific monitoring or management of tuna.

(24) Assault, impede, oppose, intimidate, or interfere with, by any means, NMFS personnel or anyone collecting information for NMFS, under an agreement or contract, relating to the scientific monitoring or management of tuna.

(25) Fail to make a shark available for inspection or provide data on catch and effort, as required by § 630.5(e).

(26) For a dealer or any person in charge of any fishing vessel subject to the jurisdiction of the United States to obstruct or to refuse to allow any authorized officer to enter the dealer's premises or to board the fishing vessel to search or inspect its catch, equipment, books, documents, records, or other articles, or to question the persons in the dealer's premises or aboard the fishing vessel under the provisions of this part.

(27) Refuse to allow an authorized officer to make inspections for the purpose of checking any records relating to the catching, harvesting, landing, purchase, or sale of any Atlantic tuna required by this part.

(28) Make any false statement, oral or written, to an authorized officer concerning the catching, harvesting, landing, purchase, sale, or transfer of any Atlantic tuna.

(29) Refuse to permit access of NMFS personnel to inspect any records relating to, or area of custody of, any Atlantic tuna.

(30) Falsify or fail to display and maintain vessel markings, as specified in § 630.6.

(31) Fail to embark an observer on a trip when selected, as specified in § 630.7.

(32) Falsify or fail to provide requested information regarding a vessel's trip, pursuant to any selection letter issued under § 630.7(a)(2) or as specified in § 630.7(b)(2).

(33) Assault, resist, oppose, impede, harass, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(34) Interfere with or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an at-sea observer conducting his or her duties aboard a vessel.

(35) Fail to provide an observer with the required food, accommodations, access, and assistance, as specified in § 630.7(c).

(36) Fish for, catch, possess, or land Atlantic bluefin tuna after fishing has been closed or before fishing has commenced under § 630.20(a), except under the provisions of § 630.30.

(37) Use or possess handline or harpoon flotation gear that is not marked in accordance with § 630.21(a), or that is marked with the Atlantic bluefin tuna permit number of another vessel.

(38) Fish for Atlantic swordfish or sharks with a drift gillnet that is 2.5 km or more in length or possess a swordfish on board a vessel possessing such drift gillnet, as specified in § 630.21(c).

(39) Possess or retain a billfish by a vessel with a pelagic longline or drift gillnet on board or harvested by gear other than rod and reel, as specified in § 630.21(d).

(40) Fish for or catch Atlantic bluefin tuna in a directed fishery with nets other than those specified in § 630.22.

(41) Begin fishing for or offloading from any purse seine vessel to which a permit has been issued under § 630.4(a)(2) any Atlantic tuna without first requesting an inspection of the vessel in accordance with § 630.22(b).

(42) Fish for, catch, possess, or land Atlantic bluefin tuna in excess of any allocation obtained under § 630.22(c).

(43) Fish for or catch Atlantic bluefin tuna in a directed fishery with purse seine nets without an allocation obtained under § 630.22(c).

(44) Fish for or catch Atlantic tunas in a directed fishery with purse seine nets if without any remaining bluefin tuna allocation obtained under § 630.22(c).

(45) For any vessel other than a vessel holding a purse seine permit issued under § 630.4(a)(2), to approach to within 100 yd (91.5 m) of the cork line of any purse seine net used by any vessel fishing for Atlantic tunas, or for any such purse seine vessel to approach to within 100 yd (91.5 m) of any vessel, other than a purse seine vessel, actively fishing for Atlantic tunas.

(46) Sell, offer for sale, purchase, receive for a commercial purpose, trade, or barter, or if a seafood dealer or processor for which a permit is required under § 630.4(b), retain or possess, any Atlantic bluefin tuna other than a large medium or giant, except with documentation as specified in § 630.23(c)(2).

(47) Transfer a swordfish at sea from or to a fishing vessel, as specified in § 630.23(a).

(48) Sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter

a swordfish harvested in the recreational fishery, as specified in § 630.23(c)(1).

(49) Purchase, barter, trade, sell, or offer for sale a billfish harvested from its management unit, as specified in § 630.23(c)(3).

(50) As a dealer or seafood processor, possess a billfish or related species without the documentation specified in § 630.23(c)(3)(ii), or with incomplete or falsified documentation.

(51) Sell, trade, or barter or attempt to sell, trade, or barter a shark from the management unit, except as an owner or operator of a vessel with a permit, as specified in § 630.23(c)(1).

(52) Purchase, trade, or barter, or attempt to purchase, trade or barter, shark meat or fins from the management unit from an owner or operator of a vessel that does not possess a vessel permit, as specified in § 630.23(c)(1); or sell, trade, or barter, or attempt to sell, trade, or barter, a shark from the management unit, except to a dealer issued a permit under § 630.4(b) as specified in § 630.23(c)(1).

(53) Sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter, shark fins that are disproportionate to the weight of carcasses landed, as specified in § 630.23(c)(4)(i).

(54) Reuse any tail tag previously affixed to an Atlantic bluefin tuna under § 630.24 or reuse any tail tag number previously written on a shipping package or container as prescribed by that section.

(55) Remove any tag affixed to an Atlantic bluefin tuna under § 630.24(c)(1) or § 630.42(a)(6)(v), before removal is allowed under § 630.24(d), or fail to write the tag number on the shipping package or container as prescribed by that section.

(56) Fail to inspect any vessel's permit or fail to affix immediately to any large medium or giant Atlantic bluefin tuna, between the fifth dorsal finlet and the keel, an individually numbered tail tag when the tuna has been received for a commercial purpose or purchased by that dealer from any person or vessel having caught such tuna.

(57) Fish for, catch, land, retain, or possess Atlantic yellowfin or bigeye tuna below the minimum size specified in § 630.25(b).

(58) Land a swordfish smaller than the minimum size specified in § 630.25(c).

(59) Possess a billfish less than the minimum size limit specified in § 630.25(d).

(60) Fail to release a billfish in the manner specified in § 630.30(c).

(61) Possess a billfish with its head, fins, or bill removed shoreward of the outer boundary of the EEZ or through landing, as specified in § 630.25(b)(4).

(62) Retain or land Atlantic bluefin tuna in excess of the incidental catch provisions under § 630.26(a).

(63) Fish for, catch, retain or possess, Atlantic bluefin tuna with longline gear, or while having longline gear on board, if the vessel is permitted in any category other than the Longline category under § 630.4(a)(2)(i).

(64) Fail to release immediately with a minimum of injury any Atlantic bluefin tuna, yellowfin tuna, or bigeye tuna that will not be retained.

(65) Fish for, catch, retain, possess or land Atlantic bluefin tuna with longline gear except as provided in § 630.26(a)(1).

(66) Possess or land a swordfish in other than whole or dressed form, as specified in § 630.23(b)(3).

(67) Land or possess on any trip Atlantic swordfish or sharks in excess the vessel trip limits specified in § 630.27 (a) and (b).

(68) Remove the fins from a shark and discard the remainder, as specified in § 630.27(b)(2).

(69) Possess shark fins, carcasses, or parts, on board or offload shark fins from a fishing vessel, except as specified in § 630.27(b), or possess shark carcasses or parts on board, or offload shark fins, carcasses, or parts, from a vessel, except as specified in § 630.27(b)(2)(ii).

(70) Fail to release a shark in the manner specified in § 630.30(d).

(71) Fish for, catch, possess or retain Atlantic bluefin tuna in excess of the quotas specified in § 630.28(a), except that fish may be caught and released under the provisions of § 630.30.

(72) Fish for or catch school, large school, or small medium Atlantic bluefin tuna with gear other than hook and line that is held by hand or rod and reel made for this purpose, or to possess such fish taken with unauthorized gear.

(73) Sell, trade, or barter or attempt to sell, trade, or barter a shark harvested in the EEZ, except as an owner or operator of a vessel with a permit, as specified in § 630.23(c)(1).

(74) During a closure of the drift gillnet or longline and harpoon fishery under § 630.28(e)(2)(i), aboard a vessel using or having on board the specified gear, fish for swordfish, or possess or land swordfish in excess of the bycatch limits, as specified in § 630.26(b)(1).

(75) Aboard a vessel using or having on board gear other than drift gillnet, longline, or harpoon, fish for swordfish, or possess or land swordfish in excess of the bycatch limit, as specified in § 630.26(b)(2).

(76) During a closure of the bycatch fishery under § 630.28(e)(2)(ii), fish for, possess, or land swordfish, as specified in § 630.28(e)(3).

(77) During a closure for a shark species group, as specified in § 630.28(e)(3)—

(i) Retain sharks of that species group in excess of the vessel trip limit, as specified in § 630.28(e)(3)(ii)(A).

(ii) Sell, purchase, trade, barter, or attempt to sell, purchase, trade, or barter a shark carcass or fin of the closed species group, as specified in § 630.28(e)(3)(ii)(B).

(78) Fish for, catch, or possess or retain Atlantic bluefin tuna in excess of the catch limits specified in § 630.29(a), or to possess or retain large medium or giant Atlantic bluefin tuna on designated restricted fishing days, except that fish may be caught and released under the provisions of § 630.30.

(79) Sell, offer for sale, or transfer to any person for a commercial purpose any large medium or giant Atlantic bluefin tuna caught with rod and reel gear under § 630.29(a) (4) or (5).

(80) Fish for, catch, possess, or retain Atlantic bluefin tuna from the Gulf of Mexico except as specified under § 630.26(a)(1)(i) for incidental take by longlines, or if taken incidental to recreational fishing for other species and retained in accordance with § 630.29(a)(4)(v) or § 630.29(a)(5)(v).

(81) Retain young school Atlantic bluefin tuna for any purpose.

(82) Fail to cease fishing and return to port once the catch limit for large medium and giant bluefin tuna is retained or possessed on board vessels for which a General, Angling, or Charter/Headboat category permit has been issued under § 630.4(a)(2).

(83) Exceed the catch limits for sharks, as specified in § 630.29(b)(1) through (3).

(84) Operate a vessel with a shark on board in excess of the catch limits, as specified in § 630.29(b)(4).

(85) Retain any Atlantic bluefin tuna caught under the tag and release program allowed under § 630.30.

(86) Fish for, catch, possess or retain Atlantic bluefin tuna with a gear type or in a manner other than specified in §§ 630.4(a), 630.28(a), 630.26(a), 630.29(a), and 630.22, or other than authorized under an experimental fishing exemption issued pursuant to the requirements of § 630.32.

(87) Violate any conditions specified by the Director in any exemption issued under § 630.32.

(88) Import or attempt to import any bluefin tuna into the United States without an accompanying original form of an approved BSD correctly completed with the appropriate certification and government validation.

(89) Import any bluefin tuna into the United States from a country that requires all such tuna to be tagged, without said tag accompanying the bluefin tuna.

(90) Remove a tag from any bluefin tuna imported into the United States accompanied by a tag, prior to its being cut into portions for a destination in the United States or for export.

(91) Fail to write legibly and indelibly the tag number and the issuing country on the outside of any package containing a part or parts of a bluefin tuna that was imported into the United States accompanied by said tag.

(92) Write false information on or modify any information previously written on any BSD required by this part or to validate such document, if not authorized to do so by the Regional Director.

(93) Reuse, or transfer to another dealer, any numbered BSD issued to a dealer under this part.

(94) Fail to provide in a timely manner any originals or copies of BSDs required to be submitted to the Regional Director pursuant to § 630.41.

(95) Fail to maintain copies of completed BSDs as required under § 630.41.

(96) Export or re-export from the United States any bluefin tuna without an accompanying original approved BSD correctly completed with the appropriate certification and, if applicable, validated by a designated official of the U.S. Government or an official of an institution authorized by the Regional Director pursuant to § 630.43(c) to validate such documents.

(97) Import any bluefin tuna in a manner inconsistent with any ports of entry designated by NMFS pursuant to § 630.44.

(98) Land any Atlantic tuna in forms other than round or eviscerated with the head and fins removed, except that one pectoral fin and the tail must remain attached.

(99) Fail to file reports or follow procedures required by this section, tamper with or remove an official seal, or alter a fishing vessel's log by any person or fishing vessel subject to the jurisdiction of the United States within the meaning of § 630.7.

(100) Fail to comply with the conditions or requirements specified in any letter of authorization issued in accordance with § 630.32.

(b) It is unlawful for any person subject to the jurisdiction of the United States to violate any other provision of this part, the ATCA, the Magnuson Act, or any other rules promulgated under the ATCA or the Magnuson Act.

§ 630.71 Facilitation of enforcement.

See § 600.730 of this chapter.

§ 630.72 Penalties.

(a) *General.* See § 600.735 of this chapter.

(b) *Civil procedures for Atlantic tunas.* In addition to the provisions of 15 CFR part 904—

(1) Because of the perishable nature of tuna when not processed otherwise than by chilling or freezing, authorized officers may cause to be sold, for not less than its reasonable market value, unchilled or unfrozen tunas that may be seized and forfeited under the ATCA and this part.

(2) The proceeds of any sale made under paragraph (b)(1) of this section must be remitted to the Regional Director. The Regional Director will deposit and retain the proceeds in the Suspense Account of NMFS, after deducting the reasonable cost of the sale, if any, pending judgement of the court or other disposition of the case.

[FR Doc. 96–28252 Filed 10–31–96; 10:19 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 61, No. 216
Wednesday, November 6, 1996

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

Newspapers Used for Publication of Legal Notice, Comment and Appeal of Decisions for Pacific Northwest Region, Oregon and Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: May 10, 1996 the Forest Service published a listing of the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Pacific Northwest Region to publish legal notice of all decisions subject to appeal under 36 CFR Parts 215 and 217 and to publish notice for public comment and notice of decisions subject to the provisions of 36 CFR Part 215. That notice is to inform interested members of the public which newspapers will be used to publish the legal notice for public comment or decision. This allows the public to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeal process. There have been no changes to that listing published in the May 10, 1996 Federal Register (61 FR 21438).

FOR FURTHER INFORMATION CONTACT: Jim L. Schuler, Regional Appeals Coordinator, Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208–3623, phone: (503) 326–2322.

Dated: October 30, 1996.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 96–28483 Filed 11–5–96; 8:45 am]

BILLING CODE 3410–11–M

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: November 13–14, 1996.

PLACE: ARRB, 600 E Street, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review and Accept Minutes of Closed Meeting
2. Review of Assassination Records
3. Other Business

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Assistant Press and Public Affairs Officer, 600 E Street, NW., Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

T. Jeremy Gunn,

General Counsel.

[FR Doc. 96–28663 Filed 11–4–96; 1:35 pm]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 79–96]

Foreign-Trade Zone 81; Portsmouth, New Hampshire; Application for Expansion (Pease International Tradeport)

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the New Hampshire State Port Authority, grantee of FTZ 81, requesting authority to expand FTZ 81 to include an additional site in Portsmouth, within the Portsmouth Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 23, 1996.

FTZ 81 was approved on January 20, 1983 (Board Order 207, 48 FR 4308, 1/31/83) and expanded on April 12, 1985 (Board Order 302, 50 FR 15948, 4/23/85). The general-purpose zone currently consists of four sites: *Site 1* (10 acres)—within the Port Authority's deep water port facility at 555 Market Street on Portsmouth Harbor; *Site 2* (175 acres)—Portsmouth Industrial Park on Lafayette Road, Portsmouth; *Site 3* (54 acres)—Crosby Industrial Park on Crosby Road, Dover; and, *Site 4* (1,469 acres)—industrial/commercial complex known as the Old Grenier Air Force Base, Manchester.

The applicant is now requesting authority to further expand the general-purpose zone to include an additional site (proposed *Site 5*—2,095 acres)—at the Pease International Tradeport, formerly the Pease Air Force Base, 601 Spaulding Turnpike, Portsmouth. The development agency for the project is the Pease Development Authority. Firms will be able to utilize zone services in an industrial park environment which would include activities such as warehousing/distribution, testing and processing of industrial machinery, research in high technology fields, and airport related functions. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 6, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 21, 1997).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 601 Spaulding Turnpike, Suite 29, Portsmouth, NH 03801

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: October 28, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–28447 Filed 11–5–96; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 850]

Expansion of Foreign-Trade Zone 21, Charleston, South Carolina

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u),

the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 21, Charleston, South Carolina, area, for authority to expand its general-purpose zone to include an additional site in Charleston, South Carolina, was filed by the Board on November 7, 1995 (FTZ Docket 72–95, 60 FR 57848, 11/22/95); and,

Whereas, notice inviting public comment was given in Federal Register and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 21 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 23rd day of October 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–28446 Filed 11–5–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Preliminary Results and Termination in Part of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and termination in part of antidumping duty administrative reviews.

SUMMARY: In response to requests by the petitioner and three exporters of the subject merchandise, the Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles, (HFHTs) from the People's Republic of China (PRC). These reviews cover three exporters of subject merchandise to the United States and the period February 1, 1995 through January 31, 1996. The reviews indicate the existence of dumping margins during the period of review.

We have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties on appropriate entries.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: November 6, 1996.

FOR FURTHER INFORMATION CONTACT: Daniel Singer or Maureen Flannery, 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) 482–4733.

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1991, the Department published in the Federal Register (56 FR 6622) the antidumping duty orders on HFHTs from the PRC. On February 9, 1996, the Department published in the Federal Register (61 FR 4956) a notice of opportunity to request administrative reviews of these antidumping duty orders. On February 29, 1996, in accordance with 19 CFR 353.22(a), three exporters of the subject merchandise to the United States, Fujian Machinery & Equipment Import & Export Corporation (FMEC), Shandong Machinery Import & Export Corporation (SMC), and Tianjin Machinery Import & Export Corporation (TMC), requested that the Department conduct administrative reviews of their exports of axes/adzes; bars/wedges; hammers/sledges; and picks/mattocks to the United States. Also on February 29, 1996, the petitioner, Woodings-Verona Tool Works, Inc., requested that the Department conduct administrative reviews of FMEC's and SMC's exports of axes/adzes; bars/wedges; hammers/sledges; and picks/mattocks.

We published the notice of initiation of these reviews on March 19, 1996 (61 FR 11184). The notice of initiation was amended on April 25, 1996 (61 FR 18378). The Department is conducting these administrative reviews in accordance with section 751 of the Act.

Termination in Part of Antidumping Duty Administrative Reviews

On April 19, 1996, TMC withdrew its request for reviews of the orders with respect to bars/wedges and picks/mattocks. This request was received within 90 days of publication of the notice of initiation of these reviews. We are hereby terminating the reviews of the orders on bars/wedges and picks/mattocks with respect to TMC, in accordance with section 353.22(a)(5) of our regulations.

Scope of Reviews

Imports covered by these reviews are shipments of HFHTs from the PRC comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes.

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently provided for under the following Harmonized Tariff System (HTS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. Although the HTS

subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

These reviews cover three exporters of HFHTs from the PRC, FMEC, SMC, and TMC. The review period is February 1, 1995 through January 31, 1996.

Verification

From August 24 through August 30, 1996, the Department conducted verification of the questionnaire responses submitted by TMC, as provided in section 782(i) of the Act. We used standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant accounting, sales, and other financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report.

Separate Rates

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) (*Sparklers*), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585 May 2,1994) (*Silicon Carbide*). Under this policy, exporters in non-market-economy (NME) countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. Evidence supporting, though not requiring, a finding of *de jure* absence of government control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control with respect to exports is based on four criteria: (1) Whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits and financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to negotiate and sign contracts. *See Silicon Carbide,* 59 FR at 22587.

In our final results of review for the 1992–1993 reviews of these orders, the Department determined that FMEC and SMC warranted company-specific dumping margins according to the criteria identified in *Sparklers* and *Silicon Carbide. See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews* (60 FR 49251, September 22, 1995). Because no new information has been submitted in these reviews to warrant reconsideration of this finding, we preliminarily determine that these two companies continue to be entitled to separate rates.

TMC responded to the Department's request for information regarding separate rates. We have found that the evidence on the record demonstrates an absence of government control, both in law and in fact, with respect to TMC's export activities according to the criteria identified in *Sparklers* and *Silicon Carbide* for this period of review, and have assigned a separate rate to TMC. For further discussion of this finding, *see Decision Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III,* dated October 23, 1996, ''Assignment of a separate rate for Tianjin Machinery Import & Export Corporation in the 1995/1996 administrative review of certain heavy forged hand tools from the People's Republic of China,'' which is on file in the Central Records Unit (room B–099 of the Main Commerce Building).

Export Price

The Department used export price (EP), in accordance with section 772(a) of the Act. We made deductions from EP, where appropriate, for brokerage and handling, foreign inland freight, ocean freight, and marine insurance. Ocean freight services were provided by both PRC-owned and non-PRC owned companies. Where the company providing ocean freight services was not a PRC-owned company, we used the actual rates charged; for ocean freight services provided by PRC-owned companies, we applied a weighted-average ocean freight rate derived from those sales for which we used actual ocean freight rates. Since marine insurance services were provided by PRC-owned companies, we based the deduction for marine insurance on surrogate values. We also used surrogate data to value foreign inland freight and brokerage and handling.

Normal Value

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors of production methodology if (1) the subject merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value, in accordance with 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Since none of the parties to these proceedings contested such treatment in these reviews, we calculated NV in accordance with section 773(c) of the Act and section 353.52 of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the factors of production utilized in producing HFHTs include, but are not limited to—(A) Hours of labor required, (B) quantities of raw materials employed, (C) amounts of energy and other utilities consumed, and (D) representative capital cost, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the factors of production to the extent possible, using the prices or cost of factors of production in a market economy that is—(A) At a level of economic development comparable to the PRC, and (B) a significant producer of comparable merchandise. We determined that India is comparable to the PRC in terms of per capita gross national product, the growth rate in per capita income, and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. For a further discussion of the Department's selection of India as the surrogate country, *see Memorandum from David Mueller, Director, Office of Policy, to Laurie Parkhill, Director, Office 3, AD/CVD Enforcement Group 1,* dated July 5, 1996, ''Certain Heavy Forged Hand Tools ('HFHTs') from the People's Republic of China (PRC): Nonmarket Economy Status and Surrogate Country Selection,'' and *File Memorandum from Case Analyst,* dated October 29, 1996, ''India as a significant producer of comparable merchandise in the 1995/1996 administrative review of heavy forged hand tools from the People's Republic of China,'' which are on file in Room B–099 of the Commerce Department.

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we valued PRC factors of

production based on data for the period of review (POR). Where appropriate, we applied inflators (deflators) to surrogate prices we obtained to reflect prices during the POR. These inflators (deflators) were derived from wholesale price indices (WPI) and consumer price indices (CPI) obtained from *International Financial Statistics*, published by the International Monetary Fund (IMF). We valued PRC factors of production as follows:

- To value all direct materials used in the production of HFHTs, including steel, resin glue, paint, varnish, wood for handles, iron wedges, anti-rust oil, scrap steel, and dilution, we used the rupee per metric ton, per kilogram, or per cubic meter value of imports into India in February 1995 and between April 1995 and July 1995 obtained from the February 1995 and July 1995 volumes of the *Monthly Statistics of the Foreign Trade of India, Volume II—Imports (Indian Import Statistics).* We adjusted direct material values to reflect inflation, using WPI of India as published in *International Financial Statistics* by the IMF.
- For direct labor, we used the labor rates reported in the International Labor Organization's *Yearbook of Labor Statistics,* released in January 1995 by the International Labor Organization. This source is based on actual wage rates. We adjusted the value of direct labor to reflect inflation, using the CPI for India, as published by the IMF.
- For factory overhead, we used information reported in the April 1995 *Reserve Bank of India Bulletin.* From this information, we were able to determine factory overhead as a percentage of total cost of manufacture. We included steel pellets used to remove oxidization from the tool heads in factory overhead as these materials are not physically incorporated into the subject merchandise.
- For selling, general and administrative (SG&A) expenses, we used information obtained from the April 1995 *Reserve Bank of India Bulletin.* We calculated an SG&A rate by dividing SG&A expenses by the cost of manufacture.
- To calculate a profit rate, we used information obtained from the April 1995 *Reserve Bank of India Bulletin.* We calculated a profit rate by dividing the before-tax profit by the sum of those components pertaining to the cost of manufacturing plus SG&A.
- To value the packing materials, including cartons, pallets, anti-rust paper, anti-damp paper, plastic and iron straps, plastic bags, iron buttons and knots, synthetic fiber, and iron wire, we used the rupee per metric ton, per kilogram, or per cubic meter value of imports into India in February 1995 and between April 1995 and July 1995, obtained from the February 1995 and July 1995 volumes of the *Indian Import Statistics.* We adjusted these values to include freight costs incurred between the suppliers and the HFHT factories. We also adjusted packing material values to reflect inflation, using the WPI published by the IMF.
- To value coal, we used the price of steam coal reported for 1990 in the International Energy Agency publication *Energy Prices and Taxes,* 2nd Quarter 1995. We adjusted the value of coal to reflect inflation, using the WPI published by the IMF.
- To value electricity, we used the price of electricity on March 1, 1995 reported in Current Energy Scene in India, July 1995, published by the Centre for Monitoring the Indian Economy.
- To value truck freight, we used the rates reported in an August 1993 embassy cable from the U.S. Embassy in India submitted for the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China* (58 FR 48833, September 20, 1993). We adjusted truck freight rates to reflect inflation, using the WPI published by the IMF.
- To value rail freight, we used the price reported in a December 1989 cable from the U.S. Embassy in India submitted for the *Final Results of Antidumping Duty Administrative Review: Shop Towels of Cotton from the People's Republic of China* (56 FR 4040, February 1, 1991). We adjusted rail freight rates to reflect inflation, using the WPI published by the IMF.

Preliminary Results of the Reviews

As a result of our reviews, we preliminarily determine that the following margins exist for the period February 1, 1995 through January 31, 1996:

Manufacturer/exporter	Time period	Margin (percent)
Fujian Machinery & Equipment Import & Export Corporation:		
Axes/Adzes	2/1/95–1/31/96	33.38
Bars/Wedges	2/1/95–1/31/96	57.08
Hammers/Sledges	2/1/95–1/31/96	33.84
Picks/Mattocks	2/1/95–1/31/96	124.04
Shandong Machinery Import & Export Corporation:		
Bars/Wedges	2/1/95–1/31/96	57.90
Hammers/Sledges	2/1/95–1/31/96	12.99
Picks/Mattocks	2/1/95–1/31/96	84.24
Tianjin Machinery Import & Export Corporation:		
Axes/Adzes	2/1/95–1/31/96	10.72
Hammers/Sledges	2/1/95–1/31/96	33.84

Parties to the proceedings may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will publish a notice of final results of these administrative reviews, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and NV may vary from the percentages stated above. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of these administrative reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies named above which have separate rates (FMEC, SMC, and TMC) will be the rates for those firms established in the final results of these administrative reviews for the classes or kinds listed above; (2) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates established in the final results of the previous administrative reviews; and (3) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. The PRC-wide rates are: 21.92 percent for axes/adzes; 66.32 percent for bars/wedges; 44.41 percent for hammers/sledges; and 108.20 percent for picks/mattocks. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 353.26 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: October 30, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–28555 Filed 11–05–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–810]

Mechanical Transfer Presses From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review; mechanical transfer presses from Japan.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on mechanical transfer presses (MTPs) from Japan in response to a request by petitioners, Verson Division of Allied Products Corp., the United Autoworkers of America, and the United Steelworkers of America (AFL–CIO/CLC); and by respondent Aida Engineering, Ltd. (Aida). This review covers shipments of this merchandise to the United States during the period February 1, 1995 through January 31, 1996.

We have preliminarily determined that sales have not been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs to liquidate entries without regard to antidumping duties.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: November 6, 1996.

FOR FURTHER INFORMATION CONTACT: Elisabeth Urfer or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

The Department published in the Federal Register an antidumping duty order on MTPs from Japan on February 16, 1990 (55 FR 5642). On February 9, 1996, we published in the Federal Register (61 FR 4956) a notice of opportunity to request an administrative review of the antidumping duty order on MTPs from Japan covering the period February 1, 1995 through January 31, 1996.

In accordance with 19 CFR 353.22(a)(1)(1995), petitioners, Verson Division of Allied Products Corp., the United Autoworkers of America, and the United Steelworkers of America (AFL–CIO/CLC), requested that we conduct a review of Ishikawajima-Harima Heavy Industries Co., Ltd. (IHI) and Hitachi Zosen Corporation (Hitachi Zosen). Aida requested that we conduct an administrative review of its subject merchandise. We published a notice of initiation of this antidumping duty administrative review on March 19, 1996 (61 FR 11184). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review include MTPs currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8462.99.0035 and 8466.94.5040. The HTS numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive of the scope of the order.

The term ''mechanical transfer presses'' refers to automatic metal-forming machine tools with multiple die stations in which the work piece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled. This review does not cover certain parts and accessories, which were determined to be outside the scope of the order. (*See* ''Final Scope Ruling on Spare and Replacement Parts,'' U.S. Department of Commerce, March 20, 1992; and ''Final Scope Ruling on the Antidumping Duty Order on Mechanical Transfer Presses (MTPs) from Japan: Request by Komatsu, Ltd.,'' U.S. Department of Commerce, October 1, 1996.)

This review covers three manufacturers/exporters of MTPs, and

the period February 1, 1995 through January 31, 1996.

Non-Shippers

IHI and Hitachi Zosen stated that they did not have shipments during the period of review, and we confirmed these statements with the United States Customs Service. Therefore, we are treating IHI and Hitachi Zosen as non-shippers in this proceeding. IHI and Hitachi Zosen will retain their rates from the last administrative review.

Export Price

For sales made by Aida we calculated an export price, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchasers in the United States prior to importation into the United States, and constructed export price was not otherwise indicated.

We calculated export price based on the delivered price to unaffiliated purchasers. We made deductions for foreign inland freight and insurance.

Normal Value

We preliminarily determine that the use of constructed value (CV) is warranted to calculate NV for Aida, in accordance with section 773(a)(4) of the Act. While the home market is viable, the particular market situation in this case, which requires that the subject merchandise be built to each customer's specifications, does not permit proper price-to price comparisons in either the home market or third countries.

Aida asserts that its home, third country, and U.S. market products are distinguished by the many differences in specifications between the various presses, and that no merchandise sold in the home market or to a third country is identical to the merchandise sold to the United States. Aida argues that it is not possible to determine cost differences because (1) there is no baseline specification for comparison purposes; (2) the design of a press is dictated throughout by the combination of specifications applicable to the press, and it is not possible to isolate the cost effect of any single specification; and (3) differences in cost between two presses result not only from differences in specifications, but also from differences in material costs, processing costs, fiscal periods, and production efficiency from press to press. We note that in past proceedings involving large, custom-built capital equipment, including prior reviews of this order, we have normally resorted to CV. (*See, e.g., Large Power Transformers from France; Final Result of Antidumping Administrative Review,* 61 FR 40403, August 2, 1996; *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan,* 61 FR 38139, July 23, 1996; and *Mechanical Transfer Presses From Japan: Final Results of Antidumping Duty Administrative Review,* 61 FR 52910, October 9, 1996.)

For Aida, CV consists of the cost of materials and fabrication, SG&A, profit, and packing. We calculated SG&A and profit based on home market sales of MTPs in accordance with section 773(e)(2)(A) of the Act. We used packing costs for merchandise exported to the United States. We made a circumstance-of-sale adjustment by deducting from CV home market direct selling expenses (*i.e.,* warranties, commissions, and credit), and adding to CV U.S. direct selling expenses (*i.e.,* warranties, commissions, and credit).

Preliminary Results of the Review

We preliminarily determine that the following dumping margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Aida Engineering, Ltd	2/1/95–1/31/96	0.00
Ishikawajima-Harima Heavy Industries, Ltd	2/1/95–1/31/96	[1] 0.00
Hitachi Zosen Corporation	2/1/95–1/31/96	[1] 0.00

[1] No shipments subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of MTPs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for reviewed companies will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the rate established in the investigation of sales at less than fair value, which is 14.51 percent.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 30, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–28556 Filed 11–05–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–501]

Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration.

ACTION: Notice of preliminary results of the antidumping duty administrative review of natural bristle paint brushes and brush heads from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on natural bristle paint brushes and brush heads (paint brushes) from the People's Republic of China (PRC) in response to requests by domestic interested parties, the Paint Applicator Division of the American Brush Manufacturers Association (PADABMA) and EZ Paintr Corporation (EZ Paintr). This review covers shipments of this merchandise to the United States during the period February 1, 1995, through January 31, 1996.

We have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs to assess antidumping duties on appropriate entries.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: November 6, 1996.

FOR FURTHER INFORMATION CONTACT: Elisabeth Urfer or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

The Department published in the Federal Register an antidumping duty order on paint brushes from the PRC on February 14, 1986 (51 FR 5580). On February 9, 1996, the Department published in the Federal Register (61 FR 4956) a notice of opportunity to request an administrative review of the antidumping duty order on paint brushes from the PRC covering the period February 1, 1995, through January 31, 1996.

In accordance with 19 CFR 353.22(a), PADABMA requested that the Department conduct an administrative review of Yixing Sanai Brush Making Co., Ltd. (Yixing); Eastar B.F. (Thailand) Company Ltd. (Eastar); Hebei Animal By-Products I/E Corp. (HACO); China National Metals & Minerals I/E Corp, Zhenjiang Trading Corp. (Zhenjiang Trading); China National Native Product and Animal By-Product Import and Export Corporation (China National); and Inner Mongolia Autonomous Region Light Industrial Products I/E Corp. EZ Paintr requested that we conduct an administrative review of HACO. We published a notice of initiation of this antidumping duty administrative review on March 19, 1996 (61 FR 11185). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of natural bristle paint brushes and brush heads from the PRC. The merchandise under review is currently classifiable under item 9603.40.40.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

This review covers the period February 1, 1995, through January 31, 1996.

Separate Rates

To establish whether a company is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this policy, exporters in non-market-economy (NME) countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. Evidence supporting, though not requiring, a finding of *de jure* absence of government control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control with respect to exports is based on four criteria: (1) Whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits and financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to negotiate and sign contracts. *See Silicon Carbide,* 59 FR at 22587.

In our final results of review of this order for the 1994–1995 review period, the Department determined that HACO warranted a company-specific dumping margin according to the criteria identified in *Sparklers* and *Silicon Carbide. See Final Results of Antidumping Duty Administrative Review: Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China,* 61 FR 52917 (October 9, 1996). Because there is no new evidence on the record to warrant reconsideration of that issue, we preliminarily determine that HACO continues to be entitled to a separate rate.

Because Yixing, Eastar, Zhenjiang Trading, China National Native Produce and Animal By-Products Import-Export Corporation, and Inner Mongolia Autonomous Region Light Industrial Products I/E Corp. did not respond to our separate rates questionnaire, we preliminarily determine that they do not qualify for separate rates.

Non-Shipper

HACO stated that it did not have shipments during the period of review, and we confirmed this with the United States Customs Service. Therefore, we

are treating HACO as a non-shipper for this review. HACO will retain its rate from the last administrative review.

Facts Available

We preliminarily determine that the use of the facts available is appropriate for Yixing, Eastar, Zhenjiang Trading, China National, and Inner Mongolia Autonomous Region Light Industrial Products I/E Corp., because these firms did not respond to the Department's antidumping questionnaire. Because necessary information is not available on the record with regard to sales by these firms, as a result of their withholding the requested information, we must make our preliminary determination based on facts otherwise available pursuant to section 776(a) of the Act. In addition, the Department finds that, in not responding to the questionnaire, these five firms failed to cooperate by not acting to the best of their ability to comply with requests for information from the Department.

Where the Department must base the entire dumping margin for a respondent in an administrative review on the facts available because that respondent failed to cooperate, section 776(b) of the Act authorizes the Department to use an inference adverse to the interests of that respondent in choosing the facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Because information from prior proceedings constitutes secondary information, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review* (60 FR 49567), where the Department disregarded the highest margin in that case as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). The Department has preliminarily determined that no such circumstances exist with respect to the selected margin, the highest rate from any prior segment of the proceeding, 351.92 percent.

Preliminary Results of the Review

We preliminarily determine that the following dumping margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Hebei Animal By-Products I/E Corp	2/1/95–1/31/96	[1] 351.92
PRC-wide rate	2/1/95–1/31/96	351.92

[1] No shipments subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of paint brushes from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) For the companies named above which were not found to have separate rates, as well as for all other PRC exporters, the cash deposit rate will be the PRC-wide rate established in the final results of this review; (2) for any company found to merit a separate rate for the final results of this review, the rate will be the company-specific rate for that company established in the final results of this review; (3) for previously reviewed non-PRC exporters, the cash deposit rate will be the rate established in the most recent segment of the proceeding; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 30, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–28557 Filed 11–5–96; 8:45 am]

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[A–588–054, A–588–604]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews.

SUMMARY: In response to requests by the petitioner and two respondents, the Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty order on tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from Japan (A–588–604), and of the antidumping finding on TRBs, four inches or less in outside diameter, and components thereof, from Japan (A–588–054). The review of the A–588–054 finding covers one manufacturer/exporter and seven resellers/exporters of the subject merchandise to the United States during the period October 1, 1994, through September 30, 1995. The review of the A–588–604 order covers two manufacturers/exporters, seven resellers/exporters, four firms identified by the petitioner in this case as forging producers, and the period October 1, 1994, through September 30, 1995.

We preliminarily determine that sales of TRBs have been made below the normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between United States price and the NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issues and (2) a brief summary of the argument.

EFFECTIVE DATE: November 6, 1996.

FOR FURTHER INFORMATION CONTACT: Valerie Turoscy, Robert James, or John Kugelman, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–0145, 5222, or 0649, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On August 18, 1976, the Treasury Department published in the Federal Register (41 FR 34974) the antidumping finding on TRBs from Japan, and on October 6, 1987, the Department published the antidumping duty order on TRBs from Japan (52 FR 37352). On October 5, 1995, the Department published the notice of ''Opportunity to Request Administrative Review'' for both TRB cases covering the period October 1, 1994 through September 30, 1995 (60 FR 52149).

In accordance with 19 CFR 353.22(a)(1) (1995), the petitioner, the Timken Company (Timken), requested that we conduct a review of Honda Motor Company, Ltd. (Honda), Fuji Heavy Industries (Fuji), Kawasaki Heavy Industries (Kawasaki), Yamaha Motor Co., Ltd. (Yamaha), Nigata Convertor Co., Ltd. (Nigata), Suzuki Motor Co., Ltd. (Suzuki), and Toyosha Co., Ltd. (Toyosha), in both the A–588–054 and A–588–604 cases. In addition, Timken requested that we conduct a review of Nittetsu Bolten (Nittetsu), Showa Seiko Co., Ltd. (Showa), Ichiyanagi Tekko (Ichiyanagi), and Sumikin Seiatsu (Sumikin) in the A–588–604 TRB case. Koyo Seiko Co., Ltd. (Koyo) requested that we conduct a review of its sales in both TRB cases, and NTN Corporation (NTN) requested that we conduct a review of its sales in the A–588–604 case. On November 11, 1995, we published in the Federal Register a notice of initiation of these antidumping duty administrative reviews covering the period October 1, 1994 through September 30, 1995 (60 FR 57573).

Because it was not practicable to complete these reviews within the normal time frame, on May 6, 1996, we published in the Federal Register our notice of the extension of the time limits for both the A–588–054 and A–588–604 1994–95 reviews (61 FR 8253). As a result of this extension and the 28-day total federal government shutdown, we extended the deadline for these preliminary results to October 30, 1996, and for the final results to February 28, 1997.

Scope of the Reviews

Imports covered by the A–588–054 finding are sales or entries of TRBs, four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. This merchandise is classified under Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.30.

Imports covered by the A–588–604 order include TRBs and parts thereof, finished and unfinished, which are flange, take-up cartridge, and hanger units incorporating TRBs, and roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the A–588–054 finding are not included within the scope of this order, except those manufactured by NTN. This merchandise is currently classifiable under HTS item numbers 8482.99.30, 8483.20.40, 8482.20.20, 8483.20.80, 8482.91.00, 8483.30.80, 8483.90.20, 8483.90.30, and 8483.90.60. In addition, on February 2, 1995, we published in the Federal Register our final scope decision concerning Koyo's rough forgings (60 FR 6519), in which we determined that Koyo's rough forgings were within the scope of the A–588–604 order. The HTS item numbers listed above for both the A–588–054 finding and the A–588–604 order are provided for convenience and Customs purposes. The written description remain dispositive.

The period for each 1994–95 review is October 1, 1994, through September 30, 1995. The review of the A–588–054 case covers TRB sales by one manufacturer/exporter (Koyo), and seven reseller/exporters (Honda, Fuji, Kawasaki, Yamaha, Nigata, Suzuki, and Toyosha). The review of the A–588–054 case covers TRBs sales by two manufacturers/exporters (Koyo and NTN), seven reseller/exporters (Honda, Fuji, Kawasaki, Yamaha, Nigata, Suzuki, and Toyosha), and four firms identified as forging producers (Nittetsu, Showa, Ichiyanagi, and Sumikin). As described in the ''Termination in Part '' section of

this notice, we are terminating our review of five of the 13 firms in the A–588–604 case and two firms in the A–588–054 case.

Termination in Part

In accordance with section 353.22(a)(5) (1995) of the Department's regulations, on January 16, 1996, Koyo withdrew its request for review in the A–588–604 case and on January 25, 1996, NTN also withdrew its request for review in the A–588–604 case. In addition, on March 7, 1996, Timken withdrew its request for review for Ichiyanagi in the A–588–604 case and for Toyosha in both the A–588–604 and A–588–054 cases. Because we received timely requests for the withdrawal of review from Koyo, NTN, and Timken, and because no other party to the proceedings requested a review for Koyo, NTN, and Ichiyanagi in the A–588–604 case and Toyosha in both the A–588–604 and A–588–054 cases, in accordance with 19 CFR 353.22(a)(5), we are terminating the A–588–604 review with respect to Koyo, NTN, Ichiyanagi, and both the A–588–054 and A–588–604 reviews for Toyosha.

In addition, we are terminating the A–588–604 review for one of the four firms Timken identified as a potential forging producer. Sumikin reported that not only did it not export subject merchandise to the United States during the POR, but it did not manufacture any TRBs or forgings for TRBs during the POR. Because this firm did not produce or export the subject merchandise, we are terminating the A–588–604 review for Sumikin. Our termination of the A–588–604 review for this firm does not constitute a revocation of the firm from the order. If this firm ever becomes a manufacturer/exporter of TRBs or forgings used in the production of TRBs, its sales to the United States will be subject to the order.

We are also terminating the A–588–054 review for Honda based on the fact that we recently revoked Honda from the A–588–054 finding in our 1992–93 TRB final results notice. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and TRBs, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding,* issued October 29, 1996.

No Shipments

Two resellers, Fuji and Honda, made no shipments of A–588–604 merchandise during the review period. In addition, neither Fuji nor Honda was a party to the A–588–604 less-than-fair-value (LTFV) investigation or any prior administrative reviews of the A–588–604 case. Because Fuji's and Honda's shipments have never been reviewed individually, we have not assigned a rate to either firm for the A–588–604 case. If Fuji or Honda begins shipping merchandise subject to the A–588–604 order at some future date, the entries will be subject to cash deposit rates attributable to the manufacturer(s) of the subject merchandise.

Two of the four firms Timken identified as forging producers also made no shipments of A–588–604 merchandise. Showa reported that, while it made forgings used in the production of TRBs, it did not export TRBs or forgings to the United States during the review period. Nittetsu also reported that it did not export TRBs or forgings used in the production of TRBs during the review period. Because both producers (1) had no shipments of merchandise subject to the A–588–604 order during the review period, (2) were not party to the LTFV investigation, and (3) were never party to any prior administrative reviews of the A–588–604 case, we have not assigned individual rates to Showa and Nittetsu for the A–588–604 case. If Showa or Nittetsu were to begin shipping merchandise subject to the A–588–604 order at some future date, the entries will be subject to the A–588–604 LTFV ''all others'' cash deposit rate of 36.52 percent.

Use of Facts Available

We preliminarily determine, in accordance with section 776(a) of the Act, that the use of facts available is appropriate for Yamaha, Kawasaki, Nigata, and Suzuki in both the A–588–054 and A–588–604 cases because these firms either did not respond in any way to our antidumping questionnaire, or submitted letters stating that they decline to respond to our antidumping questionnaire. We preliminarily find that these firms have withheld ''information that has been requested by the administering authority.'' Furthermore, we preliminarily determine that, pursuant to section 776(b) of the Act, it is appropriate to make an inference adverse to the interests of these companies because they failed to cooperate by not responding to our questionnaire. As a result, for the weighted-average dumping margins for these firms, we have used the highest rate from any prior segment of the respective A–588–054 and A–588–604 proceedings as adverse facts available, which is secondary information within the meaning of section 776(c) of the Act.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used as facts available from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that ''corroborate means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review,* 60 FR 49567 (February 22, 1996), where we disregarded the highest margin in the case as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin).

For these preliminary results, we have examined the history of the A–588–054 and A–588–604 cases and have determined that 47.63 percent, the rate we calculated for Koyo in the 1987–88 A–588–054 review, is the highest calculated rate for any firm in any prior segment of the A–588–054 finding, and that 40.37 percent, the rate we calculated for NSK Corporation in the 1988–89 A–588–604 review, is the highest calculated rate for any firm in any prior segment of the A–588–604 order. In addition, we have examined the circumstances surrounding the calculation of these two rates and have determined that there is no reliable evidence on the administrative records

for the reviews in which these rates were calculated which indicates that these margins are irrelevant or inappropriate. As a result, for these preliminary results we have used 47.63 percent in the A–588–054 case and 40.37 percent in the A–588–604 case as total adverse facts available for Yamaha, Kawasaki, Nigata, and Suzuki.

Constructed Export Price

Because all of Koyo's sales and certain of Fuji's sales of subject merchandise were first sold to unrelated purchasers after import into the United States, in calculating U.S. price we used constructed export price (CEP) for all of Koyo's sales and certain of Fuji's sales, as defined in section 772(b) of the Act.

We based CEP on the packed, delivered price to unrelated purchasers in the United States. We made deductions, where appropriate, for discounts, billing adjustments, freight allowances, and rebates. Pursuant to section 772(c)(2)(A) of the Act, we reduced this price for movement expenses (Japanese pre-sale inland freight, Japanese post-sale inland freight, international air and/or ocean freight, marine insurance, Japanese brokerage and handling, U.S. inland freight from the port to the warehouse, U.S. inland freight from the warehouse to the customer, U.S. duty, and U.S. brokerage and handling). We also reduced the price, where applicable, by an amount for the following expenses incurred in the selling of the merchandise in the United States pursuant to section 772(d)(1): commissions to unrelated parties, U.S. credit, payments to third parties, U.S. repacking expenses, and indirect selling expenses (which included, where applicable, inventory carrying costs, indirect warehouse expenses, indirect advertising expenses, indirect technical services expenses, pre-sale warehousing expenses, other U.S.-incurred indirect selling expenses, and indirect selling expenses incurred by the Japanese parent related to commercial activity in the United States). Finally, pursuant to section 772(d)(3), we further reduced USP by an amount for profit to arrive at CEP.

Because certain of Fuji's sales of subject merchandise were made to unrelated purchasers in the United States prior to importation into the United States, in accordance with section 772(a) of the Act, we used export price (EP) for these sales. We calculated EP as the packed, delivered price to unrelated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we reduced this price by Japanese pre-sale inland freight, Japanese post-sale inland freight, international air and/or ocean freight, marine insurance, Japanese brokerage and handling, U.S. brokerage and handling, U.S. duty, and U.S. inland freight.

Where appropriate, in accordance with section 772(d)(2) of the Act, the Department also deducts from USP the cost of any further manufacture or assembly in the United States, except where the special rule provided in section 772(e) of the Act is applied. With respect to Koyo, there was no further manufacturing of A–588–054 TRBs by Koyo in the United States during the review period and, as a result, an adjustment for value added in the United States was unnecessary. With respect to Fuji, its two U.S. affiliates, Subaru of America (SOA) and Subaru-Isuzu Automotive (SIA), both import TRBs into the United States which were first purchased by Fuji from Japanese producers in Japan. While SOA imported TRBs during the review period for the sole purpose of reselling the bearings as replacement parts for Subaru automobiles in the United States, SIA imported TRBs for the sole purpose of using them in its production of Subaru automobiles in the United States, the final product sold by SIA to the first unaffiliated customer in the United States. As a result, we requested information from Fuji and SIA concerning this further manufacture and have determined that the special rule for merchandise with value added after importation under section 772(e) of the Act applies to Fuji.

Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine CEP.

To determine whether the value added in the United States by SIA is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the differences between the averages of the prices charged to the first unaffiliated U.S. customer for the final merchandise sold (the automobiles) and the averages of the prices paid for the subject merchandise (the imported TRBs) by the affiliated person. Based on this analysis and information on the record, we determined that the value of the TRBs further processed by SIA in the United States was a minuscule amount of the price charged by SIA to the first unaffiliated customer for the automobiles it sold in the United States. Therefore, we determined that the value added is likely to exceed substantially the value of the subject merchandise. Accordingly, it was unnecessary for us to make an adjustment for value added in the United States. In addition, we have determined that those sales of TRBs made by SOA as replacement parts in the United States, which constitute sales of merchandise identical and/or most similar to those TRBs imported by SIA for use in the manufacture of Subaru automobiles, were made in sufficient quantities to provide a reasonable basis for comparison. Therefore, for purposes of determining dumping margins for the TRBs entered by SIA and used in the production of automobiles, we have used the weighted-average dumping margins we calculated on sales of identical or other subject merchandise sold by SOA as replacement TRBs to unaffiliated persons in the United States.

No other adjustments to USP were claimed or allowed.

Normal Value

A. Viability

Based on (1) Our comparison of the aggregate quantity of home market and U.S. sales, (2) the absence of any information that a particular market situation in the exporting country does not permit a proper comparison, and (3) the fact that each company's quantity of sales in the home market was greater than five percent of its sales to the U.S. market, we determined that the quantity of the foreign like product for Fuji and Koyo sold in the exporting country was sufficient to permit a proper comparison with the sales of subject merchandise to the United States pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like products were first sold for consumption in the exporting country.

B. Arm's-Length Sales

We excluded from our analysis those sales Koyo and Fuji made to affiliated customers in the home market which were not at arm's length. We determined the arm's-length nature of Koyo's and

Fuji's home market sales to affiliated parties by means of our 99.5 percent arm's-length test in which we calculated, for each model, the percentage difference between the weighted-average prices to the affiliated customer and all unaffiliated customers and then calculated, for each affiliated customer, the overall weighted-average percentage difference in prices for all models purchased by the customer. If the overall weighted-average price ratio for the affiliated customer was equal to or greater than 99.5 percent, we determined that all sales to this affiliated customer were at arm's length. Conversely, if the ratio for a customer was less than 99.5 percent, we determined that all sales to the affiliated customer were not at arm's length because, on average, the customer paid less than unaffiliated customers for the same merchandise. Therefore, we excluded all sales to the customer from our analysis. Where we were unable to calculate an affiliated customer ratio because identical merchandise was not sold to both affiliated and unaffiliated customers, we were unable to determine if these sales were at arm's length and, therefore, excluded them from our analysis (*see Stainless Steel Wire Rods from France: Preliminary Results of Antidumping Duty Administrative Review* (61 FR 8915 (March 6, 1996)).

C. Cost of Production Analysis

Because we disregarded sales below the cost of production (COP) in our last completed A–588–054 review for Koyo, we have reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act (*see Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan,* 58 FR 64720 (December 9, 1993)). Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Koyo.

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses (SG&A) and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment. We relied on the home market sales and COP information provided by Koyo in its questionnaire responses.

After calculating COP, we tested whether home market sales of TRBs were made at prices below COP within an extended period of time in substantial quantities and whether such prices permit the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home market prices less any applicable movement charges, discounts, or rebates.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's home market sales for a model are at prices less than the COP, we do not disregard any below-cost sales of that model because we determine that the below-cost sales were not made within an extended period of time in ''substantial quantities.'' Where 20 percent or more of a respondent's home market sales of a given model are at prices less than COP, we disregard the below-cost sales because they are (1) Made within an extended period of time in substantial quantities in accordance with sections 773(b)(2) (B) and (C) of the Act, and (2) based on comparisons of prices to weighted-average COPs for the POR, were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

The results of our cost test for Koyo indicated that for certain home market models less than 20 percent of the sales of the model were at prices below COP. We therefore retained all sales of the model in our analysis and used them as the basis for determining NV. Our cost test for Koyo also indicated that within an extended period of time (one year, in accordance with section 773(b)(2)(B) of the Act), for certain home market models more than 20 percent of the home market sales were sold at prices below COP. In accordance with section 773(b)(1) of the Act, we therefore excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

D. Product Comparisons

For both Fuji and Koyo we compared U.S. sales with contemporaneous sales of the foreign like product in the home market. We considered bearings identical on the basis of nomenclature and determined most similar TRBs using our sum-of-the-deviations model-match methodology which compares TRBs according to the following five physical criteria: inside diameter, outside diameter, width, load rating, and Y2 factor. For Koyo we used a 20 percent difference-in-merchandise (difmer) cost deviation cap as the maximum difference in cost allowable for similar merchandise, which we calculated as the absolute value of the difference between the U.S. and home market variable costs of manufacturing divided by the U.S. total cost of manufacturing. Because Fuji, a reseller, was unable to provide the variable and total costs of manufacturing for the TRBs it purchased from Japanese producers, it instead provided its acquisition cost for each TRB model it purchased from Japanese producers. As a result, consistent with our practice in past TRB reviews for Fuji, we used these acquisition costs as the basis for our 20-percent difmer cap (*see, e.g., Tapered Roller Bearings and Part Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Preliminary Results of Administrative Reviews and Termination in Part,* 61 FR 25200 (May 20, 1996)).

E. Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the SAA at 829–831, to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the U.S. sales. When we are unable to find sales of the foreign like product in the comparison market at the same level of trade as the U.S. sale, we may compare U.S. sales to sales at a different level of trade in the comparison market.

In accordance with section 773(a)(7)(A) of the Act, if sales at allegedly different levels of trade are compared, we will adjust the NV to account for the difference in levels of trade if two conditions are met. First, there must be differences between the actual selling activities performed by the exporter at the level of trade of the U.S. sale and the level of trade of the comparison market sales used to determine NV. Second, the differences between levels of trade must affect price comparability as evidenced by a pattern of consistent price differences between sales at the different levels of trade in the market in which NV is determined.

Section 773(a)(7)(B) of the Act establishes that a CEP ''offset'' may be made when two conditions exist: (1) NV is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the CEP, and (2) the data available do not provide an appropriate basis for a level-of-trade adjustment.

In order to determine that there is a difference in level of trade, the Department must find that two sales

have been made at different phases of marketing, or the equivalent. Different phases of marketing necessarily involve differences in selling functions, but differences in selling functions (even substantial ones) are not alone sufficient to establish a difference in the level of trade. Similarly, seller and customer descriptions (such as ''distributor'' and ''wholesaler'') are useful in identifying different levels of trade, but are insufficient to establish that there is a difference in the level of trade.

In implementing these principles in these reviews, we asked Fuji and Koyo to provide detailed information concerning their selling activities/functions for each claimed phase of marketing and to establish any claimed levels of trade based on these activities. In order to determine whether separate levels of trade actually existed within or between the U.S. and home markets, we reviewed the selling activities associated with each phase of marketing claimed by Fuji and Koyo. Pursuant to section 773(a)(1)(B)(i) of the Act and the SAA at 827, in identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments. For CEP sales we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. Whenever sales were made by or through an affiliate company or agent, we considered all selling activities of both affiliated parties, except for those selling activities related to expenses deducted under section 772(d) of the Act in CEP situations.

In reviewing the selling functions reported by Fuji and Koyo, we considered all types of selling activities performed. In analyzing whether separate levels of trade existed in these reviews, we found that no single selling function in the bearings industry was sufficient to indicate a separate level of trade (*see Notice of Proposed Rulemaking and Request for Public Comments,* 61 FR 7307, 7348 (February 27, 1996)). In addition, in determining whether separate levels of trade existed in or between the U.S. and home markets, we analyzed the selling activities associated with the phases of marketing the respondents reported and expected the functions and activities of the seller to be similar if a respondent claimed levels of trade to be the same. Conversely, if the party claimed that levels of trade were different for different groups of sales, we expected the functions and activities of the seller to be dissimilar.

Koyo reported two different phases of marketing, original equipment manufacturers (OEM) and after-market (AM), in both its U.S. and home markets. Based on our analysis of the information of the record concerning the selling activities associated with each of Koyo's claimed home market phases of marketing, we found significant differences in the advertising, inventory maintenance, and sales and marketing support activities performed and, to a lesser degree, differences in other selling activities as well. As a result, we determined that Koyo's claimed phases of marketing constituted two separate home market levels of trade.

While Fuji sold to both related and unrelated dealers in Japan, it reported that there were no significant differences in the selling activities it performed when selling to each group and claimed only one phase of marketing in the home market. Based on our examination of the information supplied by Fuji, we agree that only one phase of marketing exists and have therefore determined that there is only one level of trade for Fuji in the home market.

With respect to Koyo's U.S. sales, which were all CEP sales, Koyo reported two different phases of marketing based on the starting price of the CEP sales made by its affiliated reseller to unaffiliated U.S. customers. Likewise, Fuji reported three phases of marketing for its U.S. CEP sales based on the starting price for the CEP sales made by its affiliated reseller to unaffiliated customers in the United States. While we recognize that Koyo's and Fuji's affiliated resellers performed different selling activities in association with the reported phases of marketing such that different U.S. levels of trade exist based on the price to the unaffiliated U.S. customer (*i.e.,* the CEP starting price), in CEP situations we do not determine the U.S. level of trade on the basis of the CEP starting price. Rather, as described above, in CEP situations we determine the U.S. level of trade on the basis of the CEP starting price minus the expenses and profit deducted pursuant to section 772(d) of the Act (*i.e.,* the level of trade of the CEP sale). Therefore, in order to determine the U.S. level of trade for Koyo's and Fuji's CEP sales, we examined those selling expenses Koyo and Fuji performed in association with the phase of marketing from the foreign parent to the affiliated reseller and, regardless of the level of trade of the CEP starting price, found no significant differences in the functions either Koyo or Fuji performed when selling to its respective U.S. affiliate. As a result, we determined that there was only one U.S. level of trade for both Koyo's and Fuji's CEP sales.

In regard to its EP sales, Fuji identified two categories of U.S. EP sales: those to certain independent distributors in the United States where the merchandise is directly shipped from Japan and the paperwork is processed by, and certain selling functions are performed by, Fuji's related affiliate SOA, and those direct sales to an independent dealer/distributor in Hawaii. In determining whether separate levels of trade existed between these two phases, we examined the selling functions as reflected in the starting price to the unaffiliated U.S. customer and found that Fuji provided very limited selling functions to the Hawaiian dealer/distributor as compared to the independent distributors. As a result, we have determined that Fuji's EP sales constitute two separate U.S. EP levels of trade.

When we compared the level of trade of Koyo's CEP sales to Koyo's home market levels of trade we found that the record indicated that the level of trade of the CEP sales involved little or no technical services, engineering services, advertising, after-sales services, or strategic planning and, as a result, was different from either of the home market levels and also at a less advanced stage of distribution than sales at either of the home market levels. Likewise, when we compared the level of trade of Fuji's CEP sales to its home market level of trade, the record again indicated that the CEP sales involved little or no technical services, engineering services, after-sale services, or advertising and were at a less advanced stage of distribution than the sales at the home market level of trade. Upon comparing Fuji's sales at its two U.S. EP levels of trade to its sales at its home market level we found that the selling functions at its home market level of trade included strategic/economic planning services, training and personnel services, and technical services which were not characteristic of the U.S. EP levels of trade. Consequently, because we were unable to find the same levels of trade in the home market as in the United States for both respondents, we were unable to match Fuji's and Koyo's U.S. CEP sales and Fuji's EP sales at the same level of trade in the home market.

When we are unable to find sales of the foreign like product in the home market at the same level of trade as that of the CEP or EP sales, we examine whether a level-of-trade adjustment is appropriate. Because the same level of trade as Koyo's and Fuji's CEP level and Fuji's EP levels did not exist in their home markets, we lacked the data necessary to determine whether there

was a consistent pattern of price differences between levels of trade based on Koyo's and Fuji's home market sales of merchandise under review, in accordance with section 773(a)(7)(A) of the Act. However, the SAA states that ''if information on the same product and company is not available, the adjustment may also be based on sales of other products by the same company. In the absence of any sales, including those in recent time periods, to different levels of trade by the exporter or producer under investigation, Commerce may further consider the selling experience of other producers in the home market for the same product or other products'' (see SAA at 830). Accordingly, we examined these alternative methods for calculating the level-of-trade-adjustment for Koyo and Fuji, but we lacked the information that would allow us to apply them. Because the data available do not provide an appropriate basis for making a level-of-trade adjustment for Koyo or Fuji, but Koyo's and Fuji's respective home market levels of trade are at a more advanced stage of distribution than the level of trade of their respective CEP sales, a CEP offset adjustment, in accordance with section 773(a)(7)(B) of the Act, is appropriate. Both respondents claimed a CEP offset adjustment and we applied the offset to NV in our CEP comparisons for Koyo and Fuji.

F. Home Market Price

While we found below-cost home market sales for Koyo, Koyo's remaining home market sales at or above cost were sufficient to serve as the basis for NV.

We based home market prices on the packed, ex-factory or delivered prices to affiliated purchasers (where an arm's-length relationship was demonstrated) and unaffiliated purchasers in the home market. We made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6) (A) and (B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(II) of the Act, and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56. For comparison to EP we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments to NV by deducting home market direct selling expenses and, where applicable, adding U.S. direct selling expenses, except those deducted from the starting price in calculating CEP pursuant to section 772(d) of the Act. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in EP and CEP calculations.

While both Koyo and Fuji claimed certain post-sale price adjustments to their reported home market prices, we have not allowed these adjustments, as explained in detail in the proprietary versions of our 1994–95 preliminary results analysis memoranda for Koyo and Fuji.

No other adjustments were claimed or allowed.

Fair Value Comparisons

To determine whether sales of TRBs by the respondents in the United States were made at less than fair value, we compared the CEP and EP to NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these monthly averages to individual U.S. sales transactions. For Koyo, which had two phases of marketing in the home market, we first calculated monthly weighted-average NVs for the phase of marketing in the home market which was most comparable to that in which the U.S. transaction was made (as defined by the price to the first unrelated U.S. customer). Then, to the extent possible, we compared CEP to this NV. Alternatively, where there were no home market sales in the phase of marketing most comparable to the U.S. sale, we weight-averaged home market sales for the other home market phase of distribution and compared CEP to this NV (*see, e.g., Stainless Steel Wire Rods from France: Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 8015 (March 6, 1996) and *Fresh Kiwifruit from New Zealand: Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 15922 (April 10, 1996)). In regard to Fuji, which sold in only one home market channel of distribution, we compared CEP and EP to the monthly weighted-average NVs we calculated for this single channel of distribution.

Preliminary Results of Review

As a result of our reviews, we preliminarily determine the following weighted-average dumping margins exist for the period October 1, 1994, through September 30, 1995:

Manufacturer/exporter/reseller	Margin (percent)
For the A–588–054 Case:	
Koyo Seiko	31.25
Fuji	11.35
Kawasaki	47.63
Yamaha	47.63
Nigata	47.63
Suzuki	47.63
For the A–588–604 Case:	
Fuji	(1)
Honda	(1)
Kawasaki	40.37
Yamaha	40.37
Nigata	40.37
Suzuki	40.37
Nittetsu	(1)
Showa Seiko	(1)

[1] No shipments or sales subject to this review. The firm has no rate from any prior segment of this proceeding.

Parties to these proceedings may request disclosure within five days of the date of publication of this notice and may request a hearing within ten days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 37 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issues and (2) a brief summary of the argument. The Department will issue final results of these administrative reviews, including the results of our analysis of the issues in any such written comments or at a hearing, within 180 days of issuance of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of TRBs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act:

(1) The cash deposit rates for the reviewed companies will be those rates

established in the final results of these reviews;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in these reviews, a prior review, or the LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate for the A–588–054 case will be 18.07 percent, and 36.52 percent for the A–588–604 case (*see Preliminary Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan and Tapered Roller Bearings, Four Inches or less in Outside Diameter, and Components Thereof, From Japan*, 58 FR 51058, 51061 (September 30, 1993)).

All U.S. sales by each respondent will be subject to one deposit rate according to the proceeding.

The cash deposit rate has been determined on the basis of the selling price to the first unrelated customer in the United States. For appraisement purposes, where information is available, the Department will use the entered value of the subject merchandise to determine the appraisement rate.

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. These administrative reviews and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 30, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–28559 Filed 11–5–96; 8:45 am]

BILLING CODE 3510–DS–P

University of California, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated 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). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 96–091. Applicant: University of California, San Diego, La Jolla, CA 92093–0931. Instrument: Digital Sleep Recorder, Model VitaPort 2. Manufacturer: TEMEC Instruments BV, The Netherlands. Intended Use: See notice at 61 FR 49113, September 18, 1996. Reasons: The foreign instrument provides: (1) electronic measurements of electrophysical (e.g. EEG and EOG) and cardiorespiratory (e.g. ECG and RIP–THOR) parameters and (2) minimized weight, power consumption and physical dimensions appropriate for space flight. Advice received from: National Institutes of Health, September 10, 1996.

Docket Number: 96–092. Applicant: University of Pittsburgh Medical Center, Pittsburgh, PA 15213–2582. Instrument: Microvolume Stopped-Flow Spectrometer, Model SX.18MV. Manufacturer: Applied Photophysics, Ltd., United Kingdom. Intended Use: See notice at 61 FR 49113, September 18, 1996. Reasons: The foreign instrument provides: (1) a vertical flow circuit for loading solutions of different osmolalities into its injection ports and (2) low temperature capability (-5°C) for analysis of temperature sensitive yeast strains. Advice received from: National Institutes of Health, September 10, 1996.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–28553 Filed 11–05–96; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

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 whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are 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. Applications 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: 96–110. Applicant: University of Connecticut Health Center, 263 Farmington Avenue, Farmington, CT 06030–3505. Instrument: High Intensity Xenon Flashlamp, Model XF–10. Manufacturer: Hi-Tech Ltd., United Kingdom. Intended Use: The instrument will be used to characterize IP_3 induced calcium release in megakaryocytes during experiments to characterize the mechanisms of action of prostacyclin. Application accepted by Commissioner of Customs: October 10, 1996.

Docket Number: 96–111. Applicant: University of North Carolina at Chapel Hill, CB# 3270, 118 Davie Hall, Chapel Hill, NC 27599–3270. Instrument: 4 each Operant Boxes with 9–Hole Nosepoke Wall. Manufacturer: Paul Fray Ltd., United Kingdom. Intended Use: The instrument will be used for studies of the neural basis of attention in rodents using previously developed research paradigms. Application accepted by Commissioner of Customs: October 17, 1996.

Docket Number: 96–112. Applicant: Harvard University, Harvard Medical School, CBBSM, Mudd Building, Room 106, 250 Longwood Avenue, Boston, MA 02115. Instrument: Stopped-Flow Spectrometer, Model SX.18MV. Manufacturer: Applied Photophysics Ltd., United Kingdom. Intended Use: The instrument will be used to examine the mechanisms of a number of zinc

metalloenzymes. The goal of the research is to establish the number and type of intermediates and their rates of interconversion as an aid in establishing their mechanics of action. Application accepted by Commissioner of Customs: October 21, 1996.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 96–28554 Filed 11–05–96; 8:45 am]

BILLING CODE 3510–DS–P

[C–489–502]

Certain Welded Carbon Steel Pipe and Tube Products from Turkey; Extension of Time Limit for Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the preliminary and final results of this administrative review of the countervailing duty order on certain welded carbon steel pipe and tube products from Turkey. The review covers the period January 1, 1995 through December 31, 1995.

EFFECTIVE DATE: November 6, 1996.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Norma Curtis, Office of CVD/AD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W. Washington, D.C., 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the original time limit, the Department is extending the time limit for the completion of the preliminary results to no later than March 31, 1997, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA). (*See* Memorandum to the file from Jeffrey P. Bialos to Robert S. LaRussa on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce).

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the URAA (19 U.S.C. 1675(a)(3)(A)).

Dated: October 24, 1996.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 96–28445 Filed 11–5–96; 8:45 am]

BILLING CODE 3510–DS–M

Technology Administration

Under Secretary for Technology, National Medal of Technology Nomination Evaluation Committee; Notice of Determination for Closure of Meeting

The National Medal of Technology Nomination Evaluation Committee has scheduled a meeting for December 16, 1996.

The Committee was established to assist the Department in executing its responsibilities under 15 U.S.C. 3711. Under this provision, the Secretary is responsible for recommending to the President prospective recipients of the National medal of Technology. The Committee's recommendations are made after reviewing all nominations received in response to a public solicitation. The Committee is chartered to have twelve members.

TIME AND PLACE: The meeting will begin at 10:00 a.m. and end at 3:00 p.m. on December 16, 1996. The meeting will be held in Room 4830 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Katie Wolf, Director, National Medal of Technology, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Herbert C. Hoover Building, Room 4823, Washington, D.C. 20230, (202–482–3953).

If a member of the public would like to submit written comments concerning the committee's affairs at any time before and after the meeting, written comments should be addressed to the Director of the National Metal of Technology as indicated above.

SUPPLEMENTARY INFORMATION: The meeting will be closed to discuss the relative merits of persons and companies nominated for the Medal. Public disclosure of this information would be likely to significantly frustrate implementation of the National Medal of Technology program because premature publicity about candidates under consideration for the Medal, who may or may not ultimately receive the award, would be likely to discourage nominations for the Medal.

Accordingly, I find and determine, pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended, that the December 16, 1996, meeting may be closed to the public in accordance with Section 552b(c)(9)(B) of Title 5, United States Code because revealing information about Medal candidates would be likely to significantly frustrate implementation of a proposed agency action.

Due to the closure of the meeting, copies of the minutes of the meeting will not be available, however a copy of the Notice of Determination will be available for public inspection and copying in the office of Katie Wolf, Director, National Medal of Technology, 14th and Constitution Avenue, N.W., Herbert Hoover Building, Room 4823, Washington, D.C. 20230, (Ph: 202–482–3953).

Dated: October 30, 1996.

Kelly Carnes,

Deputy Assistant Secretary, Office of Technology Policy.

[FR Doc. 96–28500 Filed 11–5–96; 8:45 am]

BILLING CODE 3510–18–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hungary

November 1, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The import restraint limits for textile products, produced or manufactured in Hungary and exported during the period January 1, 1997 through December 31,

1997 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1997 period.

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 60 FR 65299, published on December 19, 1995). Information regarding the 1997 CORRELATION will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the ATC, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
351/651	242,248 dozen.
410	921,269 square meters.
433	17,471 dozen.
434	14,824 dozen.
435	25,623 dozen.
443	164,119 numbers.
444	52,943 numbers.
448	22,645 dozen.
604	1,198,996 kilograms.

Imports charged to these category limits for the period January 1, 1996 through December 31, 1996 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above is subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing and any administrative arrangements notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–28572 Filed 11–5–96; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of an Import Restraint Limit for Certain Wool Textile Products Produced or Manufactured in Ukraine

November 1, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated May 6, 1995, between the Governments of the United States and Ukraine establishes a limit for textile products in Category 435 for the period January 1, 1997 through December 31, 1997.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1997 limit. The limit for Category 435 has been reduced for carryforward applied in 1996.

This limit is subject to revision pursuant to the Uruguay Round Agreements Act and the Uruguay Round Agreement of Textiles and Clothing (ATC). On the date that Ukraine becomes a member of the World Trade Organization the restraint limit will be modified in accordance with the ATC.

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 60 FR 65299, published on December 19, 1995). Information regarding the 1997 CORRELATION will be published in the Federal Register at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 1, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Memorandum of Understanding dated May 6, 1995, between the Governments of the United States and Ukraine; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1997, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 435, produced or manufactured in Ukraine and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997, in excess of 81,558 dozen.

Imports charged to this category limit for the period January 1, 1996 through December 31, 1996 shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

Should Ukraine become a member of the World Trade Organization, the limit set forth above will be subject to adjustment in the future pursuant to the provisions of the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing and any administrative arrangement notified to the Textiles Monitoring Body.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–28571 Filed 11–5–96; 8:45 am]

BILLING CODE 3510–DR–F

Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Changes to the 1996 Correlation

November 1, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Changes to the 1996 correlation.

EFFECTIVE DATE: November 1, 1996.

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: The Correlation: Textile and Apparel Categories based on the Harmonized Tariff Schedule of the United States (1996) present the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the textile program. The Correlation should be amended to include the following changes for Categories 229, 611, 618 and 629 which are effective on November 1, 1996:

Changes to the 1996 Correlation

Delete 5408.24.9030 and 5408.24.9060 (618).

Add 5408.24.9010—Woven fabrics containing 85 percent or more by weight of artificial filament or strip or the like, printed, weighing not more than 170 g/m2, discharge printed (618).

Add 5408.24.9020—Woven fabrics containing 85 percent or more by weight of artificial filament or strip or the like, printed, weighing not more than 170 g/m2, other than discharge printed (618).

Add 5408.24.9040—Woven fabrics containing 85 percent or more by weight of artificial filament or strip or the like, printed, weighing more than 170 g/m2, discharge printed (618).

Add 5408.24.9050—Woven fabrics containing 85 percent or more by weight of artificial filament or strip or the like, printed, weighing more than 170 g/m2, other than discharge printed (618).

Delete 5408.34.9090 (629).

Add 5408.34.9085—Other woven fabrics of artificial filament yarn, printed, not elsewhere specified or included, discharge printed (629).

Add 5408.34.9095—Other woven fabrics of artificial filament yarn, printed, not elsewhere specified or included, other than discharge printed (629).

Delete 5516.14.0010, 5516.14.0020 and 5516.14.0090 (611).

Add 5516.14.0005—Woven fabrics containing 85 percent or more by weight of artificial staple fibers, printed, plain weave, discharge printed (611).

Add 5516.14.0015—Woven fabrics containing 85 percent or more by weight of artificial staple fibers, printed, plain weave, other than discharge printed (611).

Add 5516.14.0025—Woven fabrics containing 85 percent or more by weight of artificial staple fibers, printed, satin weave or twill weave, discharge printed (611).

Add 5516.14.0030—Woven fabrics containing 85 percent or more by weight of artificial staple fibers, printed, satin weave or twill weave, other than discharge printed (611).

Add 5516.14.0085—Woven fabrics containing 85 percent or more by weight of artificial staple fibers, printed, other than plain weave, satin weave or twill weave, discharge printed (611).

Add 5516.14.0095—Woven fabrics containing 85 percent or more by weight of artificial staple fibers, printed, other than plain weave, satin weave or twill weave, other than discharge printed (611).

Delete 5516.24.0090 (629).

Add 5516.24.0085—Woven fabrics of artificial staple fibers containing less than 85 percent by weight of artificial staple fibers, mixed mainly or solely with man-made fiber filaments, discharge printed (629).

Add 5516.24.0095—Woven fabrics of artificial staple fibers containing less than 85 percent by weight of artificial staple fibers, mixed mainly or solely with man-made fiber filaments, other than discharge printed (629).

Delete 5810.91.0010, 5810.91.0020, 5810.92.9050 and 5810.92.0080 (229).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–28570 Filed 11–5–96; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

BPA/Lower Valley Transmission Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: This notice announces BPA's proposal to construct a new single-circuit 115-kilovolt transmission line from BPA's Swan Valley Substation, west of Swan Valley, Bonneville County, Idaho, east approximately 36 miles to BPA's Teton Substation, northwest of Jackson, Teton County, Wyoming. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 C.F.R. Part 1022), BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment and a floodplain statement of findings will be included in the environmental impact statement being prepared for the proposed project in accordance with the National Environmental Policy Act.

DATES: Comments are due to the address below no later than November 21, 1996.

ADDRESSES: Submit comments to the Public Involvement and Information Manager, Bonneville Power Administration—CKP, P.O. Box 12999, Portland, Oregon, 97212. Comments may also be sent to the BPA Internet address: comment@bpa.gov.

FOR FURTHER INFORMATION CONTACT: Nancy Wittpenn—ECN, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number (503) 230–3297, fax number (503) 230–5699.

SUPPLEMENTARY INFORMATION: As proposed, the project would locate a new 115-kV transmission lines on 75 feet of additional right-of-way. The proposed transmission line corridor and associated access roads cross drainages identified as 100 year floodplains. The Federal Emergency Management Agency (FEMA) identifies areas that have a one percent chance of being flooded in a given year as a 100-year floodplain. The 100-year floodplains crossed by the transmission line corridor and or access roads are:

Pine Creek

T2N R43E Sec 14 (corridor)

T2N R44E Sec 6 (corridor & access road)
T3N R44E Sec 31 (access road)
T3N R44E Sec 29 (access road)
T3N R44E Sec 28 (access road)
Trail Creek T3N R46W Sec 30 (corridor)
T41N R117W no sec (corridor)
Fish Creek
T41N R117W Sec 2 (corridor)
Lake Creek
T41N R117W Sec 2 (corridor & access road)

Adverse impacts due to the construction and maintenance activities of the proposed project could include potential flood damage to transmission facilities, increased flooding due to displacement of water from the normal floodplain, and increased potential for erosion of floodplain soil and sediment near the construction sites. These impacts may occur if transmission towers or access roads encroach on designated floodplains. No impacts would occur where floodplains are avoided, spanned, or accepted mitigation measures effectively eliminate or avoid impacts.

The proposed project lies within two major drainages that support riparian wetlands. Pine Creek drains into the Snake River and Trail Creek drains into the Teton River. These wetlands are mapped on the USFWS National Wetlands Inventory. The wetlands associated with Fish Creek and Lake Creek developed from surface and irrigation run-off. Wet meadows are also present throughout the project area.

Although wetlands occur throughout the proposed project area, no direct impacts would occur from construction of the new line. Wetlands would be spanned by the conductors and transmission towers would be located upland of the wetlands. Some indirect impacts may occur from vehicular disturbance and erosion. Stormwater runoff from roads and tower foundation areas could cause sedimentation in the wetlands.

New road construction and improvements to existing access roads could cause impacts to riparian wetlands associated with Pine Creek and Trail Creek. The construction activities could carry sediment to adjacent wetlands and affect water quality and biological productivity. Ongoing vehicular disturbance could cause permanent adverse impacts to wetland functions and could degrade overall biological productivity.

Although no road access exists for the section of the corridor between Fish Creek and Lake Creek, new roads would be constructed to avoid impacting wetlands.

Ongoing maintenance activities have the potential to impact wetlands. Roads without adequate drainage may cause sedimentation to wetlands from stormwater runoff.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on October 30, 1996.

Kenneth C. Kirkman,

NEPA Compliance Officer.

[FR Doc. 96–28503 Filed 11–5–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP85–221–072]

Frontier Gas Storage Company; Notice of Sale Pursuant to Settlement Agreement

October 31, 1996.

Take notice that on October 28, 1996, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., N.W., Suite 800, Washington, D.C. 20004, in compliance with provisions of the Commission's February 13, 1985, Order in Docket No. CP82–487–000, *et al.*, submitted an executed Service Agreement under Rate Schedule LVS–1 providing for the possible sale of up to a daily quantity of 10,000 MMBtu, not to exceed 600,000 MMBtu of Frontier's gas storage inventory on an ''as metered'' basis to PanEnergy Trading and Market Services, LLC, for term ending March 31, 1997.

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985, Order, Frontier is ''authorized to commence the sale of its inventory under such an executed service agreement fourteen days after filing the agreement with the Commission, and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter.''

Any person desiring to be heard or to make a protest with reference to said filing should, within 10 days of the publication of such notice in the Federal Register, file with the Federal Energy Regulatory Commission (888 1st Street N.E., Washington, D.C. 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28469 Filed 11–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–320–003]

Koch Gateway Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

October 31, 1996.

Take notice that on October 29, 1996, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet, to be effective August 31, 1996:

Substitute Second Revised Sheet No. 3702

Koch states that this tariff sheet updates the tariff sheet approved in Koch's Negotiated Rates Filing, Docket No. RP96–320, by incorporating the language approved on October 23, 1996 in Docket No. RP96–244. Koch states that no other changes are being made at this time.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28472 Filed 11–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT97–7–000]

NorAm Gas Transmission Company, Notice of Proposed Changes in FERC Gas Tariff

October 31, 1996.

Take notice that on October 29, 1996 in Docket No. GT97–7–000, NorAm Gas Transmission Company (NGT) filed a tariff sheet to cancel its FERC Gas Tariff, First Revised Volume No. 2. NGT states

that there are no effective rate schedules remaining therein.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28471 Filed 11–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–354–002]

Northern Natural Gas Company, Notice of Proposed Changes in FERC Gas Tariff

October 31, 1996.

Take notice that on October 28, 1996, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, proposed to be effective November 1, 1996:

2 Substitute 27 Revised Sheet No. 51

Northern states that the purpose of this filing is to correct an erroneous rate that was incorrectly stated in Northern's October 10, 1996 compliance filing in Docket No. RP96–354–000.

Northern states that copies of this filing were served upon the Company's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceedings. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28473 Filed 11–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–72–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

October 31, 1996.

Take notice that on October 28, 1996, Texas Gas Transmission Corporation (Texas Gas), Post Office Box 20008, Owensboro, Kentucky 42304, filed a request with the Commission in Docket No. CP97–72–000, pursuant to Sections 157.205, and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery tap authorized in blanket certificate issued in Docket No. CP82–407–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas proposes to install, own, operate and maintain a tap, side valve, miscellaneous piping and related facilities necessary to provide services to Western Kentucky Gas Company (WKG). Texas Gas states that WKG has requested that Texas Gas install a new delivery tap on Texas Gas' Elkton-Mitchellville 10-inch Line in Logan County, Kentucky to serve a small residential load. Texas Gas further states that WKG would reimburse Texas Gas for the cost of the delivery tap, which is estimated to be $4,600.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28470 Filed 11–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EF96–5161–000]

United States Department of Energy—Western Area Power Administration (Washoe Project); Notice of Filing

October 31, 1996.

Take notice that on July 1, 1996, the Western Area Power Administration of the United States Department of Energy submitted supplemental information concerning the filing in this docket. The supplemental information concerned the reduction in projections for Stampede Powerplant generation and the projected increase in project use loads at the Lahontan National Fish Hatchery and the Marble Bluff Fish Facility of the United States Fish and Wildlife Service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 12, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28468 Filed 11–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–186–000, et al.]

PECO Energy Company, et al.; Electric Rate and Corporate Regulation Filings

October 30, 1996.

Take notice that the following filings have been made with the Commission:

1. PECO Energy Company

[Docket No. ER97–186–000]

Take notice that on October 21, 1996, PECO Energy Company (PECO), filed a Service Agreement dated October 16, 1996 with Electric Clearinghouse, Inc. (ECI) under PECO's FERC Electric Tariff Original Volume No. 5 (Tariff). The Service Agreement adds ECI as a customer under the Tariff.

PECO requests an effective date of October 16, 1996, for the Service Agreement.

PECO states that copies of this filing have been supplied to ECI and to the

Pennsylvania Public Utility Commission.

Comment date: November 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. South Carolina Electric & Gas Company

[Docket No. ER97–187–000]

Take notice that on October 21, 1996, South Carolina Electric & Gas Company (SCE&G), submitted a service agreement, dated October 14, 1996, establishing Enron Power Marketing, Inc. (Enron) as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of September 9, 1996. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon Enron and the South Carolina Public Service Commission.

Comment date: November 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, the Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER97–188–000]

Take notice that on October 21, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 15 to add four (4) new Customers to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of October 18, 1996, to Carolina Power & Light Company, Equitable Power Services Company, PacifiCorp Power Marketing, Inc., and SCANA Energy Marketing, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: November 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Illinois Power Company

[Docket No. ER97–189–000]

Take notice that on October 21, 1996, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Williams Energy Services Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of November 1, 1996.

Comment date: November 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. South Carolina Electric & Gas Company

[Docket No. ER97–190–000]

Take notice that on October 21, 1996, South Carolina Electric & Gas Company (SCE&G), submitted a service agreement, dated October 17, 1996, establishing Electric Clearinghouse, Inc. (ECI) as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon ECI and the South Carolina Public Service Commission.

Comment date: November 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28467 Filed 11–5–96; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 11546–000, et al.]

Hydroelectric Applications [City of Thief River Falls Municipal Utilities, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: Minor License.

b. Project No.: 11546–000.

c. Date filed: May 31, 1995.

d. Applicant: City of Thief River Falls Municipal Utilities.

e. Name of Project: Municipal Power Dam.

f. Location: On Red Lake River in the City of Thief River Falls, Pennington County, Minnesota.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791 (a)—825(r).

h. Applicant Contact: Arlo L. Rude, P.O. Box 528, Thief River Falls, MN 56701, (218) 681–5816.

i. FERC Contact: Charles T. Raabe (202) 219–2811.

j. Deadline Date: December 20, 1996.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D10.

l. Description of Project: The existing, operating project consists of: (1) a 193-foot-long, 24.5-foot-high concrete gravity dam, having three 17.75-foot-wide, 11-foot-high steel tainter gates and four overflow sections with flashboards; (2) a 4.4-mile-long reservoir having a 160-acre surface area and a storage capacity of approximately 1,133 acre-feet at normal summer pool elevation 1115.3 feet; (3) a concrete and brick powerhouse containing one 250-kW generating unit and one 300-kW generating unit operated at a 15-foot head; and (4) appurtenant facilities.

Project facilities are owned by the applicant. The project's annual energy production has averaged 2,500,000-kWh. Energy produced by the project is used within applicant's system.

m. This notice also consists of the following standard paragraphs: A4 and D10.

n. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Washington, D.C. 20426, (202) 208–1371. A copy is also available for inspection and reproduction at the City of Thief River Falls Municipal Utilities, P.O. Box 528, Thief River Falls, MN 56701, (218) 681–5816.

2 a. Type of Application: Minor License.

b. Project No.: 11072–001.

c. Date filed: April 13, 1994.

d. Applicant: Trenton Falls Hydroelectric Company.

e. Name of Project: Boyd Dam Hydroelectric Project.

f. Location: On the East Branch of Fish Creek, in Lewis County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791 (a)—825(r).

h. Applicant Contact: Steven C. Samel, Box 169, Prospect, NY 13435, (315) 896–6351.

i. FERC Contact: Mark Pawlowski (202) 219–2795.

j. Deadline Date: December 5, 1996.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D10.

l. Description of Project: The proposed project consists of the following: (1) an existing 82.5-foot-high concrete gravity dam composed of: (a) a 140-foot-long western non-overflow section with a crest elevation of 1,295 feet National Geodetic Vertical Datum (NGVD) topped with an additional 3-foot-high concrete parapet wall; (b) a 150-foot-long ogee spillway section with a crest elevation of 1,280 feet (NGVD); (c) a 150-foot-long eastern non-overflow section with a crest elevation of 1,295 feet (NGVD) topped with an additional 3-foot-high concrete parapet wall; and (d) a 75-foot-long earthfill section with a crest elevation of 1,295 feet (NGVD); (2) a separate 300-foot-long by 7-foot-high earthen dike, located 350 feet east of the eastern abutment, with a crest elevation of 1,295 (NGVD); (3) an existing modified reinforced concrete intake structure adjacent to the western non-overflow section which would be equipped with a proposed 795 (kW) synchronous generator and a proposed vertical Kaplan turbine with a minimum hydraulic capacity of 80 cubic feet per second (cfs) and a maximum hydaulic capacity of 200 (cfs); (4) a reservoir, about 1.7 miles-long with a surface area of about 210 acres and a gross storage capacity of 4,345 acre-feet at a normal pool elevation of 1,280 (NGVD); (5) an upgraded 3.5 mile-long, three-phase, 1.32 kilovolt (kV) transmission line; and (6) appurtenant facilities. The proposed project would have a rated capacity of 795 kW. The applicant estimates that the total average annual generation would be 3,570,000 kilowatthours.

m. Purpose of the Project: All project energy generated would be utilized by the applicant for sale.

n. This notice also consists of the following standard paragraphs: A4 and D10.

In responding, commenters may submit a copy of their comments on a 3½-inch diskette formatted for MS–DOS based computers. In light of our ability to translate MS–DOS based materials, the text need only be submitted in the format and version in which it was generated (i.e., MS Word, WordPerfect 5.1/5.2, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS–DOS machines.

o. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 1st Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Steven C. Samel, Box 169, Prospect, NY 13435, (315) 896–6351.

3 a. Type of Application: Major New License.

b. Project No.: 1991–009.

c. Date filed: April 1, 1996.

d. Applicant: City of Bonners Ferry, Idaho.

e. Name of Project: Moyie River Hydroelectric Project.

f. Location: On the Moyie River in Boundary County, Idaho near the town of Moyie Springs and city of Bonners Ferry. The project is partially located on lands administered by the Idaho Panhandle National Forest. T62N,R2E, sections 11, 2, and 14. Boise Meridian.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791 (a)- 825(r).

h. Applicant Contact:

Mike Woodward, P.E., City Administrator, City of Bonners Ferry, P.O. Box 149, 7232 Main Street, Bonners Ferry, ID 83805, (208) 267–3105

John G. Lincoln, P.E., CH2M Hill, P.O. Box 8748, 700 Clearwater Lane, Boise, ID 83707–2748, (208) 345–5310.

i. FERC Contact: Surender M. Yepuri, P.E. (202) 219–2847.

j. Deadline Date: January 6, 1997.

k. Status of Environmental Analysis: The application is not ready for environmental analysis at this time—see attached paragraph E1.

l. Brief Description of existing Project: The existing project consists of: (1) a 92-foot-high, 376-foot-long concrete dam on the Moyie River, with a 117-foot-long ogee spillway in the center of the dam; (2) a reservoir with a storage area of 30.5 acres; (3) an intake structure and trashrack; (4) a 990-foot-long combination penstock/pressure tunnel system; (5) three powerhouses each containing generating unit(s) rated at 450, 1,500 and 2,000 kilowatts, respectively; (6) a tailrace; (7) a 13.8-kilovolt transmission line; and (8) related facilities.

The are no proposed modifications to project facilities or operation at this time.

m. This notice also consists of the following standard paragraphs: B1 and E1.

n. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

4 a. Type of Application: Amendment of License.

b. Project No.: 2232–334.

c. Date Filed: September 25, 1996.

d. Applicant: Duke Power Company.

e. Name of Project: Catawba-Wateree.

f. Location: Catawba River, in Lancaster, York, and Fairfield Counties, South Carolina and Gaston, Lincoln, and Burke Counties, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 USC Section 791(a)–825(r).

h. Applicant Contact: Mr. E.M. Oakley, Duke Power Company, P.O. Box 1006, Charlotte, NC 28201–1006, (704) 382–5778.

i. FERC Contact: Rebecca Martin, (202) 219–2650.

j. Comment Date: December 14, 1996.

k. Description of Application: The licensee has applied to grant an easement for the withdrawal of up to 250 million gallons per day of project water by the Charlotte-Mecklenburg Utility Department. A new raw water intake facility and pumping station expansion would be constructed at the site of the current Catawba River Raw Water Pumping Station on Mountain Island Lake. The site is located north of the City of Charlotte in Mecklenburg County, North Carolina, and is on the southern shore of the lake, southwest of the mouth of Gar Creek.

l. The notice also consists of the following standard paragraphs: B, C1, and D2.

5 a. Type of Application: New License for Minor Project.

b. Project No.: 1517–008.

c. Date filed: June 19, 1995.

d. Applicant: Monroe City Corporation.

e. Name of Project: Upper Monroe Hydroelectric Project.

f. Location: Partially within Fishlake National Forest, on Shingle Creek, Serviceberry Creek, and the First Lefthand Fork of the Monroe Creek, near the town of Monroe City, in Sevier County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: John Spendlove, Jones & DeMille Engineering, 45 East 500 North, Richfield, Utah 84701, (801) 896–8266.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219–2827.

j. Deadline for comments: December 27, 1996.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D6.

l. Description of Project: The run-of-river project as licensed consists of: (1) a small diversion structure on each of the following three streams—First Lefthand Fork, Shingle Creek, and Serviceberry Creek; (2) an 11,200-foot-long, 8-inch-diameter penstock leading from the diversion structure on First Lefthand Fork to a powerhouse; (3) a 3,300-foot-long, 6-inch-diameter penstock leading from the diversion structure on Shingle Creek to a point on the First Lefthand Fork penstock 7,400 feet upstream from the powerhouse; (4) a 12,900-foot-long, 8-inch-diameter penstock leading from the diversion structure on Serviceberry Creek to a point on the First Lefthand Fork penstock 15 feet upstream from the powerhouse; (5) the powerhouse containing one generating unit with an installed capacity of 250 kW; (6) a 1.65-mile-long transmission line; (7) a tailrace returning water to Monroe Creek; and (8) appurtenant facilities.

No new construction is planned.

m. This notice also consists of the following standard paragraph: D6.

n. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the offices of Jones & DeMille Engineering (see address above).

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. 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 date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D6. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (December 27, 1996 for Project No. 1517–008). All reply comments must be filed with the Commission within 105 days from the date of this notice. (February 12, 1997 for Project No. 1517–008).

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.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; 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 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: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the

Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (December 20, 1996 for Project No. 11546–000 and December 5, 1996 for Project No. 11072–001). All reply comments must be filed with the Commission within 105 days from the date of this notice (February 3, 1997 for Project No. 11546–000 and January 21, 1997 for Project No. 11072–001).

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.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application 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 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: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, 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.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application 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: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: October 30, 1996, Washington, D.C.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28466 Filed 11–5–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. RP93–151–000, RP94–39, RP94–127, RP94–197, RP94–309, RP94–425, RP95–89, RP95–216, RP95–368, RP95–451, RP96–85, RP96–195, RP96–297, RP97–7, RP93–148, RP95–62, RP96–73, RP94–222, RP94–202, RP94–309, and RP95–112]

Tennessee Gas Pipeline Company; Notice of Informal Settlement Conference

November 1, 1996.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, November 7, 1996, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 285.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald Williams at (202) 208–0743 or Dennis H. Melvin at (202) 208–0042.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28512 Filed 11–5–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–55–000, et al.]

NorAm Gas Transmission Company, et al.; Natural Gas Certificate Filings

October 30, 1996.

Take notice that the following filings have been made with the Commission:

1. NorAm Gas Transmission Company

[Docket No. CP97–55–000]

Take notice that on October 21, 1996, NorAm Gas Transmission Company (NGT), 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP97–55–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to continue operating a 2-inch tap and 2-inch U-Shape meter station, located in Faulkner County, Arkansas, to provide transportation services to ARKLA, a distribution division of NorAm Energy Corporation (ARKLA) under NGT's blanket certificate issued in Docket No. CP82–384–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to continue operating a 2-inch tap and a 2-inch U-Shape meter station on their Line B to provide transportation services under Subpart G of Part 284 of the Commission's Regulations. NGT states this tap was originally installed solely to provide services authorized under Section 311 of the Commission's Regulations, to ARKLA, and is located in Faulkner County, Arkansas.

NGT advises that the estimated volumes to be delivered through these facilities are approximately 10,000 MMBtu annually and 30 MMBtu on a peak day on a firm basis to ARKLA's new Rural Extension No. 1391, consisting of 4,066 feet of 4-inch plastic pipe installed along state highway right-

of-way. NGT states the facilities were constructed in October, 1996, at an estimated cost of $3,316 and ARKLA will reimburse NGT $2,661 of the total construction cost.

Comment date: December 16, 1996, in accordance with Standard Paragraph G at the end of this notice.

2. Equitrans, Inc.

[Docket No. CP97–57–000]

Take notice that on October 21, 1996, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP97–57–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install one delivery tap under Equitrans's blanket certificate issued in Docket No. CP83–508–000 and CP86–676–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans proposes to install the proposed delivery tap on Equitrans field gathering pipeline No. F–986 in Upshur County, West Virginia. The tap will be instituted to provide transportation deliveries to Equitable Gas for ultimate distribution to one residential customer. Equitrans will charge Equitable the applicable transportation rate contained in Equitrans FERC Gas Tariff on file with and approved by the Commission. Equitrans projects that the 1 Mcf per day of peak service requested within the entitlements of Equitable Gas, and will not impact Equitrans peak day and annual deliveries. Equitrans has sufficient capacity to accomplish the deliveries described herein without detriment to its other customers.

Equitrans states that the new delivery tap is not prohibited by its existing tariff and the total volumes delivered to Equitable Gas will not exceed total volumes authorized prior to the request.

Comment date: December 16, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. NorAm Gas Transmission Company

[Docket No. CP97–62–000]

Take notice that on October 23, 1996, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in the above docket a request pursuant to Sections 157.205 and 157.211 of the Regulations (18 CFR Sections 157.205 and 157.211) under its blanket certificate in Docket Nos. CP82–384–000 and CP82–384–001 to construct and operate certain facilities in Arkansas and Louisiana to deliver gas to ARKLA, a distribution division of NorAm Energy Corp., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, NGT proposes to: (a) operate an existing 2-inch tap on NGT's Line AC in Pike County, Arkansas for delivery of natural gas to ARKLA's customers to other than the right-of-way grantor for whom the tap was originally installed; (b) construct and operate a new 2-inch delivery tap and 2-inch U-Shape meter station on NGT's Line F in Bossier Parish, Louisiana, to provide an additional town border station for ARKLA to serve its Princeton system and, (c) construct and operate a new 2-inch delivery tap and 4-inch meter run on NGT's Line LIT–1 in Caddo Parish, Louisiana, to provide service to ARKLA.

NGT states that the estimated volumes to be delivered through these facilities are 76,083 MMBtu annually and 346 MMBtu on a peak day. The facilities will be constructed at an estimated cost of $64,444, and ARKLA will reimburse NGT for all costs.

NGT states that it will transport gas to ARKLA and provide service under its tariff, that the volumes delivered are within ARKLA's certificated entitlement and NGT's tariff does not prohibit the addition of new delivery points. NGT states that it has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers.

Comment date: December 16, 1996, in accordance with Standard Paragraph G at the end of this notice.

4. Florida Gas Transmission Company

[Docket No. CP97–68–000]

Take notice that on October 25, 1996, Florida Gas Transmission Company (Applicant), 1400 Smith Street, Suite 3963, Houston, Texas 77251, filed under Section 7(b) of the Natural Gas Act, for authority to abandon, a certificated firm transportation service for Southern Natural Gas Company (SNG). The service is Applicant's Rate Schedule X–22 in its FERC Gas Tariff, Original Volume No. 3. Applicant's proposal is more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that FGT and SNG have agreed to end the gas transportation service agreement dated February 10, 1981 designated in FGT's Tariff as Rate Schedule X–22. FGT states that the proposed abandonment will not result in the abandonment of facilities or service to other customers.

Comment date: November 20, 1996, in accordance with Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Company

[Docket No. CP97–69–000]

Take notice that on October 25, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP97–69–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon a segment of pipeline in Saline County, Nebraska, under Northern's blanket certificate issued in Docket No. CP82–401–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to abandon and remove approximately 1.2 miles of 2-inch pipeline (the Wilber, Nebraska, branchline) and appurtenant facilities. It is stated that the line was installed to serve the town of Wilber, Nebraska, but is no longer needed to serve current customer needs. It is explained that the customers are served by another line, a 3-inch loop line serving the Wilber Town Border Station, and that this line has adequate capacity to serve the customers formerly served by the 2-inch line. It is asserted that the proposed abandonment will not result in the abandonment of service to any of Northern's existing customers. It is further asserted that the customers served by the 2-inch line have agreed to the abandonment.

Comment date: December 16, 1996, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28465 Filed 11–5–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP97–27–000, et al.]

Puget Sound Energy, et al.; Natural Gas Certificate Filings

October 29, 1996.

Take notice that the following filings have been made with the Commission:

1. Puget Sound Energy

[Docket No. CP97–27–000]

Take notice that on October 16, 1996 Puget Sound Energy (PSE), 411 108th Avenue, N.E., Bellevue, Washington 98004–5515, as Successor In Interest to Washington Natural Gas Company, in its capacity as Project Operator of the Jackson Prairie Storage Project (Storage Project), filed an abbreviated application for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act, to succeed to the role as Project Operator of the Storage Project effective upon the merger of the current certificate holder, Washington Natural Gas Company (Washington Natural), with, and into, PSE. Specifically, PSE requests the Commission to reissue to PSE certain case-specific Section 7(c) certificates and a Part 284 blanket certificate previously issued to Washington Natural, as Project Operator of the Storage Project, all as more fully described in the application that is on file with the Federal Energy Regulatory Commission and open to public inspection.

PSE states that no change in operations, no new construction, nor increase in storage activity is proposed. Rather, PSE states that this application is submitted in its status as ''Successor In Interest'' to Washington Natural the current Project Operator of the Storage Project which is located in Chehalis, Lewis County, Washington adjacent to Northwest Pipeline Corporation's (Northwest) main transmission lines. The Storage Project is currently owned in equal one-third undivided interests by Washington Natural, Northwest Pipeline, and Washington Water Power Company. PSE states that the operations of the Storage Project are conducted pursuant to the provisions of the Gas Storage Agreement (Project Agreement) to which each of the owners is a signatory. According to PSE, the Project Agreement provides that the overall supervision of the Project is conducted by a Management Committee on which each of the three owners is represented.

PSE says the Project Agreement is on file with the Commission as Washington Natural's Rate Schedule No. S–1 in its FERC Gas Tariff, First Revised Volume No. 1. Concurrent with the effective date of the merger, PSE states that it will file the Project Agreement as its FERC Gas Tariff, Original Volume No. 1 and will cancel Washington Natural's tariff. PSE states that it is filing this application at this time, pending a review of the merger by the Washington Utilities and Transportation Commission (WUTC), to ensure that the Commission will have all of the necessary information to grant authorizations requested effective with the approval of the merger, thereby avoiding any lapse in the authorization to conduct storage operations, especially during the upcoming winter heating season.

Comment date: November 19, 1996, in accordance with Standard Paragraph F at the end of this notice.

2. Equitrans, L.P.

[Docket No. CP97–42–000]

Take notice that on October 18, 1996, Equitrans, L.P. (Equitrans), 3500 Park Lane, Pittsburgh, PA 15275, filed in the above docket a request pursuant to Sections 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR Sections 157.205 and 157.212) to install one delivery tap pursuant to its blanket certificate in Docket No. CP83–508–000 and transferred to Equitrans in Docket No. CP86–676–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Equitrans states that the proposed delivery tap is to be installed on Equitrans' field gathering pipeline No. F–114 in Greene County, Pennsylvania. The tap will be instituted to provide transportation deliveries to Equitable Gas for retail service to one residential customer. Equitrans indicates that it will charge Equitable the applicable transportation rate contained in Equitrans' FERC Gas Tariff on file with and approved by the Commission. Equitrans projects that the quantity of gas to be delivered through the proposed delivery tap will be approximately 1 Mcf on a peak day.

Equitrans states that it will offer the proposed service within the existing certificated transportation entitlements of Equitable Gas under Equitrans' Rate Schedule FTS. Equitrans indicates that its tariff does not prohibit this type of service. Further, Equitrans states that the total volumes to be delivered to Equitable Gas after this request do not exceed the total volumes authorized prior to the request.

Comment date: December 13, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. Questar Pipeline Company

[Docket No. CP97–49–000]

Take notice that on October 18, 1996, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP97–49–000 a petition for declaratory order requesting that the Commission (1) remove the at-risk conditions attached to Commission orders associated with the Muddy Creek interconnect (57 FERC ¶ 61,094 and 65 FERC ¶ 61,033) and the Fidlar Compressor Station expansion and Main Line 68 replacement facilities (71 FERC ¶ 61,210) and (2) find that the costs and revenues attributable to these facilities will be included in Questar's cost of service and revenues on a rolled-in basis in any future rate proceeding.

Comment date: November 21, 1996, in accordance with Standard Paragraph F at the end of this notice.

4. Southern Natural Gas Company, South Georgia Natural Gas Company

[Docket No. CP97–50–000]

Take notice that on October 18, 1996, Southern Natural Gas Company and South Georgia Natural Gas Company, 1900 Fifth Avenue North, Birmingham, Alabama 35202–2563 (jointly referred to as Applicants), filed in Docket No. CP97–50–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, for a certificate of public convenience and necessity authorizing Applicants to abandon an emergency exchange service between Applicants and Florida Gas Transmission Company (FGT), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants request that the Commission issue an order authorizing the abandonment of the emergency exchange agreement between Applicants and FGT approved by the Commission in Docket No. CP79–222 on September 14, 1979. Applicants state that, by a letter agreement dated November 14, 1994, FGT agreed to terminate the emergency exchange agreement, and to make the termination effective September 26, 1995.

Comment date: November 19, 1996, in accordance with Standard Paragraph F at the end of this notice.

5. Equitrans, L. P.

[Docket No. CP97–51–000]

Take notice that on October 18, 1996, Equitrans, L. P. (Equitrans), 3500 Park Lane, Pittsburgh, PA 15275, filed in the above docket a request pursuant to Sections 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR Sections 157.205 and 157.212) to install one delivery tap pursuant to its blanket certificate in Docket No. CP83–508–000 and transferred to Equitrans in Docket No. CP86–676–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Equitrans states that the proposed delivery tap is to be installed on Equitrans' field gathering pipeline No. F–738 in Ritchie County, West Virginia. The tap will be instituted to provide transportation deliveries to Equitable Gas for ultimate distribution to one residential customer. Equitrans indicates that it will charge Equitable the applicable transportation rate contained in Equitrans' FERC Gas Tariff on file with and approved by the Commission. Equitrans projects that the quantity of gas to be delivered through the proposed delivery tap will be approximately 1 Mcf on a peak day.

Equitrans states that it will offer the proposed service within the existing certificated transportation entitlements of Equitable Gas under Equitrans' Rate Schedule FTS. Equitrans indicates that its tariff does not prohibit this type of service. Further, Equitrans states that the total volumes to be delivered to Equitable Gas after this request do not exceed the total volumes authorized prior to the request.

Comment date: December 13, 1996, in accordance with Standard Paragraph G at the end of this notice.

6. Mississippi River Transmission Corporation

[Docket No. CP97–59–000]

Take notice that on October 22, 1996, Mississippi River Transmission Corporation (MRT), 1600 Smith Street, Houston, Texas 77002, filed an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for permission and approval to abandon by transfer and sale approximately 10.9 miles of pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, MRT seeks to abandon and transfer by sale to Arkla, a division of NorAm Energy Corporation approximately 10.9 miles of 12-inch pipeline, known as MRT's Newport Loop, together with facilities appurtenant thereto, located in Jackson and Independence Counties, Arkansas. MRT states the subject line no longer functions as a loop of its Main Line No. 1, and serves only to transport natural gas to rural customers served by Arkla.

Comment date: November 19, 1996, in accordance with Standard Paragraph F at the end of this notice.

7. Northern Natural Gas Company

[Docket No. CP97–61–000]

Take notice that on October 23, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP97–61–000, an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, and Part 157 of the Commission's Regulations, requesting permission and approval to abandon service under an individually certificated transportation agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Northern proposes to abandon Rate Schedule T–18, contained in its FERC Gas Tariff, Original Volume No. 2. Northern states that the underlying contract has been terminated.

Comment date: November 19, 1996, in accordance with Standard Paragraph F at the end of this notice.

8. ANR Pipeline Company

[Docket No. CP97–63–000]

Take notice that on October 23, 1996, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP97–63–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate an interconnection between ANR and Hunt Petroleum Company (Hunt) in La Salle Parish, Louisiana, under ANR's blanket certificate issued in Docket No. CP82–480–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR proposes to construct and operate an interconnection between ANR and Hunt at a cost of $5,000 to be reimbursed by Hunt. It is stated that about 200,000 Mcf/d of gas would be delivered at this point under ANR's ITS Rate Schedule.

Comment date: December 13, 1996, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal

Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28474 Filed 11–5–96; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RM95–4–000]

Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies; Notice of Revised Electronic Filing Specifications for FERC Form Nos. 2 and 2–A

October 31, 1996.

On September 28, 1995, the Federal Energy Regulatory Commission (Commission) issued Order No. 581, amending its Uniform System of Accounts, forms, and reports and statements for natural gas companies. [1] The changes made by the rule include modifications to the Commission's electronic filing requirements.

Although Order No. 581 imposed new and revised electronic filing requirements, it did not include the final electronic filing specifications. On April 2, 1996,[2] the Commission authorized the Commission staff to issue, in the future, further electronic and paper filing specifications related to the forms that were modified by Order Nos. 581 and 582.[3] In compliance with the Commission's directive, staff is issuing the instruction manual for filing the Form Nos. 2 and 2–A electronically. Staff is also modifying the paper filing requirements for Form Nos. 2 and 2–A to ensure consistency between the electronic filing requirements and the paper filing requirements.

As has been the case with other electronic filing requirements established by Order No. 581, staff worked with industry representatives to complete the electronic filing instructions. The specifications for Form Nos. 2 and 2–A were discussed at working group meetings held on March 20 and October 9, 1996. As a result of those discussions, staff has finalized the electronic filing specifications. A single set of electronic filing instructions for both forms is attached at Attachment A, the Instruction Manual for Electronic Filing of Form No. 2 and Form No. 2–A. The revised paper copy filing instructions for Form No. 2 and 2–A are included as Attachments B and C, respectively.[4]

Electronic Filing Specifications for Form Nos. 2 and 2–A

Order No. 581 changed Form No. 2–A into a subset of Form No. 2. Since the schedule-pages in Form No. 2–A are now identical to those in Form No. 2, the electronic filing instructions for the two forms have been consolidated into a single document. The instructions make clear which of the electronic schedules apply to the Form No. 2–A respondents.

As a result of the discussions at the working group meetings, the electronic data layouts for the forms have been modified as little as possible from those in effect prior to the issuance of Order No. 581. To make the data more compatible with common personal computer software, however, the data will be submitted in a tab-delimited format. Changes to the data layouts were limited to incorporating the changes made by Order No. 581, ensuring all data on the paper form is captured electronically, and adding improvements which will make completing the form easier.

Fifty-three record types were eliminated, fifteen were added. In addition to modifications made to recognize changes to the paper forms, all dates were changed to incorporate a four digit year. Records which capture only text were modified to eliminate the requirement that a schedule ID, record ID, and sequence number appear on every line. The footnote ID now consists of the page number, line or item number, column number and footnote number, making it consistent with the paper form. On many records the sequence number has been supplanted by the line number appearing on the paper form. This change will align the electronic data more closely with the data reported on the paper form. Where the respondent is asked to enter an asterisk to designate a data element having a specific defined property, a separate field has been created to report the asterisk.

Modifications to the Paper Form Nos. 2 and 2–A

Minor modifications to the paper version of Form Nos. 2 and 2–A, and to the paper filing instructions included in the forms, were made to ensure conformity between the electronic and paper versions of the form.

In the process of developing the electronic filing specifications for Form Nos. 2 and 2–A, it became apparent that not all of the paper copy instructions would translate into electronic filing specifications. In order to accurately capture the data reported on the forms electronically, certain modifications to the paper form were necessary. The modified Form No. 2 is attached as Attachment B. The modified Form No. 2–A is attached as Attachment C.

Minor typographical errors have been corrected. On page iii, Item XI is revised to read MMBtu instead of Btu. The word Debt is added to instruction 8 on page 257 to correct the name of Account 427.

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[1] Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies, 60 FR 53019 (October 11, 1995).

[2] Order on Electronic and Paper Filing Specifications for Form No. 11, 75 FERC ¶ 61,009 (1996).

[3] Filing Requirements for Interstate National Gas Company Rate Schedules and Tariffs, 60 FR 52,960 (October 11, 1995). Order No. 582 is a companion order to Order No. 581, which revised the regulations governing the form and composition of interstate natural gas pipeline tariffs and filing requirements. Order No. 582 required that changes be made to the electronic specifications for filings under subpart D of Part 154. Work on these filing specifications will be completed by the working group established for that purpose.

[4] These Attachments are not being published in the Federal Register. These filing formats can be obtained by writing to the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, Division of Information Services, Washington, D.C. These attachments are also available in electronic format on the Gas Pipeline Data portion of the Commission's bulletin board system.

On page 278, in instruction 1, the word reporting is changed to report. On page 301 the reference to page 104 in instruction 5 is changed to 108. Portions of the index were modified to correct page references and add some new references.

On pages 1, 230, and 254, items or lines were renumbered to ensure every item or line number has a unique reference. A unique reference is necessary for footnotes. For the same reason, line numbers were added to pages 2, 3, 102, and 103.

Unnecessary lines were removed from pages 220 and 336. On pages 253 and 340, the instruction to add additional columns if deemed appropriate with respect to any account is eliminated.

Several pages require the respondent to report data which will require an unknown number of rows. The number of rows necessary to report the data will depend on the respondent's business. In Form No. 11, the issue of variable numbers of rows was solved by allowing the respondent to insert rows. Where a row is inserted between line number 3 and line number 4, the row is numbered 3.01. Subsequent inserted lines are numbered 3.02, 3.03, *etc.* This solution is adopted for Form Nos. 2 and 2–A. Pages 118, 119, 120, 121, 219, 234, 235, 274, 275, 276, 277, 338, 355, 518, and 520 are modified to permit variable numbers of rows to be inserted.

Several pages have space at the bottom of the page to enter notes. The pre-existing electronic filing instructions required all notes to be entered as footnotes. Based on deliberations with the working group participants, the space for notes on pages 234, 235, 255, 274, 275, 276, 277, and 338 is eliminated. In some cases the added flexibility granted by variable rows made the space for notes unnecessary. In other cases, the notes could be handled as footnotes. On page 255, the entire response is text therefore the word notes at the top of the page is misleading.

In some cases, the respondent is asked to enter an asterisk to mark data meeting a specified condition, such as, marking an associated company. To conform the paper form to the electronic form, the asterisk will be entered in a separate column. Pages 212, 213, 222, 223, 252, 332, 357, and 514 are modified to add a column to report an asterisk where applicable.

The footnote page is split in two. Previously the footnote page consisted of a report of the page number, the line number, the column letter, and the footnote text. This configuration did not permit the respondent to enter footnote text once and refer to it many times. To add this capability, the first footnote page, page 551, consists of the page number, line or item number, the column letter, and the footnote number. The second footnote page, page 552, consists of the footnote number and the footnote text. Page 551 will be sorted by page number. Page 552 will be sorted by footnote number. A general instruction is added to page iii explaining this change. Permitting the respondent to enter a footnote once which can be referred to more than once saves processing time and paper.

All of the changes outlined above apply to the Form No. 2 and also to Form No. 2–A if the referenced page is part of Form No. 2–A. The modified instructions in the attachments are effective for the 1996 report year to be filed in 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28475 Filed 11–5–96; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5648–1]

Agency information collection activities: Proposed Collection; Comment Request; Significant New Alternatives Policy (SNAP) Program Final Rulemaking Under Title VI of the Clean Air Act Amendments of 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Significant New Alternatives Policy (SNAP) Program Final Rulemaking under Title VI of the Clean Air Act Amendments of 1990, OMB Control No. 2060–0226, Expiration Date February 28, 1997. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 6, 1997.

ADDRESSES: Written comments should be sent to: Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460. Interested persons may make a copy of the ICR without charge from the docket. The docket is open between 8 a.m. and 4:00 p.m. on weekdays. The telephone number is (202) 260–7549, and the fax number is (202) 260–4400. To expedite review of comments, a second copy of the comments should be sent to Carol Weisner, Stratospheric Protection Division, Mail Code 6205J, EPA, 401 M Street, Washington, DC 20460. Overnight mail should be sent to our 501–3rd Street, NW, Washington, DC 20001 street address.

FOR FURTHER INFORMATION CONTACT: Carol Weisner at (202) 233–9193, or fax (202) 233–9665.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which manufacture, formulate, and/or sell substitutes for ozone-depleting chemicals.

Title: Significant New Alternatives Policy (SNAP) Program Final Rulemaking under Title VI of the Clean Air Act Amendments of 1990, OMB Control No. 2060–0226, Expiration Date February 28, 1997.

Abstract: Information collected under this rulemaking is necessary to implement the requirements of the Significant New Alternatives Policy (SNAP) program for evaluating and regulating substitutes for ozone-depleting chemicals being phased out under the stratospheric ozone protection provisions of the Clean Air Act (CAA). Under CAA section 612, EPA is authorized to identify and restrict the use of substitutes for class I and class II ozone-depleting substances where EPA determines other alternatives exist that reduce overall risk to human health and the environment. The SNAP program, based on information collected from the manufacturers, formulators, and/or sellers of such substitutes, provides for the identification of acceptable substitutes. Anyone submitting confidential business information (CBI) as part of an information collection subject to this ICR must assert and substantiate a claim of confidentiality for the data under 40 CFR, Part 2, Subpart B, at the time of submission. Under CAA section 114(c), emissions information may not be claimed as confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA estimates the projected hour burden of the renewed information collection is an annual total of 16,630 hours. This annual total includes an estimated average annual reporting burden of 8,880 hours and an estimated average annual recordkeeping burden of 7,750 hours. The average annual reporting burden is calculated from an estimated average of 148 burden hours per response, a one-time only frequency of response, and an estimated 60 likely respondents. The average annual recordkeeping burden is calculated from an estimated average of 310 recordkeepers and an estimated 25 burden hours per recordkeeper. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources, complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: October 31, 1996.

Reynaldo Forte,

Acting Director, Stratospheric Protection Division.

[FR Doc. 96–28538 Filed 11–5–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5648–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Information Collection Request for Solid Waste Disposal Facility Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Solid Waste Disposal Facility Criteria, RCRA Part 258, OMB Control Number; 2050–0122, expiring December 31, 1996. 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 December 6, 1996.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 1381.05

SUPPLEMENTARY INFORMATION:

Title: Solid Waste Disposal Facility Criteria RCRA Part 258, (OMB Control Number; 2050–0122; EPA ICR No. 1381.05). This is a request for extension of a currently approved collection.

Abstract: Under statutory authority found in RCRA Part 258, EPA established mandatory regulations (See 40 CFR Part 258) that established the criteria for Municipal Solid Waste Landfills (MSWLFs) that co-dispose of sewage sludge and that receive ash from municipal waste combustion (MWC) facilities (including ash monofills). EPA believes these requirements mitigate potential hazards to human health and the environment from the potential mismanagement by owners or operators of MSWLFs. This information will be used by the State Director to confirm owner or operator compliance with the regulations under Part 258.

The Part 258 Criteria requires that information be recorded in the MSWLF operating record as it becomes available and that this information be retained by the owner or operator of each MSWLF unit and made available to the State upon request. The following information is requested: demonstrations that facilities meet the requirements for the ''small'' landfill exemption; any required location restriction demonstrations; training procedures, monitoring results, and demonstrations required by operating requirements; demonstrations required under Subpart D—Design Criteria; any monitoring, testing, or analytical data required for groundwater monitoring and corrective action; closure and post-closure care plans and any monitoring, testing, or analytical data required by Sections 258.60 and 258.61; and any cost estimates and financial assurance documentation required under Subpart G—Financial Assurance Criteria.

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 Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 7/30/96 (61 FR 39641); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 85 hours per response. 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: 3500.

Estimated Number of Respondents: 3500.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 297,800 hours.

Estimated Total Annualized Cost Burden: $12,667,314.

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. 1381.05 and OMB Control No. 2050–0122 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE 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: October 31, 1996.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 96–28546 Filed 11–5–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5648–3]

Acid Rain Program: Notice of Draft Written Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft written exemptions.

SUMMARY: The Environmental Protection Agency is issuing draft written exemptions from Acid Rain permitting and monitoring requirements to 2 new utility units at 2 plants. Under the Acid Rain Program regulations (40 CFR 72.7), utilities may petition EPA for an exemption from permitting and monitoring requirements for any new utility unit that serves one or more generators with a total nameplate capacity of 25 MW or less and burns only fuels with a sulfur content in excess of 0.05 percent or less by weight. Because the Agency does not anticipate receiving adverse comments, the exemptions are also being issued as a direct final action in the notice of written exemptions published elsewhere in today's Federal Register.

DATES: Comments on the exemptions proposed by this action must be received on or before December 6, 1996 or 30 days after publication of a similar notice in a local newspaper, whichever is later.

ADDRESSES: *Administrative Records.* The administrative record for the exemptions, except information protected as confidential, may be viewed during normal operating hours at EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604.

Comments. Send comments to: David Kee, Director, Air and Radiation Division, EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604.

Submit comments in duplicate and identify the exemption to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the unit covered by the exemption.

FOR FURTHER INFORMATION CONTACT: Contact Beth Valenziano, (312) 886–2703.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are timely received, no further activity is contemplated in relation to these draft written exemptions and the exemptions issued as a direct final action in the notice of written exemptions published elsewhere in today's Federal Register will automatically become final on the date specified in that notice. If significant, adverse comments are timely received on any exemption, that exemption in the notice of written exemptions will be withdrawn and all public comment received on that exemption based on the relevant exemption in this notice of draft written exemptions. Because the Agency will not institute a second comment period on this notice of draft written exemptions, any parties interested in commenting should do so during this comment period.

For further information and a detailed description of the exemptions, see the information provided in the notice of written exemptions elsewhere in today's Federal Register.

Dated: October 31, 1996.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 96–28540 Filed 11–5–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5648–2]

Acid Rain Program: Notice of Written Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of written exemptions.

SUMMARY: The Environmental Protection Agency is issuing, as a direct final action, written exemptions from the Acid Rain permitting and monitoring requirements to 2 utility units at 2 plants in accordance with the Acid Rain Program regulations (40 CFR part 72). Because the Agency does not anticipate receiving adverse comments, the exemptions are being issued as a direct final action.

DATES: Each of the exemptions issued in this direct final action will be final on December 16, 1996, or 40 days after publication of a similar notice in a local newspaper, whichever is later, unless significant, adverse comments are received by December 6, 1996 or 30 days after publication of a similar notice in a local newspaper, whichever is later. If significant, adverse comments are timely received on any exemption in this direct final action, that exemption will be withdrawn through a notice in the Federal Register.

ADDRESSES: *Administrative Records.* The administrative record for the exemptions, except information protected as confidential, may be viewed during normal operating hours at EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604.

Comments. Send comments to David Kee, Director, Air and Radiation Division, EPA Region 5, (address above).

Submit comments in duplicate and identify the exemption to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the unit covered by the exemption.

FOR FURTHER INFORMATION CONTACT: Contact Beth Valenziano, (312) 886–2703.

SUPPLEMENTARY INFORMATION: All public comment received on any exemption in this direct final action on which significant, adverse comments are timely received will be addressed in a subsequent issuance or denial of exemption based on the relevant draft exemption in the notice of draft written exemptions that is published elsewhere in today's Federal Register and that is identical to this direct final action.

Under the Acid Rain Program regulations (40 CFR 72.7), utilities may petition EPA for an exemption from permitting and monitoring requirements for any new utility unit that serves one or more generators with total nameplate capacity of 25 MW or less and burns only fuels with a sulfur content of 0.05 percent or less by weight. On the earlier of the date a unit exempted under 40 CFR 72.7 burns any fuel with a sulfur content in excess of 0.05 percent by weight or 24 months prior to the date the exempted unit first serves one or more generators with total nameplate capacity in excess of 25 MW, the unit shall no longer be exempted under 40 CFR 72.7 and shall be subject to all permitting and monitoring requirements of the Acid Rain Program.

EPA is issuing written exemptions to the following new units, effective from January 1, 1997 through December 31, 2001:

Beaver Island unit 8 in Michigan, owned and operated by Wolverine Power Supply Cooperative. The designated representative is Brian Warner.

Claude Vandyke unit 7 in Michigan, owned and operated by Wolverine Power Supply Cooperative. The designated representative is Brian Warner.

Dated: October 31, 1996.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 96–28541 Filed 11–5–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5648–6]

Acid Rain Program: Petition for Administrative Review of Determination of Applicability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On October 3, 1996, a petition was filed with the Environmental Appeals Board appealing a determination by the Administrator of the applicability of the Acid Rain Program to the Carson Cogeneration facility in California.

FOR FURTHER INFORMATION CONTACT: Robert Miller, U.S. EPA, ARD(6204J), 401 M St., SW, Washington, DC 20460, (202) 233–9077.

SUPPLEMENTARY INFORMATION: The Carson Energy Group petitioned the Administrator under 40 CFR 72.6(c) to make a determination of applicability of the Acid Rain Program to the Carson Cogeneration facility (''Carson'') located near Sacramento, California. A determination was made by the Administrator that Carson is an affected source subject to the requirements of the program. The Administrator's decision was appealed to the Environmental Appeals Board by the Carson Energy Group through a petition filed on October 3, 1996 under part 78 of the Acid Rain regulations. The petitioner does not believe there are any disputed issues of fact and is not requesting an evidentiary hearing at this time.

Dated: October 30, 1996.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 96–28547 Filed 11–5–96; 8:45 am]

BILLING CODE 6560–50–P

[OPP–00457; FRL–5573–5]

Food Safety Advisory Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As required by section 9(c) of the Federal Advisory Committee Act (Public Law 92–463), EPA's Office of Pesticide Programs (OPP) is giving notice of the third meeting of the Food Safety Advisory Committee (FSAC).

DATES: This meeting will take place Thursday, November 14, 1996 from 9:00 a.m. to 5:00 p.m. and Friday, November 15, 1996 from 9:00 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at: The Hyatt Fair Lakes, 12777 Fair Lakes Circle, Fairfax, Virginia 22033. Take exit 55B (Fairfax County Parkway) off Route 66, turn right on Fair Lakes Parkway, then take first right on Fair Lakes Circle. Hotel is one quarter mile on the left. From Dulles Airport, take Dulles Access Road to exit 11 South (Fairfax County Parkway). After seven and one half miles turn left onto Fair Lakes Parkway then follow directions above.

FOR FURTHER INFORMATION CONTACT: By mail: Margie Fehrenbach, Designated Federal Officer, or Carol Peterson, Office of Pesticide Programs (7501C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7090; e-mail: Fehrenbach.margie@epamail.epa.gov or Peterson.carol@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Food Quality Protection Act (FQPA), signed into law on August 3, 1996, (Public Law 104–170) amends the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA) to provide greater protection for U.S. consumers, particularly infants and children.

EPA formed the FSAC as a subcommittee under the auspices of the National Advisory Council for Environmental Policy and Technology (NACEPT) to provide a structured environment for exchange of information and ideas on regulatory, policy, and implementation issues. These discussions will assist EPA in the implementation of the new food safety statute and are essential if EPA is to be responsive to the needs of the public and the affected industry.

II. Participation

The FSAC is composed of a balanced group of participants from the following sectors: pesticide user and commodity groups; environmental/public interest groups, including the general public; federal and state governments; academia; industry; the public health community; and congressional offices.

FSAC meetings are open to the public. Outside statements by observers are welcome. Oral statements will be limited to five minutes, and it is preferred that only one person per organization present the statement. Any person who wishes to file a written statement can do so before or after an FSAC meeting. These statements will become part of the permanent file and will be provided to FSAC members for their information.

Materials related to the Food Safety Advisory Committee are maintained in a public record. These materials are available for inspection from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

III. Meeting Schedule

The agenda will include: Use of a 10–fold safety factor to protect children and infants; consideration of in-utero exposure for carcinogenicity studies; tolerance reassessment, worker risk issues, EPA's decision logic for risk management and risk assessment, and presentation of USDA programs.

A fourth meeting is tentatively planned for December 4, 1996. Meeting location and agenda topics will be published prior to the meeting. To receive an agenda for this (November 14–15) meeting please write or call Margie Fehrenbach at the address or number listed under FOR FURTHER INFORMATION CONTACT.

List of Subjects

Environmental protection.

Dated: October 31, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 96–28550 Filed 11–1–96; 1:49 pm]

BILLING CODE 6560–50–F

[OPP–00456; FRL–5573–4]

Pesticide Program Dialogue Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As required by section 10(a)(2) of the Federal Advisory

Committee Act [Public Law 92–463], EPA's Office of Pesticide Programs (OPP) is giving notice of a public meeting of the Pesticide Program Dialogue Committee (PPDC).

DATES: The meeting will be held on Tuesday, November 12, 1996, from 1:00 p.m. to 5:00 p.m. and Wednesday, November 13, 1996, from 8:30 a.m to 4:15 p.m.

ADDRESSES: The meeting will be held at: The Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: By mail: Margie Fehrenbach or Linda Murray, Office of Pesticide Programs (7501C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7090; e-mail: fehrenbach.margie@epamail.epa.gov or murray.linda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The PPDC is composed of a balanced group of participants from the following sectors: industry and trade associations; pesticide user and commodity groups; federal agencies and state governments; consumer and environmental/public interest groups, including representatives from the general public; academia; the public health community; and, congressional staff. The Committee was formed to foster communication and understanding among the parties represented on the Committee and with OPP. The Committee also provides advice and guidance to OPP regarding pesticide regulatory, policy, and implementation issues.

PPDC meetings are open to the public. Outside statements by observers are welcome. Oral statements will be limited to five minutes, and it is preferred that only one person present the statement. Any person who wishes to file a written statement can do so before or after a Committee meeting. These statements will become part of the permanent file and will be provided to the Committee members for their information. Materials will be available for public review at the following address: U.S. Environmental Protection Agency, Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5805.

Topics to be discussed at the November meeting are: 1) An overview of the Food Quality Protection Act, 2) The Government Performance and Results Act - with a focus on the Reduced Use/Reduced Risk Program, and 3) Labelling.

List of Subjects

Environmental protection.

Dated: October 31, 1996.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 96–28549 Filed 11–1–96; 1:49 pm]

BILLING CODE 6560–50–F

[OPP–00452; FRL 5570–7]

Notice of Availability of Pesticide Data Submitters List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of an updated version of the Pesticide Data Submitters List which supersedes and replaces all previous versions.

FOR FURTHER INFORMATION CONTACT: By mail: John Jamula, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 226, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6426; e-mail: jamula.john.@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Pesticide Data Submitters List is a compilation of names and addresses of registrants who wish to be notified and offered compensation for use of their data. It was developed to assist pesticide applicants in fulfilling their obligation as required by sections 3(c)(1)(f) and 3(c)(2)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and 40 CFR part 152 subpart E regarding ownership of data used to support registration. This notice announces the availability of an updated version of the Pesticide Data Submitters List which supersedes and replaces all previous versions.

II. Ordering Information

Microfiche copies of the document are available from the National Technical Information Service (NTIS) ATTN: Order Desk 5285 Port Royal Road Springfield, VA 22161; telephone: (703) 487–4650. When requesting a document from NTIS, please provide its name and NTIS Publication Number (PB). The NTIS Publication for this version of the Pesticide Data Submitters List is PB96–210430.

III. Electronic Access

The Pesticide Data Submitters List is available on EPA's gopher server and two other pathways on the Internet. The Internet address of EPA's gopher server is gopher://gopher.epa.gov. This information also is available using file transfer protocol (ftp) on ftp.epa.gov or using the world wide web (www) Internet address on http://www.epa.gov.

The Pesticide Data Submitters List is also available on the Pesticides Special Review and Reregistration Information System Bulletin Board System. This Bulletin Board System (BBS) is a computer set up to accept calls from over a telephone line and allow callers to use the computer. Anyone with a computer or terminal connected to a phone line or networked to one can dial into the BBS and perform the functions it is set up to allow.

The telephone number of this bulletin board is (703) 308–7224. To connect to this or any other BBS, several parameters in your communication software must be set appropriately. The settings for this BBS are the standard settings for most: 8 data bits, no parity, and 1 stop bit (abbreviated as 8N1). Communication speeds from 2400 bps to 28.8K bps are available, accommodating almost all speeds available in modems on the market today. The system displays color ANSI graphics as well as ASCII text.

IV. From the Internet

The Pesticide Special Review and Reregistration Information System can be accessed via GSA's Fedworld System. Telnet or ftp to fedworld.gov and follow the onscreen instructions to get to the gateway.

V. From a LAN

Many Local Area Networks (LANs) are connected to the telephone network. While it is not possible to address the multitude of possible configurations here, your network administrator will be able to tell you if you are able to dial out to other systems from your LAN and what specific software you have available to do this.

List of Subjects

Environmental protection

Dated: October 24, 1996.

Linda A. Travers,

Acting Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 96–28418 Filed 11–5–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66232; FRL 5570–6]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by February 4, 1997, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the Federal Register before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 50 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000100 NC–90–0009	D.Z.N. Diazinon Ag 500	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
000352–00332	10% Bromacil Pellets Weed Killer	5-Bromo-3-sec-butyl-6-methyluracil
000352–00409	Dupont 80% Bromacil Powder	5-Bromo-3-sec-butyl-6-methyluracil
000352–00412	4% Bromacil Granular Weed Killer	5-Bromo-3-sec-butyl-6-methyluracil
000352–00413	Dupont 21.9% Bromacil Liquid Concentrate	5-Bromo-3-sec-butyl-6-methyluracil, lithium salt
000352–00414	7.5% Bromacil Liquid Concentrate	5-Bromo-3-sec-butyl-6-methyluracil, lithium salt
000352–00415	2.5% Bromacil Liquid Weed Killer	5-Bromo-3-sec-butyl-6-methyluracil, lithium salt
000352–00416	2% Bromacil Liquid Weed Killer	5-Bromo-3-sec-butyl-6-methyluracil, lithium salt
000352–00546	Dupont Hyvar DF Herbicide	5-Bromo-3-sec-butyl-6-methyluracil
000352 NC–82–0011	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000875–00169	514 Insecticide	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins (5-Benzyl-3-furyl)methyl2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
001812–00321	Trilin Dry 80	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
001812 ND–94–0002	Trilin 10G	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
002382–00120	Ecto-Soothe Carbaryl Shampoo	1-Naphthyl-*N*-methylcarbamate
003876–00148	Slimicide C-84	Dodecylguanidine hydrochloride 2-Bromo-2-nitropropane-1,3-diol
004691–00048	Flea, Lice & Tick Powder Contains Sevin	1-Naphthyl-*N*-methylcarbamate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
004691–00104	Anchor Flea, Lice and Tick Spray	Butoxypolypropylene glycol 1-Naphthyl-*N*-methylcarbamate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
004816–00498	Allethrin Technical	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl 2,2-dimethyl-3-(2-
005887–00137	Black Leaf Flea & Tick Killer	Butoxypolypropylene glycol 1-Naphthyl-*N*-methylcarbamate
007501 ID–87–0020	Gustafson Flo-Pro Imz Flowable Systemic Fungicide	1-(2-(2,4-Dichlorophenyl)-2-(2-propenyloxy)ethyl)-1*H*-imidazole
010182 OR–93–0018	Diquat Herbicide	6,7-Dihydrodipyrido(1,2-a :2',1'-c)pyrazinediiumdibromide
011715–00224	Farnam Non-Aerosol Deflea/Detick Spray	Butoxypolypropylene glycol 1-Naphthyl-*N*-methylcarbamate
034911–00001	Hi-Yield Liquid Edger	Ammonium sulfamate

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
042443–00001	Herbal Flea Collar	Oil of citronella Oil of eucalyptus Cedarwood oil Oil of Pennyroyal Oils, rue
046193–00006	Trifluralin E.C.	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
048301–00025	Bioban 2001 Antimicrobial Agent	2-Bromo-2-nitropropane-1,3-diol
050534 DE–90–0003	Bravo 720	Tetrachloroisophthalonitrile
050534 MD–91–0005	Bravo 720	4-Chloro-alpha-(1-methylethyl)benzeneacetic acid, cyano(3-phenoxyphenyl)methyl
050534 NJ–91–0003	Bravo 720	Tetrachloroisophthalonitrile
050534 VA–90–0003	Bravo 720	Tetrachloroisophthalonitrile
051311–00002	Zero	Boric acid
062719–00093	Treflan E. C.	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
062719–00101	Treflan E.C. 44.5%	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
062719–00116	Treflan M.T.F.	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
062719–00118	Treflan 5	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
062719–00143	Commence EC	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha) 2-(2-Chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone
062719–00172	Treflan 5	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
062719–00216	Treflan 80 D.C.	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
062719–00241	Legacy	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
062719 AZ–92–0003	Treflan 5	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
062719 ID–80–0016	Treflan E. C.	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
062719 NM–90–0002	Treflan E. C.	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
062719 NM–90–0004	Treflan-5	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
062719 OR–80–0031	Treflan E. C.	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
062719 TX–93–0001	Treflan E. C.	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
062719 TX–93–0002	Treflan 5	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
062719 WA–80–0030	Treflan E. C.	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
065636–00104	R & M Insecticide Paint Additive	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
066676 TX–95–0009	Tree Guard	Benzyl diethyl ((2,6-xylylcarbamoyl)methyl) ammonium benzoate
067517–00001	Rat-Kill Soluble	2-Pivalyl-1,3-indandione, sodium salt
067716–00001	B-Brite	Sodium hypochlorite
067716–00002	B-Brite TG	Sodium hypochlorite
068708–00004	Feul-Prep 1000	1-(2-Hydroxyethyl)-2-alkyl-2-imidazoline (as in fatty acids of tall oil)

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2.— REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000352	E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000875	Diversey Corp., 46701 Commerce Center Dr., Plymouth, MI 48170.
001812	Griffin Corp., Box 1847, Valdosta, GA 31603.
002382	Virbac Inc., Box 162059, Fort Worth, TX 76161.
003876	Betz Laboratories Inc., 4636 Somerton Rd., Trevose, PA 19053.
004691	Boehringer Ingelheim Animal Health Inc., Anchor Div., 2621 North Belt Highway, St. Joseph, MO 64506.
004816	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
005887	SureCo Inc., 10012 N. Dale Mabry, Ste. 221, Tampa, FL 33618.
007501	Gustafson, Inc., Box 660065, Dallas, TX 75266.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
011715	Speer Products Inc., Box 18993, Memphis, TN 38181.
034911	Hi-Yield Chemical Co., Box 460, Bonham, TX 75418.
042443	Natural Research People Inc., South Route, Box 12, Dean Creek Rd., Lavina, MT 59046.
046193	Westrade USA, Inc., 10260 Westheimer, Suite 230, Houston, TX 77042.
048301	Angus Chemical Co, 1500 E. Lake Cook Rd., Buffalo Grove, IL 60089.
050534	ISK Biosciences Corp., 5966 Heisley Rd., Box 8000, Mentor, OH 44061.
051311	Tamby Chemical Inc., 214 51st Street, Brooklyn, NY 11220.
062719	DowElanco, 9330 Zionsville Rd 308/3e, Indianapolis, IN 46268.
065636	R & M Regulatory Services, 1091 Cambridge Square - Suite C, Alpharetta, GA 30201.
066676	Nortech Forest Products Inc., 7600 W. 27th St., Suite B11, St Louis Park, MN 55426.
067517	P.M. Resources Inc., c/o R.E. Broyles, 1401 Hanley Rd., St. Louis, MO 63144.
067716	Burris Chemical Inc., 4210 Azalea Dr., Charleston, SC 29405.
068708	Nalco Chemical Co., Agent For: Nalco/Exxon Energy Chemicals, One Nalco Center, Naperville, IL 60563.

III. Loss of Active Ingredients

Unless the requests for cancellation are withdrawn, three pesticide active ingredients will no longer appear in any registered products. Those who are concerned about the potential loss of these active ingredients for pesticidal use are encouraged to work directly with the registrants to explore the possibility of withdrawing their request for cancellation. The active ingredients are listed in the following Table 3, with the EPA Company and CAS Number.

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

CAS No.	Chemical Name	EPA Company No.
8000–27–9	Cedarwood Oil	042443
8007–44–1	Oil of Pennyroyal	042443
8014–29–7	Oils, Rue	042443

IV. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before February 4, 1997. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in Federal Register (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special

Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: October 24, 1996.

Oscar Morales,

Acting Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 96–28420 Filed 11–5–96; 8:45 am]

BILLING CODE 6560–50–F

[OPP–340103; FRL 5570–5]

Notice of Receipt of Requests for Amendments to Delete uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on February 4, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the Federal Register. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 12 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before February 4, 1997 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
019713–00337	Drexel LV6 Weed Killer	Acetic acid, (2,4-dichlorophenoxy)-2-ethylhexyl ester	Sugarcane, aquatic applications (for aquatic weeds in lakes, ponds, drainage ditches & marshes)
019713–00345	Drexel #4 Low Volatile Ester Herbicide	Acetic acid, (2,4- dichlorophenoxyl)-2-ethylhexyl ester	Sugarcane
033660–00003	Trifluralin Technical	Trifluralin	Forage legumes
033660–00031	Flutril 5EC	Trifluralin	Mint
033660–00032	Flutrix 4EC ATT	Trifluralin	Mint
033660–00033	Flutrix 4EC	Trifluralin	Mint
045728–00001	Thiram Technical	Thiram	Bananas, celery, onions (dry bulb), sweetpotatoes (preplant dip only), tomatoes, lawns/grasses
049585–00024	Sevin Plus MultiPurpose Garden Dust	Carbaryl	Pet application uses
049585–00026	KGRO Sevin Brand Insecticide 10 Dust Formula II	Carbaryl	Pet application uses
062719–00099	Trifluralin Technical	Trifluralin	Forage legumes
062719–00131	Treflan TR-10	Trifluralin	Forage legumes
062719–00250	Treflan HFP		Forage legumes

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
019713	Drexel Chemical Company, 1700 Channel Avenue, P.O. Box 13327, Memphis, TN 38113.
033660	Lewis & Harrison, 122 C Street, N.W., Suite 740, Washington, DC 20001.
045728	UCB Chemical Corp., c/o Compliance Services International, 2001 Jefferson Davis Hwy, Suite 1010, Arlington, VA 22202.
049585	Alljack, Division of United Industries Corp., P.O. Box 15842, St. Louis, MO.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

Company No.	Company Name and Address
062719	DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: October 23, 1996.

Oscar Morales,

Acting Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 96–28419 Filed 11–5–96; 8:45 am]

BILLING CODE 6560–50–F

[PF–670; FRL–5571–4]

Pesticide Tolerance Petition; Notice of Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice is a summary of a pesticide petition proposing the establishment of a regulation for residues of sulfentrazone in or on soybeans.

DATES: Comments, identified by the docket number [PF–670], must be received on or before, December 6, 1996.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring comments to Rm 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–670]. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted as a comments concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Joanne Miller (PM23) Rm., 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. 703–305–6224, e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP 4F4407) from FMC Corporation, 1735 Market Street, Philadelphia, PA 19103, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. section 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the herbicide sulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-l*H*-1,2,4-triazol-1-yl]phenyl]-methanesulfonamide in or on the raw agricultural commodity soybeans at 0.05 ppm and rotational crop tolerances in cereal grains from 0.1 to 0.5 ppm. The proposed analytical method is gas chromatography with electron detection.

Pursuant to section 408(d)(2)(A)(I) of the FFDCA, as amended, FMC Corporation has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by FMC Corporation and EPA has not fully evaluated the merits of the petition. EPA edited the summary to clarify that the conclusions and arguments were the petitioner's and not necessarily EPA's and to remove certain extraneous material.

I. FMC Petition Summary

1. *Sulfentrazone uses.* Sulfentrazone is the first herbicide in a new aryl triazolinone chemical class. Weeds found resistant to other herbicides are not cross resistant to sulfentrazone. The unique mode of action of sulfentrazone provides economic control for a wide spectrum of grass and broadleaf weeds, with exceptional strength on morningglory and nutsedge species.

Sulfentrazone will be used on soybeans to control Broadleafs (including cocklebur, lambsquarter, morningglory, pigweed and velvetleaf); Grasses (including barnyardgrass, crabgrasses, foxtail, goose grass, johnsongrass and panicum); Sedges (including purple and yellow nutsedge and annual sedge).

Sulfentrazone will be applied to the soil preemergent to the soybean crop. The product controls emerging weeds and also has postemergent burn-down activity to small exposed weeds. A single application will be made using standard low pressure ground herbicide boom sprayer equipped with suitable nozzles and screens. Application rates for sulfentrazone alone range from 0.25 to 0.375 lb active ingredient per acre dependent on soil texture, organic matter, and geography. Combinations with selected products may further reduce the application rate to 0.15 lb active ingredient per acre. Applications can be made up to 30 days before crop emergence in either conventional or no-till situations. Authority 75DF or 4F may be applied early preplant, preplant incorporated or preemergence.

2. *Sulfentrazone safety.* FMC has submitted over 40 separate toxicology studies in support of tolerances for sulfentrazone. According to FMC, sulfentrazone is not a carcinogen or a mutagen and has low oral and dermal toxicity to mammals. Although laboratory experiments at the higher rates tested have shown some developmental and reproductive effects, risk assessment calculations indicate the margins of safety for agricultural

workers and the population in general far exceed the EPA required level of 100.

The following mammalian toxicity studies have been conducted to support the tolerance of sulfentrazone:

A rat acute oral study with an LD_{50} of 3,034 mg/kg (male) and 2,689 mg/kg (female).

A rabbit acute dermal LD_{50} of >2,000 mg/kg.

A rat acute inhalation LC_{50} of >4.13 mg/L.

A primary eye irritation study in the rabbit which showed mild irritation.

A primary dermal irritation study which showed no irritation.

A primary dermal sensitization study which showed no sensitization.

An acute neurotoxicity study with a No-Observed Effect Level (NOEL) of 250 mg/kg and no neuropathological findings at any dose.

A 28–day feeding study in the rat with a NOEL of 1,000 ppm based on hematology effects.

A 90–day feeding study in the rat with a NOEL of 1,000 ppm based on hematology findings.

A 28–day feeding study in the mouse with a NOEL of 800 ppm based on effects on hematology parameters.

A 90–day feeding study in the mouse with a NOEL of 300 ppm based on hematology parameters.

A 90–day subchronic neurotoxicity study in the rat with a neurotoxicity and overall NOEL of 500 ppm; no histopathological effects on the peripheral or central nervous system were observed.

A 24–month chronic feeding/oncogenicity study in the rat with an overall NOEL of 600 ppm in females and 1,000 ppm in males based on hematology effects and reduced body weights. There was no evidence of an oncogenic response.

A 4 week range-finding study in dogs with a NOEL of 900 ppm based on hematology effects.

A 90–day feeding study in dogs with a NOEL of 300 ppm based on liver histopathology.

A 12–month feeding study in dogs with a NOEL of 800 ppm based on hematology effects and microscopic liver changes.

A mouse oncogenicity study with a NOEL of 600 ppm based on decreased hemoglobin. There was no evidence of oncogenicity.

An oral teratology study in the rat with a maternal NOEL of 25 mg/kg/day based on body weight effects and a fetal NOEL of 10 mg/kg/day based on reduced body weights and delayed skeletal effects at higher doses.

A supplemental teratology study conducted to test for cardiac effects at the request of the EPA did not reveal any significant effects on fetal cardiac development.

A dermal teratology study in the rat with a maternal NOEL of 250 mg/kg/day and a fetal NOEL of 100 mg/kg/day based on an increase in fetal and litter incidence of skeletal effects.

An oral teratology study in the rabbit with a maternal and fetal NOEL of 100 mg/kg/day based on decreased body weights for the does and fetal effects at higher doses.

A two generation reproduction study in the rat with a NOEL for systemic and reproductive/developmental parameters of 200 ppm. Male fertility in the Fl generation was reduced at higher doses; litter size, pup survival and pup bodyweight for both generations were also effected at higher doses.

A supplemental rat reproduction study with a NOEL for reproductive parameters of 200 ppm.

Ames Assay: Negative; Mouse lymphoma: Negative with activation, equivocal without activation.

Mouse Micronucleus Assay: Negative.

3. *Threshold effects—chronic effects.* Based on the available chronic toxicity data, FMC believes the Reference Dose (RfD) for sulfentrazone should be 0.05 mg/kg/day. The RfD for sulfentrazone is based on a multigeneration reproduction study in rats with a threshold No-observed Effect Level (NOEL) of 14 mg/kg/day and an uncertainty factor of 100, with an additional modifying factor of 3 to account for the nature of the effects.

Acute toxicity. EPA recently proposed a tiered approach to estimate acute dietary exposure. The methods proposed by the EPA were reviewed and supported by the FIFRA scientific advisory panel (SAP, 1995). EPA's Tier 1 method is based on the assumption that residue concentrations do not vary. The analysis assumes that all residues have the same magnitude, typically the highest field trial residue or tolerance value. This value is assumed for all points along the consumption distribution, resulting in a distribution of dietary exposure.

For the acute analysis for sulfentrazone, a Tier 1 analysis was conducted for the overall U.S. population, infants, children 1 to 6 years of age, females 13 years and older, and males 13 years and older. Using the NOEL of 10 mg/kg/day derived from the oral teratology study in rats, the following margins of exposure were calculated (Margins of exposure of 100 or more are considered satisfactory):

Population Group	Margin of Exposure
U.S. Population	2,180
Infants	760
Children 1 to 6	2,052
Females 13 years and older	3,640
Males 13 years and older	3,219

4. *Non-threshold effects—Carcinogenicity.* Using the Guidelines for Carcinogen Risk Assessment, FMC believes sulfentrazone to be in Group E for carcinogenicity — no evidence of carcinogenicity — based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in an 18–month feeding study in mice and a 2–year feeding study in rats at the dosage levels tested. The doses tested are adequate for identifying a cancer risk. Thus, a cancer risk assessment should not be necessary.

5. *Aggregate exposure.* For purposes of assessing the potential dietary exposure, FMC has estimated aggregate exposure based on the Theoretical Maximum Residue Contribution (TMRC) from the tolerances for sulfentrazone on soybeans at 0.05 ppm and rotational crop tolerances in cereal grains from 0.1 to 0.5 ppm. (The TMRC is a worse case estimate of dietary exposure since it is assumed that 100 percent of all crops for which tolerances are established are treated and that pesticide residues are present at the tolerance levels.) Dietary exposure to residues of sulfentrazone in or on food will be limited to residues on soybeans and cereal grains. Forage and straw from cereal grains are fed to animals; thus exposure of humans to residues might result if such residues carry through to meat, milk, poultry or eggs. However, FMC believes that there is no reasonable expectation that measurable residues of sulfentrazone will occur in meat, milk, poultry or eggs from this use. There are no other established U.S. tolerances for sulfentrazone, and there are no registered uses for sulfentrazone on food or feed crops in the U.S. In conducting this exposure assessment, very conservative assumptions—100% of soybeans and cereal grains will contain sulfentrazone residues and those residues would be at the level of the tolerances have been used which results in an overestimate of human exposure.

Other potential sources of general population exposure to residues of pesticides are residues in drinking water and exposure from non-occupational sources. While the majority of field studies with sulfentrazone indicate that movement into groundwater will not occur, a single study in very vulnerable

soil has shown that a small percentage of material could reach shallow groundwater under extreme conditions. Based on this worst case situation, the maximum exposure to residues of sulfentrazone in drinking water resulting from product use at extremely vulnerable sites would be less than 50 ppb. There is no established Maximum Contaminant Level(MCL) for residues of sulfentrazone in drinking water under the Safe Drinking Water Act. However, a reasonable estimate of the sulfentrazone MCL using the appropriate methodology would be 350 ppb. The dietary contribution from these residues is included in the safety determination for both the U.S. population and infants (shown below).

Non-occupational exposure for sulfentrazone has not been estimated since the current registration for sulfentrazone is limited to commercial soybean production. The potential for nonoccupational exposure to the general population is, thus, insignificant.

EPA consideration of a common mechanism of toxicity is not appropriate at this time since EPA does not have information to indicate that toxic effects produced by sulfentrazone would be cumulative with those of any other chemical compounds.

6. *Determination of safety for U.S. population— Reference Dose*. Using the conservative exposure assumptions described above, based on the completeness and reliability of the toxicity data, the aggregate exposure to sulfentrazone will utilize 4.5 percent of the RfD for the U.S. population. EPA generally has no concern for exposures below 100 percent of the Reference Dose (RFD). Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, FMC, concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of sulfentrazone, including all anticipated dietary exposure and all other non-occupational exposures.

7. *Determination of safety for infants and children*. Developmental toxicity was observed in developmental toxicity studies using rats and rabbits. The NOELs for developmental effect were established at 10 mg/kg/day in the rat study and 100 mg/kg/day in the rabbit study. The developmental effect observed in these studies is believed to be a secondary effect resulting from decreased oxygen transport to the fetus.

Reference Dose. Using the conservative exposure assumptions described above, FMC has concluded that the percent of the RfD utilized by aggregate exposure to residues of sulfentrazone ranges from 4.3 percent for children 1 to 6 years old, up to 13.5 percent for non-nursing infants. EPA generally has no concern for exposure below 100 percent of the Reference Dose. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, FMC concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of sulfentrazone, including all anticipated dietary exposure and all other non-occupational exposures.

8. *Estrogenic effects.* No specific tests have been conducted with sulfentrazone to determine whether the pesticide may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects.

9. *Chemical residue.* The qualitative nature of the residues in plants and animals is adequately understood for the purposes of registration. Residues of sulfentrazone do not concentrate in the processed commodities. There are no Codex maximum residue levels established for residues of sulfentrazone on soybeans. FMC has submitted a practical analytical method for detecting and measuring levels of sulfentrazone in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. EPA will information on this method to the Food and Drug Administration. The method is available to anyone who is interested in pesticide residue enforcement from the Field operations Division, Office of Pesticide Programs.

Forty separate residue trials have been conducted with sulfentrazone on soybeans. Analysis of these trials shows that the maximum total combined residue for sulfentrazone and its major metabolite will be below 0.05 ppm. Virtually no detectable residues of sulfentrazone were found in soybean meal, soapstock and oil treated at an exaggerated rate. Because of the very low level of these residues, no food additive tolerances are being proposed for these processed commodities.

Tolerances have been requested for residues of sulfentrazone and its major metabolite on soybean seed at the low level of 0.05 ppm. In addition, tolerances for residues of sulfentrazone and its major metabolites have been requested to cover inadvertent residues found in rotational crops of the cereal grain crop grouping (excluding sweet corn). For these rotational crop tolerances, the requested levels are as follows: 0.1 ppm in or on grain; 0.2 ppm in or on hay; 0.6 ppm in or on straw; 0.2 ppm in or on forage; 0.1 ppm in or on stover and 0.2 ppm in or on bran.

The proposed tolerance levels are adequate to cover residues likely to be present from the proposed use of sulfentrazone. Therefore, no special processing to reduce the residues will be necessary. There is no need for tolerances in animal meat, milk, poultry or eggs since there is no reasonable expectation of residues in these materials. This is based on the results of goat and poultry metabolism studies, as well as the soybean metabolism and crop rotation studies. Calculated transfer factors are extremely low and maximum expected residues in meat, milk, poultry and eggs would be in the part per trillion range. Since the level of detection of the available methods would be higher than the maximum expected level in each of the matrixes, no detectable residues would be found.

10. *Environmental fate.* Laboratory studies indicate that sulfentrazone has the potential to persist in soil and be mobile. However, the results of field dissipation studies run in the three largest soybean producing states (Iowa, Illinois, Arkansas) indicate that downward movement of sulfentrazone is limited, with no quantifiable residues being found below 18. In a single field study conducted under highly vulnerable conditions (very high sand content and low organic matter), small amounts of sulfentrazone were detected in shallow groundwater when sulfentrazone was applied at exaggerated rates. The site for this study received excessive record rainfall early during the study which contributed to the movement observed.

Sulfentrazone has been found to be stable to chemical hydrolysis in the pH range of environmental concern. However, the compound is subject to rapid extensive degradation in water in the presence of natural sunlight. Under these conditions, sulfentrazone residues rapidly break down, with more than 50% of the residue disappearing in 1 hour at environmental pH. Under aerobic conditions in soil, the major metabolic pathway for sulfentrazone is oxidation of the methyl group on the triazolinone ring. A minor metabolic pathway under aerobic conditions is the cleavage of the sulfonamide group on sulfentrazone. Sulfentrazone residues do not bioaccumulate in fish.

II. Administrative Matters

Interested persons are invited to submit comments on this notice of filing. Comments must bear a notation indicating the document control number, [PF–670]. All written comments filed in response to this

petition will be available, in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this notice of filing under docket number [PF–670] including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp=Docket@epamail.epa.gov

Electronic comments must be submitted as ASCII file avoiding the use of special characters and any form of encryption.

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

List of Subjects

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

Dated: October 21, 1996.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 96–28422 Filed 11–5–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5646–9]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding Corning Municipal Utilities, Corning, IA

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding Corning Municipal Utilities, Corning, Iowa.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of this public notice.

On September 26, 1996, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of Corning Municipal Utilities, CWA Docket No. VII–96–W–0004.

The Complaint proposes a penalty of Fourteen Thousand ($14,000) dollars for the discharge of 127 gallons of No. 2 diesel fuel into or upon the East Nodaway River and for failure to prepare an SPCC Plan in writing and in accordance with 40 CFR 112.7, in violation of Section 311(b)(3) and 311(j) of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Corning Municipal Utilities is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: October 23, 1996.

William Rice,

Acting Regional Administrator.

[FR Doc. 96–28425 Filed 11–5–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5647–1]

Clean Water Act Class II: Proposed Administrative Penalty Reinhold Development, Inc., St. Louis, MO

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding Reinhold Development, Inc., St. Louis, Missouri.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1113(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of this notice.

On September 30, 1996, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of Reinhold Development, Inc., St. Louis, Missouri, CWA Docket No. VII–96–W–0006.

The Complaint proposes a penalty of Sixty-seven Thousand Four Hundred Forty-nine Dollars ($67,449) for the discharge of pollutants into the waters of the United States without permit in accordance with 40 CFR part 22, in violation of Section 301 and 404 of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Reinhold Development, Inc. is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: October 22, 1996.

William Rice,

Acting Regional Administrator.

[FR Doc. 96–28426 Filed 11–5–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5647–2]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding Jacobson Brothers, Inc., Dubuque, IA

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding Jacobson Brothers, Inc., Dubuque, Iowa.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of this public notice.

On September 26, 1996, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of Jacobson Brothers, Inc., CWA Docket No. VII–96–W–0007.

The Complaint proposes a penalty of Ten Thousand ($10,000) Dollars for discharging approximately 43 barrels of oil into or upon the North Fork of Catfish Creek (a navigable water, as defined in 40 CFR 110.1) in violation of Section 311(b)(6) of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Jacobson Brothers, Inc. is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: October 22, 1996.

William Rice,

Acting Regional Administrator.

[FR Doc. 96–28427 Filed 11–4–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5647–3]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity to Comment regarding Union Electric Company, Cape Girardeau, MO

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding Union Electric Company, Cape Girardeau, Missouri.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(A).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of this public notice.

On September 26, 1996, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following Complaint:

In the Matter of Union Electric Company, CWA Docket No. VII–96–W–0003.

The Complaint proposes a penalty of Twenty-eight Thousand Three Hundred Fifty ($28,350) dollars for failure to prepare an SPCC Plan in writing and in accordance with 40 CFR 112.7, in violation of Section 331(j) of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding

should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Union Electric Company is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this notice.

Dated: October 22, 1996.

William Rice,

Acting Regional Administrator.

[FR Doc. 96–28428 Filed 11–5–96; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5647–7]

Proposed General NPDES Permit for log transfer facilities in Alaska: General NPDES Permit No. AK–G70–0000

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice, extension of the public comment period.

SUMMARY: On September 30, 1996, EPA provided notice of the draft general National Pollutant Discharge Elimination System (NPDES) permit no. AK–G70–0000 for log transfer facilities in Alaska. The public comment period was published in the notice. At the request of interested parties, EPA is today providing notice that the public comment period has been extended.

ORIGINAL PUBLIC NOTICE ISSUANCE DATE: September 30, 1996.

ORIGINAL PUBLIC NOTICE EXPIRATION DATE: October 30, 1996.

EXTENDED PUBLIC NOTICE EXPIRATION DATE: November 20, 1996.

PUBLIC COMMENTS: Interested persons may submit written comments on the draft general NPDES permit to: Environmental Protection Agency, Attn: Susan Cantor, 222 W. Seventh Avenue #19, Anchorage, Alaska 99513. All comments should include the name, address, and telephone number of the commenter and a concise statement of comment and the relevant facts upon which it is based. Comments of either support or concern which are directed at specific, cited permit requirements are appreciated. Comments must be submitted to EPA on or before the extended expiration date of the public notice.

ADMINISTRATIVE RECORD: The draft general NPDES permit, fact sheet, and the draft technical report for the ''Ocean Discharge Criteria Evaluation of the NPDES General Permit for Alaskan Log Transfer Facilities'' are available for inspection and copying at the EPA office in Anchorage (Room 537) any time between 8:00 am and 4:30 pm., Monday through Friday. Copies and other information may also be requested by mail or by calling Susan Cantor at (907) 271–3413.

FOR FURTHER INFORMATION CONTACT: Susan Cantor, of the Environmental Protection Agency, Region 10, Alaska Office, at the address listed above, or by telephone at (907) 271–3413. Inquiries may be submitted via facsimile to (907) 271–3424. Requests may be electronically mailed to CANTOR.SUSAN@EPAMAIL.EPA.GOV. Additional services can be made available to persons with disabilities. For those with impaired hearing or speech, please contact EPA's telecommunication device for the deaf at (206) 553–1698.

Dated: October 29, 1996.

Philip G. Millam,

Director, Office of Water.

[FR Doc. 96–28542 Filed 11–05–96; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5646–6]

Questions and Answers Regarding Implementation of an Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has developed a set of questions and answers to assist municipalities and permitting authorities in implementing its recent policy outlining an interim approach for incorporating water quality-based effluent limitations into storm water permits.

Background and Purpose

On August 26, 1996, the EPA published in the Federal Register (61 FR 43761) a policy outlining an interim approach for incorporating water quality-based effluent limitations into National Pollution Discharge Elimination System (NPDES) storm water permits. The policy was developed to address the variable nature of storm water discharges, and the typical lack of information on which to base numeric water quality-based effluent limitations (expressed as concentration and mass). The policy addresses issues related to the type of effluent limitations that are most appropriate for NPDES storm water permits to provide for the attainment of water quality standards. Since the policy only applies to water quality-based effluent limitations, it is not intended to affect technology-based limitations, such as those based on effluent guidelines or the permit writer's best professional judgements, that are incorporated into storm water permits.

Based on numerous requests for additional information regarding the implementation of the policy, the EPA has developed the following set of questions and answers. For convenience, the policy is also reprinted below.

Policy Statement

In response to recent questions regarding the type of water quality-based effluent limitations that are most appropriate for National Pollutant Discharge Elimination System (NPDES) storm water permits, the Environmental Protection Agency (EPA) is adopting an interim permitting approach for regulating wet weather storm water discharges. Due to the nature of storm water discharges, and the typical lack of information on which to base numeric water quality-based effluent limitations (expressed as concentration and mass), EPA will use an interim permitting approach for NPDES storm water permits.

The interim permitting approach uses best management practices (BMPs) in first-round storm water permits, and expanded or better-tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards. In cases where adequate information exists to develop more specific conditions or limitations to meet water quality standards, these conditions or limitations are to be incorporated into storm water permits, as necessary and appropriate. This interim permitting approach is not intended to affect those storm water permits that already include appropriately derived numeric water quality-based effluent limitations. Since the policy only applies to water quality-based effluent limitations, it is not intended to affect technology-based limitations, such as those based on effluent guidelines or the permit writer's best professional judgement, that are incorporated into storm water permits.

Each storm water permit should include coordinated and cost-effective monitoring program to gather necessary information to determine the extent to which the permit provides for attainment of applicable water quality standards and to determine the appropriate conditions or limitations for subsequent permits. Such a monitoring program may include, ambient monitoring, receiving water assessment, discharge monitoring (as needed), or a combination of monitoring procedures designed to gather necessary information.

This interim permitting approach applies only to EPA, however, EPA also encourages authorized States and Tribes to adopt similar policies for storm water permits. This interim permitting approach provides time, where necessary, to more fully assess the range of issues and possible options for the control of storm water discharges for the protection of water quality. This interim permitting approach may be modified as a result of the ongoing Urban Wet Weather Flows Federal Advisory Committee policy dialogue on this subject.

Questions and Answers

Question 1: Must EPA require that storm water dischargers, industrial or municipal, be subject to numeric water quality-based effluent limitations (expressed as concentration and mass) in order to attain water quality standards (WQS)?

Answer 1: No. Although National Pollutant Discharge Elimination System (NPDES) permits must contain conditions to ensure that water quality standards are met, this does not require the use of numeric water quality-based effluent limitations. Under the Clean Water Act (CWA) and NPDES regulations, permitting authorities may employ a variety of conditions and limitations in storm water permits, including best management practices, performance objectives, narrative conditions, monitoring triggers, action levels (e.g., monitoring benchmarks, toxicity reduction evaluation action levels), etc., as the necessary water quality-based limitations, where numeric water quality-based effluent limitations are determined to be unnecessary or infeasible.

Analysis

A. The Clean Water Act does not require numeric effluent limitations.

Section 301 of the CWA requires that discharger permits include effluent limitations necessary to meet State or Tribal WQS. Section 502 defines ''effluent limitation'' to mean *any* restriction on quantities, rates, and concentrations of constituents discharged from point sources. The CWA does not say that effluent limitations need be numeric. As a result, EPA and States have flexibility in terms of how to express effluent limitations.

B. EPA's regulations do not always require numeric effluent limitations.

EPA has, through regulation, interpreted the statute to allow for non-numeric limitations (e.g., ''best management practices'' or BMPs, see 40 CFR 122.2) to supplement or replace numeric limitations in specific instances that meet the criteria specified at 40 CFR 122.44(k). This regulation essentially codifies a court case addressing storm water discharges. *NRDC* v. *Costle*, 568 F.2d 1369 (D.C. Cir. 1977). In that case, the Court stated that EPA need not establish numeric effluent limitations where such limitations were infeasible.

C. EPA has interpreted the statute and regulations to allow BMPs in lieu of numeric limitations.

EPA has defended use of BMPs as a substitute for numeric limitations in litigation involving storm water discharges (*CBE* v. *EPA*, 91–70056 (9th Cir.)(brief on merits)) and in correspondence (Letter from Michael Cook, EPA, to Peter Lehner, NRDC, May 31, 1995). EPA has found that numeric limitations for storm water permits can be very difficult to develop at this time because of the existing state of knowledge about the intermittent and variable nature of these types of discharges and their effects on receiving waters. Some storm water permits, however, currently do contain numeric water quality-based effluent limitations where adequate information exists to derive such limitations.

Question 2: Has EPA provided guidance on a methodology for deriving numeric water quality-based effluent limitations?

Answer 2: Yes, but primarily for continuous wastewater discharges at low flow conditions in the receiving water, not intermittent wet weather discharges during high flow conditions. Regulations at 40 CFR 122.44(d) specify the requirements under which permitting authorities establish water quality-based effluent limitations when a facility has the ''reasonable potential'' to cause or contribute to an excursion of numeric or narrative water quality criteria. In addition, EPA guidance in the *Technical Support Document for Water Quality-Based Toxics Control* (TSD) and the *NPDES Permit Writers Training Manual,* supplemented with total maximum daily load (TMDL) and modeling guidance, supports issuing permits that include numeric water quality-based effluent limitations. This guidance was based on crafting numeric water quality-based effluent limitations using TMDLs, or calculations similar to those used in developing TMDLs, and wasteload allocations (WLAs) derived through modeling. EPA expects the Urban Wet Weather Flows Federal Advisory Committee (60 FR 21189, May 1, 1995) will review this issue at greater length and may provide recommendations on how to proceed.

Question 3: Why can numeric water quality-based effluent limitations be difficult to derive for storm water permits?

Answer 3: Storm water discharges are highly variable both in terms of flow and pollutant concentrations, and the relationships between discharges and water quality can be complex. The water quality impacts of storm water discharges are related to the uses designated by States and Tribes in their WQS, the quality of the storm water discharge (e.g., conventional or toxic pollutants conveyed to the receiving water) and quantity of the storm water (e.g., erosion and loss of habitat caused by increased flows and velocity). Uses may be impacted by both water quality and water quantity. Depending on site-specific considerations, some of the water quality impacts of storm water discharges may be more related to the physical effects (e.g., stream bank erosion, streambed scouring, extreme temperature variations, sediment smothering) than the type and amount of pollutants present in the discharge. For municipal storm water discharges in particular, the current use of system-wide permits and a variety of jurisdiction-wide BMPs, including educational and programmatic BMPs, does not easily lend itself to the existing methodologies for deriving numeric water quality-based effluent limitations. These methodologies were designed primarily for process wastewater discharges which occur at predictable rates with predictable pollutant loadings under low flow conditions in receiving waters. Using these methodologies, limitations are typically derived for each specific outfall to be protective of low flows in the receiving water. Because of this, permit writers have not made wide-spread use of the existing methodologies and models for storm water discharge permits. In addition, wet weather modeling is technically more difficult and expensive than the simple dilution models generally used in the permitting process.

Question 4: Has EPA previously recognized the technical difficulty in deriving numeric water quality-based

effluent limitations for storm water discharges?

Answer 4: Yes. EPA recognized the technical difficulty in deriving numeric water quality-based effluent limitations for wet weather discharges in its brief on the merits in *Citizens for a Better Environment (CBE)* v. *United States Environmental Protection Agency,* 91–70056 (9th Cir.) and in the Great Lakes Water Quality Guidance (58 FR 20841, April 16, 1993).

In the *CBE* case, EPA explained why it was technically infeasible to derive numeric water quality-based effluent limitations for the discharge of metals in storm water into South San Francisco Bay and asserted that a water quality-based effluent limitation could take the form of a narrative statement, such as a BMP, if it was infeasible to derive a numeric limitation. In explaining its arguments in the *CBE* case, EPA cited 40 CFR 122.44(k)(2), which provides that BMPs may be imposed in NPDES permits ''to control or abate the discharge of pollutants when * * * [n]umeric effluent limitations are infeasible.''

In the Great Lakes Water Quality Guidance, EPA did not extend the method for calculating wasteload allocations, the basis for numeric water quality-based effluent limitations, to storm water or combined sewer overflow (CSO) discharges because the varying nature of these discharges is inconsistent with the assumptions used in developing the guidance. The Great Lakes Water Quality Guidance defers to national guidance and policy on wet weather and does not seek to establish a separate and distinct set of wet weather requirements. EPA expects the Urban Wet Weather Flows Advisory Committee to provide recommendations about how to address the broader technical issues involved in achieving compliance with WQS in a wet weather context.

Question 5: What are the potential problems of using standard methodologies to derive numeric water quality-based effluent limitations for storm water permits?

Answer 5: Correctly derived numeric water quality-based effluent limitations provide a greater degree of confidence that a discharge will not cause or contribute to an exceedance of the WQS, because numeric water quality-based effluent limitations are derived directly from the numeric component of those standards. In addition, numeric water quality-based effluent limitations can avoid the expense associated with overly protective treatment technologies because numeric water quality-based effluent limitations provide a more precisely quantified target for permittees. Potential problems of incorporating inappropriate numeric water quality-based effluent limitations rather than BMPs in storm water permits at this time are significant in some cases. Deriving numeric water quality-based effluent limitations for any NPDES permit without an adequate effluent characterization, or an adequate receiving water exposure assessment (which could include the use of dynamic modeling or continuous simulations) may result in the imposition of inappropriate numeric limitations on a discharge. Examples of this include the imposition of numeric water quality criteria as end-of-pipe limitations without properly accounting for the receiving water assimilation of the pollutant or failure to account for a mixing zone (if allowed by applicable State or Tribal WQS). This could lead to overly stringent permit requirements, and excessive and expensive controls on storm water discharges, not necessary to provide for attainment of WQS. Conversely, an inadequate effluent characterization could lead to water quality-based effluent limitations that are not stringent enough to provide for attainment of WQS. This could result because effluent characterization and exposure assessments for discharges with high variability of pollutant concentrations, loadings, and flow are more difficult than with process wastewater discharges at low flows.

Question 6: How are water quality-based effluent limitations developed for combined sewer overflow (CSO) discharges?

Answer 6: The CSO Control Policy issued by EPA on April 19, 1994 (59 FR 18688) provides direction on compliance with the technology-based and water quality-based requirements of the CWA for communities with combined sewer systems. The CSO Policy provides for implementation of technology-based requirements (expressed as ''nine minimum controls'') by January 1, 1997.

In addition, under the CSO Policy, communities are also expected to develop long-term control plans that will provide for attainment of WQS through either the ''presumption approach'' or the ''demonstration approach.'' Under the presumption approach, CSO controls would be presumed to attain WQS if certain performance criteria are met. A program that meets the criteria specified in the CSO policy is presumed to provide an adequate level of control to meet the water quality-based requirements of the CWA, provided the permitting authority determines that such presumption is reasonable based on characterization, monitoring, and modeling of the system, including consideration of sensitive areas. Under the demonstration approach, the permittee would demonstrate that the selected CSO controls, when implemented, would be adequate to meet the water quality-based requirements of the CWA.

The CSO Policy anticipates that it will be difficult in the early stages of permitting to determine whether numeric water quality-based effluent limitations are necessary for CSOs, and, if so, what the limitations should be. For that reason, in the absence of sufficient data to evaluate the need for numeric water quality-based effluent limitations, the Policy recommends that the first phase of CSO permits (''Phase I'') contain a narrative requirement to comply with WQS. Further, so-called ''Phase II'' permits would contain water quality-based effluent limitations, as provided in 40 CFR 122.44(d)(1) and 122.44(k), that may take the form of numeric performance or design standards, such as a certain number of overflow events or a certain percent volume capture. Generally, only after the long-term control plan is in place and after collection of sufficient water quality data (including applicable wasteload allocations developed during a TMDL process) would numeric water quality-based effluent limitations be included in the permit. This would likely occur only after several permitting cycles.

Question 7: If BMPs alone are demonstrated to provide adequate water quality protection, are additional controls necessary?

Answer 7: No. If the permitting authority determines that, through implementation of appropriate BMPs required by the NPDES storm water permit, the discharges have the necessary controls to provide for attainment of WQS and any technology-based requirements, additional controls need not be included in the permit. Conversely, if a discharger (municipal or industrial) fails or refuses to adopt and implement adequate BMPs, the permitting authority may have to consider other approaches to ensure water quality protection.

If, however, the permitting authority has adequate information on which to base more specific conditions or limitations, such limitations are to be incorporated into storm water permits, as necessary and appropriate. Such conditions or limitations may include an integrated suite of BMPs, performance objectives, narrative standards, monitoring triggers, numeric water quality-based effluent limitations,

action levels, etc. Storm water permits may also need to include additional requirements to receive State or Tribal 401 certifications.

Question 8: What is EPA doing to develop information about the linkage between BMPs and water quality and to facilitate a watershed-based approach to storm water permitting?

Answer 8: The Agency has cooperative agreements with WERF (Water Environment Research Foundation) and ASCE (American Society of Civil Engineers) to research which BMPs are most effective under which circumstances. The results of this research should provide permitting authorities and permittees with information about how to evaluate the effectiveness of different kinds of BMPs in different circumstances and to select the most appropriate controls to achieve water quality objectives. EPA also has cooperative agreements with the Watershed Management Institute and other organizations to conduct research over the next two to four years that will examine the capability of storm water BMPs to improve receiving water quality and restore/protect the biological integrity of those waters. EPA expects the Urban Wet Weather Flows Federal Advisory Committee to provide recommendations on how to permit storm water discharges on a watershed basis.

Question 9: The interim permitting approach states that permits should include monitoring programs to generate necessary information to determine the extent to which permits are providing for the attainment of water quality standards. What types of monitoring should be included and how much monitoring is necessary?

Answer 9: The amount and types of monitoring necessary will vary depending on the individual circumstances of each storm water discharge. EPA encourages dischargers and permitting authorities to carefully evaluate monitoring needs and storm water program objectives so as to select useful and cost-effective monitoring approaches. For most dischargers, storm water monitoring can be conducted for two basic reasons: (1) to identify if problems are present, either in the receiving water or in the discharge, and to characterize the cause(s) of such problems; and (2) to assess the effectiveness of storm water controls in reducing contaminants and making improvements in water quality.

Under the NPDES storm water program, large and medium municipal separate storm sewer system permittees are required to conduct monitoring. EPA recommends that each such municipal permittee design the monitoring effort to be supportive of the goals and objectives of its storm water management program when developing such a program for the term of its NPDES permit. To accomplish this, a municipal permittee may use a variety of storm water monitoring tools including receiving water chemistry; receiving water biological assessments (benthic invertebrate surveys, fish surveys, habitat assessments, etc.); effluent monitoring; including chemical, whole effluent and visual examinations; illicit connections screening; and combinations thereof, or other methods. Techniques that assess receiving waters will help to identify the degree to which storm water discharges are contributing to any water quality problems. Techniques that assess storm water discharge characteristics will help to identify potential causes of any identified water quality problems. The municipal permittee, in conjunction with the applicable NPDES permitting authority, should determine which monitoring approaches would be most appropriate given the objectives of the storm water management program. If municipal permittees conduct ambient monitoring, it may be most cost-effective to pool resources with other organizations (including, for example, other municipalities, States, and Tribes) conducting monitoring within the same watershed. This could be best accomplished through a coordinated watershed monitoring strategy.

For industrial storm water dischargers, monitoring may be required under the terms of an NPDES permit for storm water discharges. For those industrial storm water permits that do require monitoring, this is typically done to characterize contaminants that might be found in the industrial runoff and/or to assess the effectiveness of the industrial storm water pollution prevention plan in reducing these contaminants. This typically involves end-of-pipe chemical-specific monitoring. End-of-pipe monitoring may be more appropriate for an industrial facility than for a municipal permittee, given the industrial facility's more discrete site characteristics, which make management strategies such as collection and treatment more feasible. Industries, for the most part, have readily defined storm water conveyances into which runoff flows from discrete drainage areas. Industries may more readily identify and control existing on-site sources of storm water contamination or provide collection and treatment within these discrete drainage areas to control pollutant concentrations in their storm water discharges.

EPA and other organizations are currently working to improve approaches for monitoring storm water and the potential effects upon water quality. These new approaches are called storm water program ''environmental indicators.'' Environmental indicators are designed to be more meaningful monitoring tools that storm water dischargers can use to conduct storm water monitoring for the purposes described above. A manual describing each of the recommended storm water program environmental indicators is being prepared by the Center for Watershed Protection in Silver Spring, Maryland. That manual is expected to be ready by the end of August 1996 and should provide useful information for storm water dischargers contemplating the need to develop a cost-effective, meaningful storm water monitoring program. In addition, EPA expects the Urban Wet Weather Flows Federal Advisory Committee to provide recommendations on how to better monitor storm water and other wet weather discharges using a watershed approach.

Question 10: Does this interim permitting approach apply to both storm water discharges associated with industrial activity and storm water discharges from municipal separate storm sewer systems?

Answer 10: Yes. The interim permitting approach is applicable to both discharges from municipal separate storm sewer systems and storm water discharges associated with industrial activity (as defined by 40 CFR 122.26(b)(14)). The interim permitting approach would not affect, however, permits that already incorporate appropriately derived numeric water quality-based effluent limitations. Since the interim permitting approach only addresses water quality-based effluent limitations, it also does not affect technology-based effluent limitations, such as those based on effluent limitations guidelines or developed using best professional judgement, that are incorporated into storm water permits. In addition, particularly for some industries, adequate information may already have been collected with which to assess the reasonable potential for a storm water discharge to cause or contribute to an excursion of a WQS, and from which a numeric water quality-based effluent limitation can be (or has been) appropriately derived. An adequate amount of storm water pollutant source information may also exist with which to assess the effectiveness of the industrial storm

water control measures in complying with the limitations and in reducing storm water contaminants for protecting water quality.

DATE: The policy was signed by the Assistant Administrator for Water on August 1, 1996.

FOR FURTHER INFORMATION CONTACT: Copies of the policy with the questions and answers are available by writing the U.S. Environmental Protection Agency, Water Resources Center, Mail Code 4101, 401 M Street, SW, Washington, D.C., 20460, or by calling (202) 260–7786. If you have additional questions about the policy, please contact, Bill Swietlik, Storm Water Phase I Matrix Manager, Office of Wastewater Management, at (202) 260–9529 or William Hall, Urban Wet Weather Flows Matrix Manager, Office of Wastewater Management, at (202) 260–1458, or by Internet at hall.william@epamail.epa.gov.

Dated: October 11, 1996.

Michael B. Cook,

Director, Office of Wastewater Management, Designated Federal Official.

[FR Doc. 96–28430 Filed 11–5–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by FCC for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

October 30, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions 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.

The FCC is reviewing the following information collection requirements for possible 3-year extension under delegated authority 5 CFR 1320, authority delegated to the Commission by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted on or before January 6, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Number: 3060–0270.

Title: 90.443 Content of Station Records.

Form Number: N/A.

Type of Review: Extension of an existing collection.

Respondents: State or local governments; Businesses or other for-profit; Non-profit institutions; Individuals or households.

Number of Respondents: 57,410 Recordkeepers.

Estimated time per response: .083 hours.

Total annual burden: 4,765 hours.

Needs and Uses: Rule lists information that station licensees are required to maintain. Maintenance records are used by licensee or Commission field personnel to note any recurring equipment problems that may pose an aviation hazard or cause interference.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–28434 Filed 11–5–96; 8:45 am]

BILLING CODE 6712–01–P

Notice of Public Information Collections Submitted to OMB for Review and Approval

October 29, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions 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.

DATES: Written comments should be submitted on or before December 6, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain__t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0076.

Title: Annual Employment Report for Common Carriers.

Form No.: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profits.

Number of Respondents: 4,000.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 4,000 hours.

Needs and Uses: The Annual Employment Report is submitted by certain common carrier licensees and permittees. The data is intended to assess compliance with equal employment opportunity requirements. Data is used by the FCC, Congress and U.S. Commission on Civil Rights, EEOC, NTIA and public interest groups.

OMB Approval Number: New Collection.

Title: Disclosure and Dissemination of Pay-Per-Call Information Section 47 CFR 64.1509.

Form No.: N/A.

Type of Review: New Collection.

Respondents: Business and other for-profit, including small businesses.

Number of Respondents: 25.

Estimated Time Per Response: 410 hours (average).

Total Annual Burden: 10,250 hours.

Needs and Uses: 47 CFR 64.1509 imposes requirements on common carriers that assign telephone numbers to pay-per-call services. The requirements are intended to ensure that consumers understand their rights and responsibilities with respect to these services.

OMB Approval Number: 3060–0168.

Title: Reports of Proposed Changes in Depreciation Rates Section 43.43.

Form No.: N/A.

Type of Review: Extension of an existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 12.

Estimated Time Per Response: 6,500 hours.

Total Annual Burden: 78,000 hours.

Needs and Uses: Dominant communications carriers with annual operating revenue of $100 million or more are required to file a report showing any proposed changes to their depreciation rate schedule pursuant to 47 CFR Section 43.43. The information is used by the Commission to establish the proper depreciation rate to be charged by the carriers.

OMB Approval Number: New Collection.

Title: Disclosure Requirements for Information Services Provided through Toll-Free Numbers.

Form No.: N/A.

Type of Review: New Collection.

Respondents: Business or other for-profit.

Number of Respondents: 3,750.

Estimated Time Per Response: 2.8 hours.

Total Annual Burden: 10,500 hours.

Needs and Uses: 47 CFR 64.1504 imposes disclosure requirements on entities that use toll-free numbers to provide information services. The requirements are intended to ensure that callers to toll-free numbers are (1) informed if charges will be levied and (2) receive the information necessary to make an informed decison whether to purchase an information service.

OMB Approval Number: New Collection.

Title: Section 73.673 Public information initiative regarding educational and informational programming for children.

Form No.: N/A.

Type of Review: New Collection.

Respondents: Business or other for-profit; Individuals or households.

Number of Respondents: 1,200.

Estimated Time Per Response: 1 minute per program to ensure that on-the-air identification is provided; 5 minutes per program to convey children's television information to publishers of program guides.

Total Annual Burden: 37,440 hours.

Total Annual Cost: $1,500 per respondent.

Needs and Uses: This new Section will require commercial TV broadcasters to identify programs specifically designed to educate and inform children at the beginning of those programs, in a form that is at the discretion of the licensee, and to provide information identifying such programs and the age groups for which they are intended to publishers of program guides. These requirements will provide better information to the public about the shows broadcasters air to fulfill their obligations to air educational and informational programming under the CTA. This information will assist parents who wish to guide their children's television viewing. In addition, if large numbers of parents use that information to choose educational programming for their children it will increase the likelihood that the market will respond with more educational programming.

OMB Approval Number: 3060–0214.

Title: Section 73.3526 Local Public Inspection File of Commercial Stations.

Form No.: N/A.

Type of Review: Revision of an existing collection.

Respondents: Individuals or households; Business and other for-profit.

Number of Respondents: 10,250 commercial radio licensees recordkeepers; 1,200 commercial TV licensee recordkeepers; 1,200 comercial TV stations making must-carry/transmission consent elections; 1,200 comercial TV stations publicizing existence and location of children's public inspection file.

Estimated Time Per Response: 104 hours for radio recordkeeping; 130 hours per year for TV recordkeeping; 1 hour per election statements to 150 cable systems per station; 5 minutes per TV station for revising station identification publicizing the existence and location of the children's public inspection file.

Total Annual Burden: 1,282,100 hours.

Needs and Uses: Section 73.3526 requires each licensee/permitee of a commercial AM, FM or TV broadcast station to maintain a file for public inspection. The contents of the file vary according to the type of service and status. The data are used by the public and FCC staff to evaluate information about the station's performance.

OMB Approval Number: 3060–0392.

Title: 47 CFR 1.1401 through 1.1416 Pole Attachment Complaint Procedures.

Type of Review: Extension of existing collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 83.

Estimated Time Per Response: 1–25 hours.

Total Annual Burden: 449 hours. Notices: 36 sets of notices × 2 hours each = 72 hours. Petitions for Stay: 10 Petitions × 8 hours each = 80 hours. Complaints, responses and replies: 10 complaint cases (20 parties): 50% of parties will use in-house legal assistance with an average burden of 25 hours per case. 10 parties × 25 hours = 250 hours. 50% of parties will use outside legal counsel with an average burden of 4 hours to coordinate information with outside legal counsel. 10 parties × 4 hours = 40 hours. State certifications: 7 certifications × 1 hour = 7 hours.

Total Costs to Respondents: $41,000. Notices: 36 sets of notices × $100 each for postage and stationery = $3,600. Complaints, responses and replies: 50% of parties will use outside legal counsel paid at $150 per hour. 10 parties × 25 hours per case × $150 per hour = $37,500.

Needs and Uses: Initial pole attachment provisions were mandated by Congress pursuant to Section 224 of the Communications Act of 1934. Among other things, Section 224 initially mandated the following: The Commission was required to establish rules to ensure that the rates, terms and conditions under which cable television system operators attach their hardware to utility poles are just and reasonable.

Utilities shall provide a cable television system operator no less than 60 days written notice prior to (1) removal of facilities or termination of any service to those facilities, such removal or termination arising out of a rate, term or condition of a cable television pole attachment agreement, or (2) any increase in pole attachment rates. The Commission was required to establish a Petition for Stay process for the action contained in the notice. The Commission was required to establish a complaint resolution process regarding pole attachments. The Commission was required to establish a certification process for states to use to make notice of their authority to regulate the rates, terms and conditions for pole attachments. The provisions in Section 224 were initially only applicable to cable television system operators. However, Section 703 of the Telecommunications Act of 1996 (''1996 Act'') amends Section 224 to expand the scope of the pole attachment provisions to include telecommunications carriers as well as cable television system operators. Information collected as a result of pole attachment provisions has been used by the Commission to hear and resolve petitions for stay and complaints as mandated by Section 224. Information filed has been used to determine the merits of the petition and complaint. State certifications have been used to make public notice of the state's authority to regulate the rates, terms and conditions for pole attachments.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–28435 Filed 11–5–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1136–DR]

Puerto Rico; Amendment 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 Puerto Rico (FEMA–1136–DR), dated September 11, 1996, and related determinations.

EFFECTIVE DATE: October 23, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Puerto Rico 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 11, 1996:

The municipalities of Guanica and Vega Alta for Public Assistance (already designated for Individual Assistance and Hazard Mitigation).

The municipality of Quebradillas for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 96–28568 Filed 11–5–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1135–DR]

Virginia; Amendment 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–1135–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: October 23, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

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 6, 1996:

The counties of Accomack and Northampton for Individual Assistance and Hazard Mitigation (already designated for direct Federal assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 96–28566 Filed 11–5–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1135–DR]

Virginia; Amendment 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–1135–DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: October 23, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

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 6, 1996:

Charles City County for Individual Assistance (already designated for direct Federal assistance, Public Assistance and Hazard Mitigation.)

Cumberland County for Public Assistance (already designated for direct Federal assistance, Individual Assistance and Hazard Mitigation.)

Amelia, Buckingham, Dinwiddie, Fluvanna and Goochland Counties for Public Assistance and Hazard Mitigation (already designated for direct Federal assistance.)

The independent cities of Fredericksburg, Hopewell, Newport News, Poquoson, Suffolk and Williamsburg, and the counties of Chesterfield, Essex, Gloucester, Henrico, Isle of Wight, James City, King & Queen, King George, King William, Lancaster, Mathews, Middlesex, New Kent, Northumberland, Prince George, Prince William, Richmond, Surry and York for Individual Assistance and Hazard Mitigation (already designated for direct Federal assistance)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 96–28567 Filed 11–5–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL LABOR RELATIONS AUTHORITY

Senior Executive Service; Performance Review Board

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names on the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: M. Dian Jamison, Human Resources Director, Federal Labor Relations Authority (FLRA), 607 Fourteenth Street, NW; Washington, D.C. 20424–0001; (202) 482–6690, extension No. 423.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C. requires that each agency establish, in accordance with the regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards. The Boards shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The following persons will serve on the FLRA's Performance Review Board:

Solly Thomas, Office of the Executive Director, FLRA

William E. Washington, Office of the General Counsel, FLRA

Patricia C. Johnson, Equal Employment Opportunity Commission

Gloria Joseph, National Labor Relations Board

Darrell L. Netherton, Merit Systems Protection Board

M. Dian Jamison,

Human Resources Director.

[FR Doc. 96–28536 Filed 11–5–96; 8:45 am]

BILLING CODE 6727–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Noral Cargo International, Inc., 4745 N.W. 72nd Avenue, Miami, FL 33166, Officers: Norma E. Garcia, President; Carlos Garcia, Vice President

I.C.A.T. Logistics, Inc., 1340 Charwood Road, Suite G, Hanover, MD 21076, Officers: Richard Campbell, President; John T. Greene, Director of Sales.

Dated: October 31, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–28532 Filed 11–5–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 20, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Dr. Madhu Mohan Katikineni, and Dr. Mangal Katikineni, both of Potomac, Maryland; to acquire an additional 4.83 percent, for a total of 14.13 percent of the voting shares of First Liberty Bancorp, Inc., Washington, D.C., and thereby indirectly acquire First Liberty National Bank, Washington, D.C.

Board of Governors of the Federal Reserve System, October 31, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–28449 Filed 11–5–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 29, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. New Asia Bancorp, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of NAB Bank, Chicago, Illinois.

2. Wintrust Financial Corporation, Lake Forest, Illinois (formerly known as North Shore Community Bancorp, Inc., Wilmette, Illinois); to acquire 100 percent of the voting shares of Barrington Bank & Trust Company, N.A., Barrington, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Commercial Corporation, Little Rock, Arkansas; to merge with W.B.T. Holding Company, Memphis,

Tennessee, and thereby indirectly acquire United American Bank, Memphis, Tennessee.

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis Minnesota; to acquire 100 percent of the voting shares of Central Bancorporation, Inc., Fort Worth, Texas, and thereby indirectly acquire Central Bank and Trust Company, Fort Worth Texas.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. City National Corporation, Beverly Hills, California; to merge with Ventura County National Bancorp, Oxnard, California, and thereby indirectly acquire Ventura County National Bank, Oxnard, California, and Frontier Bank, N.A., La Palma, California.

Board of Governors of the Federal Reserve System, October 31, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–28450 Filed 11–5–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 20, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Citizens BancShares, Inc., Raleigh, North Carolina; to engage *de novo* through its subsidiary, Atlantic States Bank, Raleigh, North Carolina, in owning and operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 31, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–28448 Filed 11–5–96; 8:45 am]

BILLING CODE 6210–01–F

[Docket No. R–0778]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has announced that, effective December 8, 1997, the Fedwire on-line funds transfer service will open at 12:30 a.m. Eastern Time five days per week (Monday through Friday). Previously, the Board determined that expansion of the Fedwire funds transfer service to 18 hours per day could be a useful component of private-sector initiatives to reduce settlement risk in the foreign exchange markets and to eliminate an operational barrier to potentially important innovation in privately-provided payment and settlement services.

EFFECTIVE DATE: December 8, 1997.

FOR FURTHER INFORMATION CONTACT: Louise Roseman, Associate Director (202/452–2789), Jeff Stehm, Manager (202/452–2217), or Jeannine Butcavage, Financial Services Analyst (202/452–2225), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System. For the hearing impaired *only:* Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

I. Background

In February 1994, the Board approved an expansion of the operating hours for the Fedwire on-line funds transfer service to 18 hours per day, five days per week (Monday through Friday) beginning in 1997, with the specific implementation date to be announced approximately one year in advance of the effective date (59 FR 8981, February 24, 1994; 60 FR 110, January 3, 1995). Beginning December 8, 1997, the Fedwire on-line funds transfer service will open at 12:30 a.m. and close at 6:30 p.m. Eastern Time.[1, 2, 3] Participation in the earlier operating hours is voluntary.

A 12:30 a.m. Fedwire opening time will overlap the entire European banking day and about two and one-half hours of the banking day in Tokyo. The Board believes that overlaps in operating hours among major financial centers will contribute to strengthened interbank settlement for cross-border markets. The closing time for the Fedwire funds transfer service will remain at 6:30 p.m. As discussed at length in the Board's February 1994 decision, the Board believes that the long-run benefits from offering final payment capabilities will strengthen interbank settlements and contribute to reductions in foreign exchange settlement risk through innovations in payment and settlement practices. In addition, the Fedwire funds transfer service will be an important tool for managing settlement risk early in the day during times of financial stress.

II. Implementation

A. Funds Transfer Business Day

With the earlier opening time of the Fedwire funds transfer system, the Federal Reserve Banks' funds transfer business day for on-line transfers will begin with the opening of the Fedwire funds transfer system at 12:30 a.m. and end with its closing (typically 6:30

[1] The current operating hours for the Fedwire on-line funds transfer service are 8:30 a.m. to 6:30 p.m. Eastern Time, five days per week (Monday through Friday).

[2] All times referenced are Eastern Time unless otherwise noted.

[3] The earlier opening of the Fedwire on-line funds transfer service will not affect the opening time for the origination of and telephone advice of credit for Fedwire off-line funds transfers.

p.m.), Monday through Friday, except for specified holidays observed by the Federal Reserve Banks.[4] For transfers originated during the very early hours, the Federal Reserve's funds transfer business day may differ from the calendar day on which a Fedwire participant sends or receives the transfer. For example, in the expanded operating hours environment, when a West Coast bank originates a Fedwire funds transfer on Tuesday at 10:00 p.m. Pacific Time (1:00 a.m. on Wednesday Eastern Time), its Federal Reserve Bank will deem that transfer to have occurred on its Wednesday funds transfer business day.

B. Opening Time Considerations

While the Federal Reserve will establish 12:30 a.m. as the standard opening time for the Fedwire funds transfer service, lengthy extensions to the closing time on the previous day could delay the 12:30 a.m. opening for the next business day. The Federal Reserve, therefore, will limit lengthy closing time extensions of the Fedwire funds transfer system to only those necessary to prevent significant market disruptions.

C. Notification of Participation

Some Fedwire participants have indicated to their Federal Reserve Banks that they would find useful a listing of depository institutions that plan to participate during the earlier hours. Participants stated that this information would help them to decide whether it would be beneficial to use their intraday liquidity to initiate certain Fedwire funds transfers during the earlier hours. To accommodate this request, the Federal Reserve will provide a list of earlier hour participants. This list will be updated regularly.

The list of earlier hour participants will not be restrictive; consequently, depository institutions will be permitted to send on-line funds transfers during the earlier hours even if they are not on the Federal Reserve's list of participants. All depository institutions will receive any funds transfers sent to them during the earlier hours whether or not they choose to participate in the earlier hours.

[4] Uniform Commercial Code Article 4A–106(a) states that a receiving bank may fix a cut-off time(s) on a funds transfer business day for the receipt and processing of payment orders, and treat payment orders received after the close of a funds transfer business day as received at the opening of the next funds transfer business day.

D. Fees for Transfers Made During Earlier Hours

During the 12:30 a.m. to 8:30 a.m. period, transaction fees for Fedwire funds transfers will be charged at the same level and in the same manner as transfers made during the 8:30 a.m. to 6:30 p.m. regular business hours.

E. Intraday Credit

Federal Reserve intraday credit will be provided to Fedwire participants during the 12:30 a.m. to 8:30 a.m. period on the same basis that such credit is provided after 8:30 a.m. That is, eligible institutions may incur intraday overdrafts subject to the requirements of the Board's payment system risk policy. To adjust for the additional operating hours during the day, daylight overdraft fees for all Fedwire participants will be calculated based on an 18-hour Fedwire day rather than a 10-hour Fedwire day.[5]

Posting times for some non-wire transactions are tied to the opening of the Fedwire funds transfer system.[6] In order not to change the current effective posting times of these transactions, the Board's posting rules have been modified to continue to post these transactions at 8:30 a.m. Interest and redemption payments on U.S. Treasury and Government agency securities generally will be posted between 8:30 a.m. and 9:15 a.m.[7]

F. Policy Statement Changes

As discussed above, the Board has adopted minor changes to the ''Federal Reserve Policy Statement on Payments System Risk,'' effective December 8, 1997. In section (I)(A) (Federal Reserve Policy—Daylight Overdraft Definition), in the table labeled ''Modified Procedures for Measuring Daylight Overdrafts,'' the heading ''Post at the Opening of Fedwire Funds Transfer System'' is revised to read ''Post at 8:30 a.m. Eastern Time''. In section (I)(B) (Federal Reserve Policy—Pricing), the third sentence of the second paragraph is revised to read ''For example, under an 18-hour scheduled Fedwire operating day, the overdraft fee equals 27 basis points (36 basis points multiplied by 18/24).''

[5] An institution's overdraft charges are calculated daily and equal the gross overdraft charge less the amount of a deductible. The gross overdraft charge is the product of the nominal daily overdraft rate and the average overdraft. Because the nominal daily rate is based on the portion of the day that the Fedwire funds transfer system is open, the nominal daily rate will increase with an 18-hour day. However, the average overdraft calculated for a longer Fedwire day will correspondingly decrease for a given level of total overdrafts. Based on the current daylight overdraft rate, the annual rate will increase from 15 basis points for a 10-hour Fedwire day to 27 basis points for an 18-hour Fedwire day. At the same time, the number of minutes used to average end-of-minute overdrafts will increase from 601 to 1081. The deductible is equal to 10 percent of an institution's qualifying capital valued at an effective daily rate that will be fixed at 10 of 24 hours. This issue was addressed at length in the Board's 1992 announcement of daylight overdraft fees (57 FR 47084, October 14, 1992).

[6] Specifically, these transactions include ACH credit transactions, advance notice Treasury investments, interest and redemption payments on state and local government series Treasury securities, and Treasury checks, postal money orders, local Reserve Bank checks, and EZ-Clear savings bond redemptions deposited by 12:01 a.m. or a later local deadline.

[7] The posting rules indicate that these transactions will be posted ''by 9:15 a.m.''

By order of the Board of Governors of the Federal Reserve System, October 30, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–28355 Filed 11–5–96; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Submission to OMB; comment request.

SUMMARY: The FTC has submitted the information collection requirements contained in 12 current rules to OMB for review and clearance under the Paperwork Reduction Act, 44 U.S.C. Chapter 35. On August 26, 1996, the FTC solicited comment concerning these information collection requirements, providing the information specified in 5 CFR 1320.5(a)(iv). 61 FR 43764. No comments were received. The current OMB clearances for these requirements expire on December 31, 1996. The FTC has requested that OMB extend the paperwork clearances through December 31, 1999.

DATES: Comments must be filed by December 6, 1996.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, ATTN: Edward Clarke, Desk Officer for the Federal Trade Commission, and to Elaine W. Crockett, Staff Attorney, Office of the General Counsel, Federal Trade Commission, Washington, DC 20580, (202)–326–2453.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Elaine W. Crockett at the address listed above.

SUPPLEMENTARY INFORMATION: The FTC has submitted requests for OMB review

of the following items. Further information concerning the entities subject to, and the burden estimates for, these requirements can be found at 61 FR 43764 (August 26, 1996). It should be noted that the great majority of the disclosure requirements discussed below entail burdens associated with statutorily required disclosure provisions. For example, the Truth-in-Lending, Textile Act, and Fair Packaging Regulations all involve large burden estimates, totaling approximately 69 million burden hours. Much of this burden reflects statutory provisions that require the disclosure of such basic consumer information as the annual percentage interest rate charged on loans, the composition of clothing and other textile items, and the size and content of packaged products. While the burden imposed on any individual party is often quite small (sometimes measured in seconds), the number of affected parties is often very high (sometimes measured in millions), and the total burden is therefore large. *See e.g.,* the Regulations implementing the Equal Credit Opportunity Act, the Electronic Fund Transfer Act, and the Consumer Leasing Act.

The great majority of the recordkeeping and reporting provisions discussed below entail burdens that are necessary for the enforcement of the regulation and/or statute. In some instances, these recordkeeping requirements are statutorily mandated. *See, e.g.* the regulations implementing the Fur Products Labeling Act. In most instances, the regulated entities keep these records in the normal course of business, and thus these recordkeeping requirements do not impose an additional ''burden'' on members of the public. *See* 5 CFR 1320.3(b)(2) (burden hours exclude effort that would be expended regardless of any regulatory requirement).

1. Collection Title: The Games of Chance Rule, 16 CFR Part 419.

OMB Control Number: 3084–0067.

Description of the collection of information and proposed use: The Rule establishes both recordkeeping and disclosure requirements applicable to food and gasoline retailers that conduct and advertise games of chance. The disclosure requirements assist consumers in determining both the likelihood of winning prizes and the legitimacy of covered games. The recordkeeping requirements assist in enforcement of the Rule.

Estimate of information collection burden: 8,250 total burden hours.

2. Title: Regulations promulgated under The Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* (''ECOA''), (''Regulation B'').

Control Number: 3084–0087.

Description of the collection of information and proposed use: The ECOA prohibits discrimination in the extension of credit. Regulation B, 12 CFR 202, promulgated by the Board of Governors of the Federal Reserve System, establishes both recordkeeping and disclosure requirements to assist consumers in understanding their rights under the ECOA and to assist in detecting unlawful discrimination.

Estimate of information collection burden: 14,400,000 total burden hours.

3. Title: Regulations promulgated under The Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq. (''EFTA''), (''Regulation E'').

Control Number: 3084–0085.

Description of the collection of information and proposed use: The EFTA requires accurate disclosure of the costs, terms and rights relating to electronic fund transfer (EFT) services to consumers. Regulation E, promulgated by the Board of Governors of the Federal Reserve System, establishes both recordkeeping and disclosure requirements applicable to entities providing EFT services to consumers.

Estimate of information collection burden: 20,500,000 total burden hours.

4. Title: Regulations promulgated under The Consumer Leasing Act, 15 U.S.C. 1667 *et seq.,* (''CLA''), (''Regulation M'').

Control Number: 3084–0086.

Description of the collection of information and proposed use: The CLA requires accurate disclosure of the costs and terms of leases to consumers. Regulation M, promulgated by the Board of Governors of the Federal Reserve System, establishes disclosure requirements that assist consumers in understanding the terms of leases and recordkeeping requirements that assist in enforcement of the Act.

Estimate of information collection burden: 533,400 total burden hours.

5. Title: Regulations promulgated under The Truth-In-Lending Act, 15 U.S.C. 1601 *et seq.* (''TILA''), (''Regulation Z'').

Control Number: 3084–0088.

Description of collection of information and proposed use: The TILA was enacted to foster comparison credit shopping and informed credit decisionmaking by requiring accurate disclosure of the costs and terms of credit to consumers. Regulation Z, promulgated by the Board of Governors of the Federal Reserve System, establishes both recordkeeping and disclosure requirements to assist consumers and to assist in the enforcement of the TILA.

Estimate of Collection of information burden: 41,600,000 total burden hours.

6. Title: Regulations under The Textile Fiber Products Identification Act, 15 U.S.C. 70 *et seq.* (''Textile Act'').

Control Number: 3084–0047.

Description of the collection of information and proposed use: The Textile Act prohibits misbranding and false advertising of textile fiber products. The Textile Act Regulations, 16 CFR 303, establish disclosure requirements that assist consumers in making informed purchasing decisions, and recordkeeping requirements that assist the Commission in enforcing the Regulations. The Regulations also contain a petition procedure for requesting the establishment of generic names for textile fibers.

Estimate of information collection burden: 15,500,000 total burden hours.

7. Title: Regulations under the Wool Products Labeling Act, 5 U.S.C. 68 *et seq.* (''Wool Act'').

Control Number: 3084–0047.

Description of the collection of information and proposed use: The Wool Act prohibits misbranding of wool products. The Wool Act Regulations, 16 CFR 300, establish disclosure requirements that assist consumers in making informed purchasing decisions and recordkeeping requirements that assist the Commission in enforcing the Regulations.

Estimate of information collection burden: 2,291,000 total burden hours.

8. Title: Regulations under the Fur Products Labeling Act, 15 U.S.C. 69 et seq. (''Fur Act'').

Control Number: 3084–0047.

Description of the collection of information and proposed use: The Fur Act prohibits misbranding and false advertising of fur products. The Fur Products Regulations, 16 CFR 301, establish disclosure requirements that assist consumers in making informed purchasing decisions and recordkeeping requirements that assist the Commission in enforcing the Regulations. The Regulations also provide a procedure for exemption from certain disclosure provisions under the Act.

Estimate of information collection burden: 137,600 total burden hours.

9. Title: The ''900'' Number Rule, 16 CFR Part 308.

Control Number: 3084–0102.

Description of the collection of information and proposed use: As mandated by the Telephone Disclosure and Dispute Resolution Act, 15 U.S.C. 5701–24, the 900 Number Rule establishes disclosure and recordkeeping requirements for

operators of pay-per-call services and common carriers who provide telecommunication services to a provider of pay-per-call services.

Estimate of information collection burden: 3,241,200 total burden hours.

10. Title: The Care Labeling Rule, 16 CFR Part 423.

Control Number: 3084–0103.

Description of collection of information and proposed use: To assist consumers in making purchase decisions and in determining what method to use to clean their apparel, the Care Labeling Rule requires manufacturers and importers to attach a permanent care label to all covered textile clothing. Also, manufacturers and importers of piece goods used to make textile clothing must provide the same care information on the end of each bolt or roll of fabric.

Estimate of information collection burden: 3,985,000 total burden hours.

11. Title: Regulations under The Fair Packaging and Labeling Act, 15 U.S.C. 1450 (''FPLA'').

Control Number: 3084–0110.

Description of collection of information and proposed use: The FPLA was enacted to eliminate consumer deception concerning product size representations and package content information. The Regulations that implement the FPLA, 16 CFR 500, establish requirements for the manner and form of labeling applicable to manufacturers, packagers, and distributors of consumer commodities. Section 4 of the FPLA specifically requires packages or labels to be marked with: (1) a statement of identity, (2) a net quantity of contents disclosure, and (3) the name and place of business of a company that is responsible for the product.

Estimate of information collection burden: 12,000,000 total burden hours.

12. Title: The Fuel Rating Rule, 16 CFR Part 306.

Control Number: 3084–0068.

Description of collection of information and proposed use: The Fuel Rating Rule establishes standard procedures for determining, certifying and disclosing the octane rating of automotive gasoline and the automotive fuel rating of alternative liquid automotive fuel, as required by the Petroleum Marketing Practices Act, 15 U.S.C. 2822(a)–(c). The Rule also requires refiners, producers, importers, distributors and retailers to retain records of delivery tickets, letters of certification or tests upon which automotive fuel ratings are based.

Estimate of information collection burden: 43,000 total burden hours.

Date received by the Federal Register: November 1, 1996.

Donald S. Clark,

Secretary.

[FR Doc. 96–28523 Filed 11–5–96; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Settlement of Scientific Misconduct Allegations

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case of alleged scientific misconduct:

Gang Yuan, Fox Chase Cancer Center: The Office of Research Integrity (ORI) has entered into a Voluntary Exclusion Agreement with Mr. Gang Yuan, a former laboratory technician at the Fox Chase Cancer Center (FCCC). This agreement was based on information obtained by ORI during its oversight review of an investigation conducted by FCCC into allegations of scientific misconduct made against Mr. Yuan. ORI's oversight review focused on the issue of falsification of research results by the insertion of allegedly false data into a computer-based formula and then back-calculation to support the falsified results. The data at issue involved research supported by Public Health Service (PHS) grants and was included in a grant application submitted to the National Institute of General Medical Sciences (NIGMS) and in a manuscript submitted to but not published by the journal Biochemistry.

Although Mr. Yuan disagreed with the allegations and ORI's proposed administrative actions, to resolve the matter, Mr. Yuan has voluntarily agreed, for the two (2) year period beginning October 25, 1996, to voluntarily exclude himself from:

(1) any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 C.F.R. Part 76 (Debarment Regulations); and

(2) serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, 301 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 96–28579 Filed 11–5–96; 8:45 am]

BILLING CODE 4160–17–P

Centers for Disease Control and Prevention

[INFO–97–28]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. The National Home and Hospice Care Survey (NHHCS)—(0920–0298)—Revision—The National Home and Hospice Care Survey (NHHCS) was conducted in 1992, 1993, 1994 and 1996. It is part of the Long-Term Care component of the National Health Care Survey. Section 306 of the Public Health Service Act states that the National Center for Health Statistics ''shall collect statistics on health resources * * * [and] utilization of health care, including utilization of * * * services of hospitals, extended care facilities, home health agencies, and other institutions.'' NHHCS data are used to examine this most rapidly expanding

sector of the health care industry. Data from the NHHCS are widely used by the health care industry and policy makers for such diverse analyses as the need for various medical supplies; minority access to health care; and planning for the health care needs of the elderly. The NHHCS also reveals detailed information on utilization patterns, as needed to make accurate assessments of the need for and costs associated with such care. Data from earlier NHHCS collections have been used by the Congressional Budget Office, the Bureau of Health Professions, the Maryland Health Resources Planning Commission, the National Association for Home Care, and by several newspapers and journals. Additional uses are expected to be similar to the uses of the National Nursing Home Survey. NHHCS data cover: baseline data on the characteristics of hospices and home health agencies in relation to their patients and staff, Medicare and Medicaid certification, costs to patients, sources of payment, patients' functional status and diagnoses. Data collection is planned for the period July-October, 1997. Survey design is in process now. Sample selection and preparation of layout forms will precede the data collection by several months. The total cost to respondents is estimated at $172,500.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Agency Questionnaire	1,200	1	0.333	400
Current Patient Sampling List	1,200	1	0.333	400
Current Patient Questionnaire	1,200	6	0.25	1,800
Discharged Patient Sampling List	1,200	1	0.50	600
Discharged Patient Questionnaire	1,200	6	0.25	1,800
Total				5,000

2. Childhood Lead Poisoning Prevention Program Quarterly Report (0902–0282)—Extension—Lead poisoning is the most common and societally devastating environmental disease of young children in the United States. Severe lead exposure can cause coma, convulsions, and even death. Lower levels of lead, which rarely cause symptoms, can result in decreased intelligence, developmental disabilities, and behavioral disturbances. State and community health agencies are the principal delivery points for childhood lead screening and related medical and environmental management activities. In FY 1996, CDC awarded 40 grants to fund childhood lead poisoning prevention programs. The primary purpose of these grants is for the initiation or expansion of state- and community-based childhood lead poisoning prevention programs that do the following: (1) screen infants and children for elevated blood lead levels, (2) assure referral for treatment of, and environmental intervention for, infants and children with elevated blood lead levels, and (3) to provide education about childhood lead poisoning. The purpose of the quarterly report is to report data collected by CDC's grantees. The report consists of narrative and data sections. The purpose of the narrative section is to provide the following: (1) highlights of quarterly activities, (2) discuss issues and activities that have significant impact on the program, (3) list objectives and discuss progress towards meeting those objectives. The purpose of the data section is to provide the following: (1) screening and case confirmation activities, (2) environmental inspection and hazard remediation activities, and (3) medical case management activities. The total cost to the respondents is $0.00.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Grantees	40	4	2	320

3. Validation of Self-Reported Health Outcomes from the Health Assessment of Persian Gulf War Veterans From Iowa—Extension with change—The purpose of this proposed study is to collect additional data to validate health outcomes reported by participants in the Health Assessment of Persian Gulf War Veterans From Iowa. The original data collection consisted of a telephone survey of 3,695 military personnel who served during the time of the Persian Gulf War and listed Iowa as their home of residence. Data will be collected from subjects who participated in the telephone survey to validate the self-report of four health outcomes: cognitive dysfunction, depression, asthma, and multi systemic conditions. Neuropsychological testing will be administered to validate cognitive dysfunction. Structured clinical interviews for mental disorders and paper-and-pencil questionnaires will be administered to validate depression. Lung function assessment, tests of airways hyperactivity, and standard respiratory health questionnaires will be administered to validate asthma. Review of medical records, standard physical examination, and laboratory evaluation will be conducted to validate multi systemic conditions, including chronic fatigue syndrome and fibromyalgia. In addition, a feasibility study will be conducted to explore the usefulness of two databases established by the Department of Defense, the Troop Exposure Assessment Model and the Registry of Unit Locations, to validate self-reported exposures among Persian Gulf War veterans who participated in the Iowa telephone survey. The total cost to the respondents is $0.00.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Case Validation of Cognitive Dysfunction				
PGW Exposed Veterans with self- reported symptoms of Cognitive Dysfunction. Full neuropsychological exam	100	1	4.0	400
Non-PGW Veterans with self-reported symptoms of Cognitive Dysfunction. Full neuropsychological exam.	100	1	4.0	400
Normal Controls (PGW/Non-PGW Veterans denying symptoms of Cognitive Dysfunction). Cognitive testing	100	1	2.0	200
Total				1000
Case Validation for Asthma				
PGW Exposed and Non-PGW Veterans self-reporting asthma. Questionnaire (ATS and Adult Respiratory Health); Pulmonary Function Tests (spirometry, DLCO, lung volumes); Histamine Challenge	50	1	2.25	112.5
Normal Controls. (PGW/Non-PGW Vets denying symptoms of asthma). Questionnaire (ATS and Adult Respiratory Health); Pulmonary Function Tests (spirometry, DLCO, lung volumes); Histamine Challenge	50	1	2.25	112.5
Total				225
Case Validation of Depression				
PGW Exposed Veterans reporting ''any type of depression.'' Questionnaire (Structured Clinical Interview and Family History-Research Diagnostic Criteria)	50	1	3.0	150
Non-PGW Exposed Veterans reporting ''any type of depression.'' Questionnaire (Structured Clinical Interview and Family History-Research Diagnostic Criteria)	50	1	3.0	150
Total				300
Validation of Multi-Systemic Illnesses				
PGW Exposed and Non-PGW Veterans reporting symptoms of chronic fatigue, fibromyalgia, and/or multiple chemical sensitivity. Iowa Persian Gulf Study Questionnaire; Physical exam	243	1	3.0	729
Normal Control (PGW/Non-PGW Veterans denying symptoms of chronic fatigue, fibromyalgia, and/or multiple chemical sensitivity). Iowa Persian Gulf Study Questionnaire; Physical exam	116	1	3.0	348
Total				1077

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–28502 Filed 11–5–96; 8:45 am]

BILLING CODE 4163–10–P

[30–DAY–22]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

The following requests have been submitted for review since the last publication date on October 17, 1996.

Proposed Project

1. Tuberculosis in Children—New—The Centers for Disease Control and Prevention, National Center for HIV, STD, and TB Prevention, Division of Tuberculosis Elimination, Surveillance Epidemiologic Investigations Branch will be conducting a study for the purpose of performing research concerning the epidemiology of TB in children, including children co-infected with the human immunodeficiency virus (HIV). The study will involve the following modules: (1) The epidemiology, magnitude and risk factors for TB in children, including HIV-infected children; (2) studies of the diagnosis of TB in children, and (3) reducing the risk of nosocomial transmission of TB in pediatric settings.

Respondents	Number of respondents	Number of responses/respondent	Avgerage burden/response (in hrs.)
Positive Tuberculin Skin Testing Form	100	1	0.33
Negative Tuberculin Skin Testing Form	200	1	0.33
Source Case Form	150	1	0.33

The total annual burden is 150.

Dated: October 30, 1996.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–28501 Filed 11–5–96; 8:45 am]

BILLING CODE 4163–18–P

[Announcement 702]

Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention

Introduction

The Centers for Disease Control and Prevention (CDC) announce the availability of fiscal year (FY) 1997 funds for the Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention. CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV infection. (For ordering a copy of Healthy People 2000 or CDC's Strategic Plan for Preventing Human Immunodeficiency Virus (HIV) Infection (July 8, 1992), see the Section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under Section 317(k)(2) [42 U.S.C. 247b(k)(2)] of the Public Health Service Act, as amended.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are non-governmental nonprofit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private (e.g., national, regional) organizations and federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations are eligible for these cooperative agreements. Current recipients of CDC HIV funding must provide the award number and title of the funded program (see the Program Announcement included in the application kit for additional information).

Availability of Funds

Approximately $250,000 is available in FY 1997 to fund approximately 10 to 15 awards. It is expected that the average award will be $20,000, ranging from $17,000 to $25,000 and will be funded for a 12-month budget and project period. Funding estimates may vary and are subject to change. Awards will initially be made on a contingency basis as described in the PURPOSE section.

The following are examples of the most frequently encountered costs that may or may not be charged to the cooperative agreement:

1. As approved, CDC funds may be used for direct cost expenditures: salaries, speaker fees, rental of conference related equipment, registration fees, and transportation cost (not to exceed economy class fares) for non-Federal employees.
2. CDC funds may be used for only those parts of the conference specifically supported by CDC as documented in the Notice of Cooperative Agreement (award document).
3. CDC funds may not be used for the purchase of equipment, payments of honoraria, organizational dues, entertainment or personal expenses, cost of travel and payment of a full-time Federal employee, or per diem or expenses, other than mileage, for local participants.
4. CDC funds may not be used for reimbursement of indirect costs.
5. Although the practice of handing out novelty items at meetings is often employed in the private sector to provide participants with souvenirs, Federal funds may not be used for this purpose.

Recipient Financial Participation

Part of the cost of the proposed conference must be supported with other than Federal funds. CDC will not fund 100% of the proposed conference.

Purpose

The purpose of the HIV Prevention Conference Support Cooperative Agreement Program is to provide partial support for conferences that stimulate efforts to prevent the transmission of HIV.

Because conference support by CDC creates the appearance of CDC co-sponsorship, CDC will actively participate in the development and approval of those portions of the agenda supported by CDC funds. In addition, CDC will reserve the right to approve or reject the content of the full agenda, press events, promotional material (including press releases), speaker selection, and site selection. CDC funds may not be expended for portions of the conference not supported by CDC. Contingency awards will be made allowing usage of only 25% of the total amount to be awarded until a final full agenda is approved by CDC. This will provide funds for costs associated with preparation of the agenda. The remainder of funds will be released only upon acceptance of the final full agenda. CDC reserves the right to terminate co-sponsorship if it does not approve the final agenda.

Program Requirements

CDC will provide support for conferences that are:

1. Regional (more than one State), national, or international in scope;
2. Targeted to individuals or organizations involved in HIV prevention efforts; and
3. Focused on the transfer of HIV prevention research and evaluation findings to intervention efforts or the application of these prevention efforts to service providers and health professionals who provide service to individuals whose behaviors place them at increased risk for HIV infection.

Topics concerned with issues and areas other than HIV prevention should be directed to other public health agencies or in accordance with the current Federal Register notice (see Federal Register Notice 703, (61 FR 19296) published on May 1, 1996).

The activities related to the development of HIV prevention conferences require substantial CDC collaboration and involvement. In conducting activities to achieve the purpose of the program, the recipient shall be responsible for conducting activities listed in section A., and CDC will be responsible for conducting activities listed in section B.:

A. Recipient Activities

1. Manage all activities related to program content (e.g., objectives, topics, participants, session design, workshops, special exhibits, speakers, fees, agenda composition, and printing). Many of these items may be developed in concert with assigned CDC project personnel.
2. Provide draft copies of the agenda and proposed ancillary activities to the CDC program office for review and comment. Submit a copy of the final agenda and proposed ancillary activities to the CDC Grants Management Office for acceptance.

3. Determine and manage all promotional activities (e.g., title, logo, announcements, mailers, press). CDC must review and approve the use of any materials with reference to CDC involvement or support.

4. Manage all registration processes with participants, invitees, and registrants (e.g., travel, reservations, correspondence, conference materials and hand-outs, badges, registration procedures).

5. Plan, negotiate, and manage conference site arrangements, including all audio-visual needs.

6. Develop and conduct education and training programs on HIV prevention.

7. Collaborate with CDC staff in reporting and disseminating results and relevant HIV prevention/education and training information to appropriate Federal, State, and local agencies, health-care providers, HIV/AIDS prevention and service organizations, and the general public.

B. CDC Activities

1. Provide technical assistance through telephone calls, correspondence, and site visits in the areas of program agenda development, implementation, and priority setting related to the cooperative agreement.

2. Provide scientific collaboration for appropriate aspects of the program, including selection of speakers, pertinent scientific information on risk factors for HIV infection, preventive measures, and program strategies for the prevention of HIV infection.

3. Review draft agendas and approve the final agenda and proposed ancillary activities prior to release of restricted funds.

4. Assist in the reporting and dissemination of research results and relevant HIV prevention education and training information to appropriate Federal, State, and local agencies, health-care providers, the scientific community, and HIV/AIDS prevention and service organizations, and the general public.

C. Letter Of Intent (LOI)

Respondents must submit a two page, typewritten LOI that gives the title, location, date and purpose of the conference, its relationship to the following CDC Topics of Special Interest, the date of the proposed conference, and the intended audience (number and description). No attachments, booklets, or other documents accompanying the LOI will be considered. The letter should also include the estimated total cost of the conference and the percentage of the total cost (which must be less than 100%) being requested from CDC. Current recipients of CDC HIV funding must provide the award number and title of the funded programs. LOIs will be reviewed by CDC program staff, and an invitation to submit an application will be made based on the proposed conference's relationship to the CDC topics of special interest and the availability of funds. An invitation to submit an application does not constitute a commitment by CDC to fund the applicant.

D. Topics of Special Interest

Funding preferences are established to ensure a balance of CDC HIV prevention funding and to address at-risk populations that are underserved. CDC is especially interested in supporting innovative meetings and conferences for individuals and organizations involved in HIV prevention efforts on the following topics:

1. Prevention of HIV infection among:

a. Underserved populations (e.g., women of reproductive age, racial and ethnic minorities).

b. High-risk populations, including both in- school and out-of-school youth.

c. Populations in special settings (e.g., racial and ethnic minorities; out-of-school, high- risk youth; incarcerated persons; men who have sex with men; high-risk drug users; migrant workers). Particular attention will be given to supporting organizations that serve multiple high-risk populations.

d. Underserved geographic areas.

2. Development of HIV prevention strategies with a broad range of community partners. Funding preferences are established to include National priorities, to ensure a balance of CDC HIV prevention funding, and to address at-risk populations and geographic areas that are underserved. No preference will be given to organizations that have received funding in past years.

National HIV Prevention Goals

1. Increase public understanding of, involvement in, and support for HIV prevention.

2. Prevent or reduce behaviors or practices that place persons at risk for HIV infection or, if already infected, place others at risk.

3. Increase individual knowledge of HIV serostatus and improve referral systems to appropriate prevention and treatment services.

Final Application

Respondents who are invited by CDC to apply must use the U.S. Department of Health and Human Services (DHHS), PHS Grant Application, Form PHS–5161–1 (7/92), OMB Number 0937–0189. Use the evaluation criteria to develop your application. The body of the application MUST BE LIMITED TO 12 PAGES. Any excess pages will not be considered.

The following additional information must be included:

1. A Project Summary cover sheet stating the following:

A. Name of organization
B. Name of conference
C. Location of conference
D. Date of conference
E. Target audience and number
F. Dollar amount requested
G. Total conference budget

2. Biographical sketches and job descriptions of the individuals responsible for planning and coordinating the conference.

3. A Budget Narrative separately identifying and justifying line items to which the requested Federal funds would be applied.

4. A draft agenda for the proposed conference.

5. Award number and title(s) of funded program(s) for current recipients of CDC HIV funding.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria (Total points available is 100).

1. Proposed Program and Technical Approach: (50 Points)

A. The applicant's description of the proposed conference as it relates to HIV prevention and education, including the public health need of the proposed conference and the degree to which the conference can be expected to influence public health practices, and the extent of the applicant's collaboration with other agencies serving the intended audience, including local health and education agencies concerned with HIV prevention.

B. The applicant's description of conference objectives in terms of quality, specificity, and the feasibility of the conference based on the operational plan, and the extent to which evaluation mechanisms for the conference adequately assess increased knowledge, attitudes, and behaviors of the target participants.

C. The relevance and effectiveness of the proposed agenda in addressing the chosen HIV prevention/education topic.

D. The degree to which conference activities proposed for CDC funding strictly adhere to the prevention of HIV transmission.

2. Applicant Capability: (25 Points)

A. The adequacy and commitment of institutional resources to administer the program.

B. The adequacy of existing and proposed facilities and resources for conducting conference activities.

C. The degree to which the applicant has established and used critical linkages with health and education agencies with the mandate for HIV prevention. Letters of support (limit of 5) from such agencies addressing related capability and experience should be obtained to demonstrate the linkages specific to the conference. Letters that do not pertain directly to the proposed conference will not be considered.

3. Qualifications of Program Personnel: (25 Points)

A. The qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership.

B. The competence of associate staff persons, discussion leaders, and speakers to accomplish conference objectives.

C. The degree to which the application demonstrates that all key personnel have knowledge about the transmission of HIV, as well as nationwide information and education efforts currently underway that may affect, and be affected by, the proposed conference.

4. Budget Justification and Adequacy of Facilities: (Not Scored)

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, consistency with the intended use of cooperative agreement funds, and the extent to which the applicant documents financial support from other sources.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 93.118, Acquired Immunodeficiency Syndrome (AIDS) activities.

Program Review Panel

Recipients must comply with the document entitled Content of HIV/AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (June 1992) (a copy is in the application kit). To meet the requirements for a Program Review Panel, recipients are encouraged to use an existing Program Review Panel such as the one created by the State health department's HIV/AIDS prevention program. If the recipient forms its own Program Review Panel, at least one member must also be an employee (or a designated representative) of an appropriate health or educational agency, consistent with the Content Guidelines. The names of review panel members must be listed on the Assurance of Compliance form (CDC Form 0.1113) which is also included in the application kit.

Letter of Intent and Application Submission and Deadlines

The original and two copies of the LOI must be postmarked by December 6, 1996, to be considered. Successful respondents will receive a written request to submit an application for funding; unsuccessful respondents will be also notified in writing. A request to submit an application does not constitute a commitment to fund the applicant.

The original and two copies of the invited application must be submitted on PHS Form 5161–1 (OMB Number 0937–0189) by February 14, 1997. The earliest possible award date is March 24, 1997, and the earliest possible conference date is April 30, 1997. Invited applications must be postmarked on or before the deadline date and sent to Van Malone, Grants Management Officer, Grants Management Branch, Procurement and Grants Office (Ann. #702), Centers for Disease Control and Prevention (CDC), MS E–15, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305.

1. Deadline: Letters of Intent and invited Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. LOIs and Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications and late LOIs. Late applications and late LOIs will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information, call (404) 332- 4561. You will be asked to leave your name, address, and telephone number, and will need to refer to Announcement Number 702. You will receive a copy of the program announcement, a list of the relevant Healthy People 2000 HIV objectives, and the addresses and telephone numbers for CDC contact personnel. The announcement is also available through the CDC homepage on the Internet. The address for the CDC homepage is http://www.cdc.gov. CDC will not send application kits by facsimile or express mail unless the cost for the latter is paid by the addressee.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Ms. Susie Ingram, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, telephone (404) 842–6777. Programmatic technical assistance may be obtained from Ms. Linda LaChanse, Program Analyst, Training and Technical Support Systems Branch, Division of HIV/AIDS Prevention, National Center for HIV/STD/TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E40, Atlanta, GA 30333, telephone (404) 639–2918. Please refer to Announcement Number 702 when requesting information and when submitting your application in response to the announcement.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800. Single copies of CDC's Strategic Plan for Preventing Human Immunodeficiency Virus (HIV) Infection (July 8, 1992) can be obtained by calling the CDC National AIDS Clearinghouse at (800) 458–5231.

Dated: October 31, 1996.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–28484 Filed 11–5–96; 8:45 am]

BILLING CODE 4163–18–P

National Institute for Occupational Safety and Health Draft Document ''Engineering Control Guidelines for Hot Mix Asphalt Pavers''; Correction

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Notice; corrections.

SUMMARY: This notice makes corrections in the request for comments on the draft document ''Engineering Control Guidelines for Hot Mix Asphalt Pavers'' published in the Federal Register on Thursday, October 3, 1996 [61 FR 51708].

FOR FURTHER INFORMATION CONTACT: Technical information may be obtained from Joann Wess or Ralph Zumwalde, NIOSH, CDC, 4676 Columbia Parkway, M/S C–32, Cincinnati, Ohio 45226, telephone (513) 533–8319.

SUPPLEMENTARY INFORMATION: In the notice document beginning on page 51708 in the issue of Thursday, October 3, 1996, make the following corrections:

On page 51711, in the first column, the following equation should be inserted in the last sentence of paragraph 5 after ''* * * the following equation:''

$$Q_{(exh)} = \frac{Q_{(SF_6)}}{C^*_{(SF_6)}} \times 10^6$$

On page 51711, in the second column, the paragraph beginning, ''To quantify capture efficiency * * *'' line 11 should read, ''test and should be ±3% or better. The''.

On page 51711, in the second column, the paragraph beginning, ''At least five consecutive measurements * * *'' the following equation should be inserted after ''* * * the following equation:''

$$\eta = \frac{C_{(SF_6)}}{C^*_{(SF_6)}} \times 100$$

On page 51711, in the second column, the paragraph beginning ''If the SF_6 volumetric * * *'' the following equation should be inserted after ''* * * using the following:''

$$\eta = \frac{C_{(SF_6)} \times Q_{(exh)}}{Q_{(SF_6)} \times 10^6} \times 100$$

On page 51712, first column, the paragraph beginning ''At least five consecutive measurements * * *'', disregard the equation shown after ''* * * volumetric flow rate from Equation 1.'' and insert the following equation instead.

$$Q_{(exh)} = \frac{\frac{0.903}{28.3}}{21.85-0.0057} \times 10^6 = 1460\ cfm$$

On page 51712, second column, under the heading ''Statistics,'' after the sentence ''Calculate the estimated standard deviation:'' disregard the equation shown and insert the following equation instead.

$$s=\{(87.9-87.5)^2+(92.1-87.5)^2+(83.3-87.5)^2+(86.7-87.5)^2)/(4-1)\}^{0.5}$$

$$=\{(0.16+21.16+17.64+0.64)/3\}^{0.5}=3.63$$

On page 51712, third column, after the sentence ''Calculate a test statistic (T):'', disregard the test statistic shown and insert the following:

$$T = \frac{m-(t \times s)}{n^{0.5}}$$

For this example:

$$T = \frac{87.5-(2.35 \times 3.63)}{4^{0.5}} = 83.2$$

Dated: October 29, 1996.

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–28499 Filed 11–5–96; 8:45 am]

BILLING CODE 4163–19–P

Board of Scientific Counselors, National Center for Infectious Diseases: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Board of Scientific Counselors, National Center for Infectious Diseases (NCID).

Times and Dates: 11:00 a.m.–5:30 p.m., December 5, 1996; 8:00 a.m.–2:30 p.m., December 6, 1996.

Place: CDC, Auditorium B, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Board of Scientific Counselors, NCID, provides advice and guidance to the Director, CDC, and Director, NCID, in the following areas: program goals and objectives; strategies; program organization and resources for infectious disease prevention and control; and program priorities.

Matters To Be Discussed: The agenda will focus on:

1. NCID Update.
2. Minority and Women's Health.
3. Global Emerging Infectious Diseases.
4. Current Scientific Issues.
5. Workgroup Sessions: Emerging Infectious Disease FY 1997 and FY 1998 Planning:

a. Surveillance and Response Capacity
b. Research
c. Prevention and Control
d. Laboratory Infrastructure

6. Workgroup Reports.
7. Recommendations.

Other agenda items include announcements/introductions; follow-up on actions recommended by the Board (May 1996); and consideration of future directions, goals, and recommendations.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person for More Information: Diane S. Holley, Office of the Director, NCID, CDC, Mailstop C–20, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0078.

Dated: October 25, 1996.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–28498 Filed 11–5–96; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 96N–0403]

Agency Information Collection Activities: Proposed Collection; Comment Request; Extension

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the recordkeeping and labeling requirements for food irradiation processors.

DATES: Submit written comments on the collection of information by January 6, 1997.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Kim A. Sanders, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–19, Rockville, MD 20857, 301–827–1473.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (the PRA) (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. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the Federal Register concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

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.

Irradiation in the Production, Processing, and Handling of Food (21 CFR Part 179)—(OMB Control Number 0910–0186)—Extension

Under sections 201(s) and 409 of the Federal Food, Drug, and Cosmetic Act (the act), food irradiation is subject to regulation as a food additive (21 U.S.C. 321(s) and 348). The regulations providing for uses of irradiation in the production, processing, and handling of food are found in part 179 (21 CFR part 179).

Section 179.25(e) requires that food processors who treat food with radiation make and retain, for 1 year past the expected shelf life of the products up to a maximum of 3 years, specified records relating to the irradiation process (e.g., the food treated, lot identification, scheduled process, etc.).

Section 179.26(c) requires that food processors label retail packages of irradiated foods with an FDA prescribed logo and statement, ''Treated with radiation'' or ''Treated by irradiation.'' To assure safe use of radiation sources, § 179.21(b)(1) requires that the label of sources bear appropriate and accurate information identifying the source of radiation (§ 179.21(b)(1)(i)) and the maximum energy of radiation emitted by X-ray tube sources (§ 179.21(b)(1)(ii)). Section 179.21(b)(2) requires that the label or accompanying labeling bear adequate directions for installation and use (§ 179.21(b)(2)(i)), a statement that

no food shall be exposed to radiation source so as to receive an absorbed dose of X-radiation in excess of 10 grays (§ 179.21(b)(2)(ii)) or an absorbed dose of certain radioisotopes[1] in excess of 2 milligrays (§ 179.21(b)(2)(iii)).

The records required by § 179.25(e) are used by FDA inspectors to assess compliance with the regulation that establishes limits within which radiation may be safely used to treat food. The agency cannot ensure safe use without a method to assess compliance with the dose limits, and there are no practicable methods for analyzing most foods to determine whether they have been treated with ionizing radiation and are within the limitations set forth in part 179. Records inspection is the only way to determine whether firms are complying with the regulations for treatment of foods with ionizing radiation.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
179.25(e)	3	120	360	1	360

There are no capital costs or operating and maintenance costs associated with this collection.

The number of firms who process food using irradiation is extremely limited. FDA estimates that there is a single irradiation plant whose business is devoted primarily (i.e., approximately 100 percent) to irradiation of food and other agricultural products. Two other facilities also irradiate small quantities of food (mainly spices). FDA estimates that this irradiation accounts for no more than 10 percent of the business for each of these firms. Therefore, the average estimated burden is based on: (1) Facility devoting 100 percent of its business (or 300 hours for recordkeeping annually) to food irradiation; (2) facilities devoting 10 percent of their business or 60 hours (2 x 30 hours) for recordkeeping annually, to food irradiation or (300 + 60)/3 = 120 x 3 firms x 1 hour = 360 hours annually.

No burden has been estimated for the labeling requirements in § 179.21(b)(1) and (b)(2)(i) because it is a usual and customary business practice for manufacturers of food processing equipment to label (identify) their products for use by their customers. Under 5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities. In addition, no burden has been estimated for §§ 179.21(b)(2)(ii) and (b)(2)(iii) and 179.26(c) because FDA provides the exact wording and logo that is to be used on the label. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not a collection of information.

Dated: October 30, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–28581 Filed 11–5–96; 8:45 am]

BILLING CODE 4160–01–F

[1] The isotopes identified by the regulation are americium-241, cesium-137, cobalt-60, iodine-125, krypton-85, radium-226, and strontium-90.

[Docket No. 96D–0390]

Exports: Certificates and Other Assurance that Products Meet FDA Requirements; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised Compliance Policy Guide (CPG) 7150.01 entitled ''Certification for Exports.'' Firms exporting products from the United States are often asked by foreign customers or foreign governments to supply a certification relating to products subject to the Federal Food, Drug, and Cosmetic Act (the act) and other acts FDA administers. FDA has historically issued a number of different types of certificates, e.g., Certificates of Free Sale, Certificates for Export, Certificates to Foreign Governments, and the European Union (EU) Health Certificate for Fishery Products. Therefore, FDA has revised CPG 7150.01 to provide guidance on the preparation of certificates, including model forms, and to clarify that it is the responsibility of the certificate requester to provide certain information that will be used by FDA to determine whether a certificate may be issued. The revised guidance is intended to improve agency uniformity and consistency in providing export certifications for FDA-regulated products.

DATES: Effective November 6, 1996. Written comments by February 4, 1997.

ADDRESSES: Send written requests for single copies of CPG 7150.01 ''Certification for Exports'' (CPG 7150.01) to the Director, Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send a self-addressed adhesive label to assist that office in processing your requests. Submit written comments on revised CPG 7150.01 to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm 1–23, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of revised CPG 7150.01 and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Steven M. Solomon, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0423.

SUPPLEMENTARY INFORMATION: Under the FDA Export Reform and Enhancement Act of 1996, FDA is required to issue certificates for the export of drugs and biologics, animal drugs, and devices that meet the applicable requirements of the act within 20 days of receipt of a request for such a certificate. A fee of up to $175 may be charged for each certificate issued. While FDA is not

required to issue certificates for foods, feed additives, nonmedicated feeds, pet foods, and cosmetics, the agency intends to continue to provide this service. In addition to issuing export certificates for products that are approved, licensed, or otherwise in compliance with the applicable requirements of the act, FDA will issue export certificates for products that meet the requirements for export of section 801(e) or 802 of the act (21 U.S.C. 381(e) or 382) but may not otherwise be marketed, sold, offered for sale, or distributed in interstate commerce.

Revised CPG 7150.01 ''Certification for Exports'' describes current agency views on issuing certificates requested by firms to facilitate the export of FDA-regulated products to other countries. While the agency recognizes the current importance of fulfilling requests for export certificates, FDA's long-term goal is to reduce or eliminate export certificates by finding other means to satisfy other countries' needs for reassurance about imported products. The new CPG replaces CPG 7150.01, entitled ''Certificates for Export'' that was issued in 1994.

Although this CPG does not create or confer any rights or benefits for or on any person and does not operated to bind FDA or industry, it does represent the agency's current thinking on issuing export certificates.

Dated: October 31, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–28528 Filed 11–5–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0383]

Export Certificates; FDA Export Reform and Enhancement Act of 1996; Certification Fees for Drugs, Animal Drugs, and Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fees for issuing export certificates. The FDA Export Reform and Enhancement Act of 1996 provides that any person who exports a drug, animal drug, or device may request FDA to certify in writing that the exported drug, animal drug, or device meets certain specified requirements. It further provides that FDA shall issue such a certification within 20 days of the receipt of a request for such certification, and that FDA may charge up to $175 for each certification that is issued within the 20 days. This notice describes the fee schedule for export certifications, the costs that form the basis for those fees, and the billing and collection processes. The agency requests comments on the fee schedule and its effects on small business.

DATES: The fees described herein for export certificates for drugs, animals drugs, and devices became effective October 1, 1996. Written comments should be submitted by February 4, 1997.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lance S. Siegall, Office of Financial Management, Accounting Reports and Analysis Branch (HFA–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1768.

SUPPLEMENTARY INFORMATION:

I. Background

The FDA Export Reform and Enhancement Act of 1996 became law on April 26, 1996 (Pub. L. 104–134, amended by Pub. L. 104–180, August 6, 1996). The principal purpose of the new law is to expedite the export of FDA-regulated products (both approved and unapproved) through amendments to sections 801(e) and 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(e) and 382). The new law adds a new subsection 801(e)(4) to the act that provides that any person who exports a drug, animal drug, or device may request FDA to certify in writing that the exported drug, animal drug, or device meets the requirements of sections 801(e)(1) or 802 of the act, or other applicable requirements of the act. Upon a showing that the product meets the applicable requirements, the new law further provides that FDA shall issue such a certification within 20 days of the receipt of a request for such certification, and that FDA may charge up to $175 for each such certification that is issued within the 20 day period.

Export certificates are issued for: Drugs, biologics, animal drugs, and medical devices by FDA's: Center for Drug Evaluation and Research (CDER), Center for Biologics Evaluation and Research (CBER), Center for Veterinary Medicine (CVM), and the Center for Devices and Radiological Health (CDRH), respectively. Although FDA's Center for Food Safety and Applied Nutrition (CFSAN) issues export certificates for food products and cosmetics, and CVM issues export certificates for feed additives, nonmedicated feeds, and pet foods, the export certificates for these products are not covered by the new law.

II. Agency Costs and Fees to be Assessed for Export Certificates

FDA has determined the costs to the agency for preparing export certificates based upon the following:

(1) Direct personnel for the research, review, tracking, writing, and assembly;

(2) Purchase of equipment and supplies used for tracking, processing, printing, and packaging. Recovery of the cost of the equipment is calculated over its useful life;

(3) Billing and collection of fees; and

(4) Overhead and administrative support.

These costs vary with the Center issuing the certificates, largely because of differences in the types of products, and the procedures used in evaluating the compliance status of the manufacturing site(s). As mentioned above, the agency may charge up to $175 for each certificate. Certificates for some classes of products cost the agency more than $175 to prepare. Subsequent certificates issued for the same products in response to the same request generally cost the agency less than $175. The fee for the second certificate for the same product(s) issued in response to the same request reflects the agency cost for preparing the second certificate plus the difference (if any) between the agency cost for preparing the first certificate and the $175 maximum fee. The fee for all subsequent certificates for the same product(s) issued in response to the same request reflects agency costs for preparing those certificates only. The agency has developed the following fee structure, which reflects agency costs for the following Centers:

(1) CBER: $175 for the first certificate; $175 for the second certificate for the same product(s) issued in response to the same request; $85 for each subsequent certificate for the same product(s) issued in response to the same request.

(2) CVM: $175 for the first certificate; $155 for the second certificate for the same product(s) issued in response to the same request; $70 for each subsequent certificate for the same product(s) issued in response to the same request.

(3) CDER: $175 for the first certificate; $90 for the second certificate with attachments for the same product(s) issued in response to the same request; $40 for any subsequent certificates with attachments for the same product(s) issued in response to the same request; $15 for second and subsequent

certificates without attachments issued for the same product(s) in response to the same request.

(4) CDRH: $100 for the first certificate; $10 for any subsequent certificates issued for the same product(s) in response to the same request.

With this fee structure, the agency estimates that it will recover most of its costs for preparing export certificates. However, despite Congress' stated intention to make this program pay for itself, the $175 maximum fee will likely have the effect of causing a taxpayer subsidy for a portion of the program. FDA may consider changing the fees for export certificates in the future (within the parameters permitted by statute) if agency costs increase or decrease. For example, FDA does not know whether the agency costs of issuing export certificates for unapproved products (which the agency will now do as a result of the Export Reform and Enhancement Act of 1996) will differ significantly from those for approved products.

III. Request for Comments

Although the FDA Export Reform and Enhancement Act of 1996 does not require FDA to solicit comments on assessment and collection of fees for export certificates, FDA is inviting comments in order to have the benefit of additional views and information. FDA is particularly interested in receiving information about the effect of these fees on small businesses. The agency also would be interested in receiving comments on whether the fee structure should reflect cost averaging across all Centers that prepare export certificates under the act, so that the agency could fully recover preparation costs and avoid the use of taxpayer funds.

Interested persons may on or before February 4, 1997, submit to the Dockets Management Branch (address above) written comments regarding this notice. 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 and a full explanation of the costs included and the methodology employed in determining these fees may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 31, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–28529 Filed 11–5–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96M–0330]

Direct Access Diagnostics; Premarket Approval of Confide® HIV Testing Service Using Dried Blood Spots

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Direct Access Diagnostics, Bridgewater, NJ, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Confide® HIV Testing Service Using Dried Blood Spots (Confide® HIV Testing Service). After reviewing the recommendation of the Blood Products Advisory Committee, FDA's Center for Biologics Evaluation and Research (CBER) notified the applicant, by letter of May 14, 1996, of the approval of the application.

DATES: Petitions for administrative review by December 6, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sukza Hwangbo, Center for Biologics Evaluation and Research (HFM–380), 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3524.

SUPPLEMENTARY INFORMATION: On December 30, 1987, Direct Access Diagnostics, Bridgewater, NJ 08807, submitted to CBER an application for premarket approval of the Confide® HIV Testing Service Using Dried Blood Spots. The service is intended for self-use by individuals who wish to obtain anonymous human immunodeficiency virus Type 1 (HIV–1) testing and counseling. The HIV–1 assay kits approved for use in the Confide® HIV Testing Service are: Vironostika HIV–1 Microelisa System manufactured by Organon Teknika Corp., Genetic Systems LAV EIA manufactured by Genetic Systems Corp., Fluorognost HIV–1 IFA manufactured by Waldheim Pharmazuetika, and HIV–1 Western Blot Kit manufactured by Cambridge Biotech Corp. The Confide® HIV Testing Service is a single use test kit consisting of aseptic wipes, two finger-stick lancets, a test card precoded with a personal identification number (PIN), an identification (ID) card which also contains the PIN, a postage-paid, pre-addressed mailer and instructions for use. Accompanying the instructions is a brochure explaining important facts about HIV–1 infection and transmission, HIV–1 testing and acquired immune deficiency syndrome (AIDS). An individual will use the test kit to obtain a sample of their own blood. The blood sample is placed on the designated area of the test card, identified only by a unique PIN, and mailed to Direct Access Diagnostics using the provided mailer. Upon receipt, the test is analyzed by Direct Access Diagnostics using enzyme-linked immunosorbent assays (ELISA) licensed for the detection of HIV–1 antibodies. Results are released to the individual in possession of the ID card and PIN. The device is intended for use with individuals 18 years of age or older.

On June 22, 1994, CBER consulted the Blood Products Advisory Committee (BPAC), an FDA advisory committee, for their comments and recommendations regarding issues FDA should address when reviewing home collection testing kits for the detection of HIV and other serious or life-threatening medical conditions. BPAC commented that the benefits of an alternative means of accessing previously unreachable populations of HIV positive individuals or persons infected with other serious diseases, far outweighed any risk to the individual's health posed by the test kit protocol or to the public's health by home testing. BPAC recommended that pilot studies be conducted to assess demographically, qualitatively, and quantitatively the test's effectiveness in targeted populations. BPAC also recommended that pilot studies be performed to determine the test's effectiveness in ensuring client anonymity and providing adequate counseling. CBER considered the BPAC recommendations during its review of the premarket approval application for the Confide® HIV Testing Service. On May 14, 1996, CBER approved the application by a letter to the applicant from the Director, Center for Biologics Evaluation and Review.

The May 14, 1996, application approval letter restated post-approval conditions agreed to by Direct Access Diagnostics in a May 8, 1996, letter to FDA. These conditions incorporate the June 22, 1994, BPAC recommendations. Under the terms of the post-approval conditions Direct Access Diagnostics will: (1) Be fully responsible for product qualifications and acceptance testing of all tests utilized in the Confide® HIV Testing Service and report test results to the agency every 6 months; (2) collect demographic and risk behavior surveillance data, at both the State and national level, for a period of 3 years

post-approval, from all clients with positive or inconclusive results and from a random sampling of clients who test negative, and to expedite post-approval the collection of demographic information from all clients who test negative; (3) compare, for 3 years post-approval, demographic data of Confide® HIV Testing Service clients with data obtained from persons using other testing services; and (4) conduct a first year post-approval study to determine the proportion of test cards submitted with adequate samples.

A summary of the safety and effectiveness data on which CBER based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CBER's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CBER's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 6, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.53).

Dated: October 18, 1996.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 96–28580 Filed 11–5–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0305]

Epitope, Inc.; Premarket Approval of OraSure® HIV–1 Western Blot Kit

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application submitted by Epitope, Inc., Beaverton, OR, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the OraSure® HIV–1 Western Blot Kit. FDA's Center for Biologics Evaluation and Research (CBER) notified the applicant, by letter of June 3, 1996, of the approval of the application.

DATES: Petition for administrative review by December 6, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sukza Hwangbo, Center for Biologics Evaluation and Research (HFM–380), 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3524.

SUPPLEMENTARY INFORMATION: On June 8, 1995, Epitope, Inc., Beaverton, OR 97008, submitted to CBER an application for premarket approval of the OraSure® HIV–1 Western Blot Kit (OraSure®). The device is intended for use as an in vitro qualitative assay for the detection of antibodies to the human immunodeficiency virus Type 1 (HIV–1) in human oral fluid specimens obtained with the OraSure® HIV–1 Oral Specimen Collection Device. The premarket approval for the OraSure® HIV–1 Oral Specimen Collection Device was announced in the Federal Register of May 24, 1996 (61 FR 26187). The OraSure® HIV–1 Western Blot Kit is indicated for use as an additional, more specific test for HIV–1 antibodies in OraSure® HIV–1 Oral Specimen Collection Device specimens collected from individuals, found to be repeatedly reactive by the Oral Fluid Vironostika® HIV–1 Microelisa System screening test manufactured by Organon Teknika Corp. On June 3, 1996, CBER approved the application by a letter to the applicant from the Director, Office of Blood Research and Review, CBER.

The June 3, 1996, approval letter included two specific conditions of approval for the OraSure® HIV–1 Western Blot Kit. One condition states that an expiration dating period of 18 months at 2–8 °C was granted for OraSure® HIV–1 Western Blot Kit. The protocol used to establish the expiration dating is an approved protocol for the purpose of extending the expiration dating as provided by 21 CFR 814.39(a)(8). The other condition specifies that OraSure® HIV–1 Western Blot Kit is intended for professional use only and that commercial distribution of the device is limited to sale for use within a clinical laboratory setting.

FDA has determined that, to ensure safe and effective use, the device is restricted within the meaning of section 520(e) of the act (21 U.S.C. 360j(e)) under the authority of section 515(d)(1)(B)(ii) of the act (21 U.S.C. 360e(d)(1)(B)(ii)) insofar as the device is intended for professional use only and commercial distribution is limited to sale for use within a clinical laboratory setting. The sale, distribution, and use of the device must not violate section 502(q) and (r) of the act (21 U.S.C. 352(q) and (r)).

A summary of the safety and effectiveness data on which CBER based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CBER's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CBER's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under

§ 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 6, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.53).

Dated: October 25, 1996.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 96–28531 Filed 11–5–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability, Joint Environmental Assessment and Restoration Plan

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service), on behalf of the Department of the Interior and States of Indiana and Ohio, announces the release for public review of the draft Joint Environmental Assessment and Restoration Plan (Plan) for the Fish Creek #2 Diesel Fuel Spill. The Plan covers the co-trustees' proposal to restore natural resources injured as a result of the 1993 Fish Creek spill. A public information meeting addressing the plan will be held on November 14, 1996, in Edgerton, Ohio.

DATES: Written comments must be submitted on or before December 16, 1996.

ADDRESSES: Requests for copies of the Plan may be made to: U.S. Fish and Wildlife Service, Ecological Services, 620 South Walker Street, Bloomington, Indiana 47403–2121.

Written comments or materials regarding the Plan should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: David C. Hudak, Field Supervisor, U.S. Fish and Wildlife Service, 620 South Walker Street, Bloomington, Indiana 47403–2121 (Attention: Environmental Contaminants Program).

Interested parties may also call (812) 334–4261 for further information.

SUPPLEMENTARY INFORMATION: On September 15, 1993, a pipeline ruptured and discharged approximately 30,000 gallons of diesel fuel that flowed into Fish Creek, in DeKalb County, Indiana, and spread into Williams County, Ohio. Fish Creek, which is located in northeastern Indiana, northwestern Ohio, and portions of southwest Michigan, supports a diverse mussel fauna. At least 30 species of mussels are known to exist in the watershed. Fish Creek is the only place in the world that the white cat's paw pearly mussel (Epioblasma obliquata perobliqua), a Federally-listed endangered mussel, is known to exist. Fish Creek also is known to harbor two other Federally-listed endangered mussel species, the northern riffleshell (Epioblasma rangiana) and the clubshell (Pleurobema clava). Several state-listed endangered mussels also occur in the affected reaches of Fish Creek. Following the spill, mortality of mammals, migratory birds, fish, reptiles, amphibians, and mussels was observed in the spill plume are of Fish Creek.

In 1996, the United States of America, the State of Indiana, and the State of Ohio settled claims for natural resource damages associated with the 1993 Fish Creek oil spill under authority of the Oil Pollution Act. The settlement proceeds shall be used to compensate for injury, destruction, or loss of natural resources under trusteeship of the Department of the Interior, State of Indiana, and State of Ohio. The Plan is being released in accordance with the Natural Resource Damage Assessment Regulations found at 15 CFR, part 990. It is intended to describe the co-trustees' proposals to restore natural resources lost as a result of this spill.

Restoration efforts will include the combination of protection and enhancement activities that have the greatest potential to restore the natural resources of Fish Creek to pre-spill conditions, with particular emphasis on the endangered mussels. The Plan focuses: (1) on increased endangered mussel recovery efforts; (2) water quality improvement; (3) riparian corridor protection; (4) community outreach and education; and, (5) monitoring to determine if the selected restoration actions are successful.

Interested members of the public are invited to review and comment on the Plan. Copies of the Plan are available for review at the U.S. Fish and Wildlife Service's Ecological Services Field Office in Bloomington, Indiana (620 South Walker Street, Bloomington, Indiana); the Indiana Department of Natural Resources (402 West Washington, Room 273, Indianapolis, Indiana 46204–2748); the Indiana Department of Environmental Management (2525 North Shadeland Avenue, Room 202, Indianapolis, Indiana 46206–6015); the Ohio Environmental Protection Agency (P.O. Box 1049, 1800 Watermark Drive, Columbus, Ohio 43216–1049 or the Northwest District Office, 347 North Dunbridge Road, Bowling Green, Ohio 43402); and the Ohio Department of Natural Resources (1930 Belcher Drive, Columbus, Ohio 43224–1387). Additionally, the Plan will be available for review at the following community libraries: Angola, Indiana; Auburn, Indiana; Bryan, Ohio; Butler, Indiana; Edgerton, Ohio; Edon, Ohio; and Fremont, Indiana.

An informational meeting, open to the public, will be held to explain the Plan, provide information, receive written comments, and to answer any questions. The meeting will be held at the Miller Park Shelter House, Miller Park Drive, Edgerton, Ohio on November 14, 1996, from 7 p.m. to 9 p.m. Written comments will be considered and addressed in the final Plan at the conclusion of the restoration planning process.

William F. Hartwig,

Regional Director, Region 3, U.S. Fish and Wildlife Service.

[FR Doc. 96–28562 Filed 11–5–96; 8:45 am]

BILLING CODE 4310–55–M

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces the Fall 1996 Meeting of the Aquatic Nuisance Species Task Force and a related Forum on Coastal and Marine Aquatic Nuisance Species. A number of topics will be addressed during the Task Force Meeting, including: recent legislation; Task Force membership and committees; ballast water and shipping issues; control of brown tree snakes, ruffe, zebra mussels, purple loosestrife and other nonindigenous species; State aquatic nuisance species management plans; funding availability; regional panels; and other issues. During the Forum, leading scientists will discuss invasions of marine and coastal waters by nonindigenous species and their impacts on those ecosystems and human activities. The Meeting and Forum are open to the public. Interested persons may make oral statements at the Task Force Meeting or submit written statements for consideration.

DATES: The Forum on Coastal and Marine ANS will be held from 8 a.m. to Noon on Wednesday, November 13, 1996. The ANS Task Force Meeting will be held from 8 a.m. to 5 p.m. on Thursday, November 14, 1996.

ADDRESSES: Both the Forum and the Meeting will be held at the Visitor Center, San Francisco Bay National Wildlife Refuge, Thornton Road, Newark, California.

FOR FURTHER INFORMATION CONTACT:

Robert A. Peoples, ANS Task Force Coordinator, telephone: 703–358–2025.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces the Fall 1996 meeting of the Aquatic Nuisance Species Task Force established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701–4741) and a related Forum on Coastal and Marine Aquatic Nuisance Species. Minutes of the meeting will be maintained by the Coordinator, ANS Task Force, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 840, Arlington, Virginia 22203–1622 and will be available for inspection during regular business hours within 30 days following the meeting.

Dated: October 31, 1996.

Gary Edwards,

Assistant Director—Fisheries Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 96–28506 Filed 11–5–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

Permanent Closure of the Green River Between Indian Crossing Raft Ramp and the Utah-Colorado State Line in Daggett County, Utah, to Any Form of Motorized Watercraft

AGENCY: Bureau of Land Management, DOI.

This action is taken in accordance with 43 CFR Subpart 8364 and Subpart 8365.1–6.

SUMMARY: Certain public lands in the Vernal District of BLM in Daggett County, Utah, will be permanently closed to the use of any form of motorized watercraft, beginning at 0001 hours November 15, 1996. Lands closed to the use of motorized watercraft are in the Green River Corridor from Indian Crossing Raft Ramp to the Utah-Colorado state line. This closure is pursuant to the Green River Management Plan Decision Record, page 8 paragraph 3. It is also consistent with the U.S. Bureau of Land Management and U.S. Forest Service management of the Green River Corridor from the Flaming Gorge Dam to Indian Crossing Raft Ramp. Motorized watercraft use is allowed by officials of the State of Utah, Daggett County, or federal agencies in the performance of their official duties or during emergencies, national disaster or national defense. Other use of motorized watercraft may be permitted by the authorized officer. Violation of this closure is punishable by a fine of up to $1000 and/or 12 months in jail.

FOR FURTHER INFORMATION CONTACT: The District Manager, or the Manager for Renewable Resources, Vernal District, 170 South 500 East Vernal, UT 84078. Business hours are from 7:45 a.m. to 4:30 p.m., Monday through Friday, except legal holidays. Telephone (801) 781–4400, FAX (801) 781–4410.

Dated: October 25, 1996.

David E. Howell,

District Manager.

[FR Doc. 96–28464 Filed 11–5–96; 8:45 am]

BILLING CODE 4310–DQ–M

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App I, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, November 22, 1996.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The commission members will convene at Park Headquarters, Marconi Station, at 1:00 p.m., November 22, 1996 for the regular business meeting which will be held for the following reasons:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting (9/27/96)
3. Reports of Officers
4. Superintendent's Report
   - Lighthouses
   - Draft General Management Plan
   - Water Management Task Force Update
   - News from Washington
5. Old Business
6. New Business
   - Recommendations from GMP Subcommittee
   - Recommendations from Use & Occupancy Subcommittee
   - Motion re value of Advisory Commission—R. Philbrick
7. Agenda for next meeting
8. Date for next meeting
9. Public comment
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: October 30, 1996.

Rick Obernesser,

Superintendent.

[FR Doc. 96–28537 Filed 11–5–96; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–744 (Final)]

Certain Brake Drums and Rotors From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–744 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from the People's Republic of China (China) of certain brake drums and rotors, provided for in subheading 8708.39.50 of the Harmonized Tariff Schedule of the United States.[1]

[1] For purposes of this investigation, Commerce has defined the subject brake drums as being made of:

''Gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake drums limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under 'one ton and a half,' and light trucks designated as 'one ton and a half.'

Finished brake drums are those that are ready for sale and installation without any further operations. Semi-finished drums are those on which the surface is not entirely smooth, and has undergone some drilling. Unfinished drums are those which have undergone some grinding or turning.

These brake drums are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (OEM) which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake drums covered in this investigation are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake drums that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria.''

Commerce has defined the subject brake rotors as being made of:

''Gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under 'one ton and a half,' and light trucks designated as 'one ton and a half.'

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and has undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (OEM) which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this investigation are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria.''

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207), as amended by 61 FR 37818, July 22, 1996.

EFFECTIVE DATE: October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain brake drums and rotors from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigation was requested in a petition filed on March 7, 1996, by the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers, whose members consist of Brake Parts, Inc., McHenry, IL; Kinetic Parts Manufacturing, Inc., Harbor City, CA; Iroquois Tool Systems, Inc., North East, PA; and Wagner Brake Corporation, St. Louis, MO.

Participation in the Investigation and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on February 13, 1997, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on February 28, 1997, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 18, 1997. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 20, 1997, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is February 21, 1997. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 6, 1997; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 6, 1997. On March 25, 1997, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 27, 1997, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: October 30, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–28535 Filed 11–5–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 332–371]

Cattle and Beef: Impact of the NAFTA and the Uruguay Round Agreements on U.S. Trade

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

EFFECTIVE DATE: October 28, 1996.

SUMMARY: As required by section 58 of the Miscellaneous Trade and Technical Corrections Act of 1996 (Act), (Pub. L. 104-295, Oct. 11, 1996, 110 Stat 3514, 3557), the Commission has instituted Investigation No. 332-371, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of conducting a study and preparing a report on (1) the impact of the North American Free Trade Agreement (NAFTA) and the Uruguay Round Agreements on United States imports and exports of live cattle for slaughter and fresh, chilled, and frozen beef; and (2) the steps that have been taken by the United States, since the enactment of the NAFTA, to prevent the transshipment of live cattle and fresh, chilled, and frozen beef through Mexico and Canada for importation into the United States. As directed by the Act, the Commission will transmit its report to the House Committee on Ways and Means and Senate Committee on Finance no later than 270 days after the date of enactment, or by July 7, 1997.

FOR FURTHER INFORMATION CONTACT: Information on industry aspects may be obtained from David Ludwick, Office of Industries (202-205-3329) or William Lipovsky, Office of Industries (202-205-3330), and legal aspects, from William Gearhart, Office of the General Counsel (202-205-3091). The media should contact Margaret O'Laughlin, Office of External Relations (202-205-1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202-205-1810).

PUBLIC HEARING: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on March 20, 1997. All persons will have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., March 6, 1997. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., March 10, 1997; the deadline for filing posthearing briefs or statements is 5:15 p.m., April 3, 1997. In the event that, as of the close of business on March 6, 1997, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202-205-1816) after March 6, 1997, to determine whether the hearing will be held.

WRITTEN SUBMISSIONS: In lieu of or in addition to participating in the public hearing, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than April 3, 1997. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

Issued: October 29, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–28534 Filed 11–5–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–745 (Final)]

Steel Concrete Reinforcing Bars From Turkey

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No.

731–TA–745 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Turkey of steel concrete reinforcing bars, provided for in subheadings 7213.10.00 and 7214.20.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207), as amended by 61 FR 37818, July 22, 1996.

EFFECTIVE DATE: October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of steel concrete reinforcing bars from Turkey are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigation was requested in a petition filed on March 8, 1996, by AmeriSteel Corporation (Tampa, FL) and New Jersey Steel Corporation (Sayreville, NJ).

[1] For purposes of this investigation, Commerce has defined the subject merchandise as ''all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed rebar rolled from billet steel, rail steel axle steel, or low-alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar.''

Participation in the Investigation and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on February 12, 1997, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on February 26, 1997, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before February 14, 1997. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 19, 1997, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is February 20, 1997. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 4, 1997; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 4, 1997. On March 25, 1997, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 28, 1997, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published

pursuant to section 207.21 of the Commission's rules.

Issued: October 29, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–28533 Filed 11–5–96; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

October 24, 1996.

The Department of Labor has submitted the following emergency processing public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by November 12, 1996. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley (202–219–5096 x.166).

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the U.S. Department of Labor, Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503; (202) 396–7316.

The Office of Management and Budget 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 response.

Agency: Employment and Training Administration.

Title: Reporting Requirements Pursuant to *The National Job Analysis Survey (NJAS).*

OMB Number: 1205–0343.

Frequency: A one-time survey administration to collect information on generalized work behaviors and elements of high performance work environments.

Affected Public: Businesses or other for-profit, Not-for-profit institutions, Federal, State, Local or Tribal Government.

Number of Respondents: 5,925.

Estimated Time Per Respondent: The burden to an organization responding to the Phase 2 survey and the Environmental Survey is 2.85 hours, which includes the contact person, two incumbents for the Phase 2 survey, and the respondent for the environmental survey.

Total Burden Hours: NJAS Phase Survey and Environmental Survey = 6,901 hours.

Total Burden Cost (capital/startup; operating/maintaining): $107,440.79.

Description: This emergency clearance is needed in order to complete Phase 2 survey work of the National Job Analysis Study (NJAS), by May 1997. This project is jointly funded by the Departments of Labor and Education. Phase 2 of the NJAS will verify the generalized work behaviors across occupations identified from Phase 1, determine when the behaviors are first needed on the job and link the behaviors to organizational characteristics like high performance. The NJAS survey in Phase 2 will be sent to a group of approximately 6,000 job incumbents in 3,000 organizations. This survey will ask the job incumbents the frequency and importance of the behaviors, and the point at which the behaviors are first needed on the job. A separate survey, the High Performance Workplace Environmental Survey will also be sent to managers in the organizations sampled, asking about the structure, culture, climate, and characteristics of their organizations. Data analyses will provide information about how the behaviors from the NJAS survey are linked to various organizational characteristic and a list of generalized cross-occupational skills that can serve as a framework for creating assessments of workplace skills, classifying/reclassifying jobs, setting skill standards for industries, and determining what behaviors should be taught in school or on-the-job for use by business, educational, community organizations and others interested in assessing the generalized work behaviors of their clients.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–28497 Filed 11–5–96; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address show below, not later than November 18, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than November 18, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 15th day of October, 1996.

Linda G. Poole,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 10/15/96

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,811	Basin Resources (UMWA)	Weston, CO	10/02/96	Mine Coal.
32,812	Petersburg Garment Co (Wkrs).	Petersburg, WV	09/27/96	Children's Wear.
32,813	E.I. DuPont DeNemours (Wkrs).	Clifton, NJ	09/26/96	Distribute Products for an Affiliate.
32,814	Chatham Mills, Inc (Co.)	Pittsboro, NC	10/01/96	Woven Labels.
32,815	OPTO Technology, Inc (Wkrs).	Platteville, WI	09/20/96	Optical Switches, Optical Encoders.
32,816	Zyloware Corp. (Wkrs)	Long Island Cty, NY	08/07/96	Eye Glass Frames.
32,817	Ingersoll-Dresser Pumps (USWA).	Phillipsburg, NJ	07/30/96	Steel Castings.
32,818	Accuride Corp. (UAW)	Henderson, KY	09/03/96	Steel Truck Wheels.
32,819	The Dial Corp. (Wkrs)	Memphis, TN	09/18/96	Soap.
32,820	Mercury Industries, Inc (Wkrs).	Fayetteville, NC	09/27/96	Brushes & Leadwires—Power Tool Motors.
32,821	W.R. Grace & Co (Co)	New Castle, PA	09/18/96	Polystyrene.
32,822	Anchor Advance Products (Wkrs).	Morristown, TN	10/01/96	Cosmetic & Tooth Brushes, Containers.
32,823	Sunbeam Outdoor Products (USWA).	Linton, IN	09/30/96	Wraught Iron Furniture.
32,824	Mueller Company (UPIU)	Decatur, IL	09/24/96	Valves—Water and Gas.
32,825	ARCO Pipe Line Company (Wkrs).	Independence, KS	10/01/96	Transport Crude Oil.
32,826	UNOCAL (Co.)	Sugarland, TX	09/30/96	Petroleum Products.
32,827	Northrop Grumman Commeric (UAW).	Dallas, TX	10/02/96	Aircrafts & Aircraft Parts.
32,828	Lafayette Apparel (Co.)	Lafayette, TN	09/27/96	Men's Western Jeans.
32,829	DuPont Holly Run Site (Co.).	Newport, DE	10/02/96	Chromium Dioxide Magnetic Particles.
32,830	Witco Corp. (Wkrs)	Bradford, PA	10/03/96	Refine Petroleum.
32,831	Crouzet Corp. (Co.)	Carrollton, TX	09/30/96	Electro-Mechanical & Solid State Control.

[FR Doc. 96–28494 Filed 11–5–96; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–31,733; TA–W–31,733A; TA–W–31,733B; TA–W–31,733C; TA–W–31,733D]

Boise Cascade Corp., Emmett, Idaho; Boise Cascade Corp., Cascade, Idaho; Boise Cascade Corp., Council, Idaho; Boise Cascade Corp., Horseshoe, Idaho; Boise Cascade Corp., Boise, Idaho; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), the Department of Labor issued a certification of eligibility to apply for worker adjustment assistance on February 13, 1996.

The certification notice was published in the Federal Register on February 28, 1996 (61 FR 18758).

At the request of a company official of Boise Cascade Corp. the Department reviewed the certification for workers of the subject firm. The Department is amending the certification to include worker separations at Boise Cascade Corp., Boise, Idaho. Workers at Boise Cascade offices in Boise, Idaho, were engaged in employment related to production at previously certified plants of the subject firm.

The amended notice applicable to TA–W–31,733A–D is hereby issued as follows:

All workers of Boise Cascade Corp., Emmett, Cascade, Council, Horseshoe, and Boise, Idaho, who became totally or partially separated from employment on or after December 7, 1994, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 22nd day of October, 1996.

Linda G. Poole,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–28489 Filed 11–5–96; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–32,585]

Dale Electronics, Inc., Bradford Electronics, Bradford, Pennsylvania; Notice of Revised Determination on Reconsideration

On September 20, 1996, the Department issued a Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to all workers of Dale Electronics, Bradford Electronics located in Bradford, Pennsylvania. The notice will soon be published in the Federal Register.

By letter of September 27, 1996, the petitioners requested administrative reconsideration of the Department's findings. The petitioners presented new evidence that was not considered in the original determination. Additional new evidence was subsequently transmitted to the Department by officials of Dale Electronics in Bradford.

The workers at Dale Electronics produce electronic components. The initial TAA petition for workers at Dale Electronics was denied because criterion (3) of the Group Eligibility Requirements of the Trade Act of 1974 was not met. The subject firm did not import electronic components. Layoffs at the Bradford plant were attributable to the transfer of production to other domestic plants.

New findings on reconsideration show that the company does import electronic components.

Other new findings on reconsideration reveal that the company is shifting production of electronic components to their foreign manufacturing facilities and will import from those foreign locations.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with electronic components produced by the subject firm contributed importantly to the declines in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Dale Electronics, Inc., Bradford Electronics, Bradford, Pennsylvania, who became totally or partially separated from employment on or after June 6, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 28th day of October, 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–28486 Filed 11–5–96; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than November 18, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than November 18, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC, this 21st day of October, 1996.

Linda G. Poole,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 10/21/96

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,832	Fashion Bed Group (Comp).	Chicago, IL	10/10/96	Bed Frames.
32,833	TRW Vehicle Safety System (Comp).	Washington, MI	10/04/96	Fabricated Metal Stampings.
32,834	BP Exploration, Inc (Comp)	Houston, TX	10/04/96	Oil and Gas.
32,835	Schuller Manufacturing (Comp).	Vienna, WV	10/07/96	Speciality Glass Marbles.
32,836	Endicott Johnson Corp (Wrks).	Johnson City, NY	10/03/96	Shoes.
32,837	Haddon Craftsmen Mfg (Wrks).	Scranton, PA	09/25/96	Books.
32,838	AVX Tantalum Corp (Wrks)	Biddeford, ME	10/02/96	Tantalum Capacitors.
32,839	Lee Company (Wrks)	Irvington, AL	10/07/96	Jeans.
32,840	Trinity Industries (Wrks)	New London, MN	09/16/96	Liquid Propane Tanks & Ammonia Tanks.
32,841	Kensington Window, Inc (IUESM).	Vandergraft, PA	09/23/96	Vinyl Replacement Windows.
32,842	Sara Lee Bodywear (Comp).	McAdoo, PA	10/07/96	Ladies' Activewear—Distributor.
32,843	Acme Boot Co (Wrks)	El Paso, TX	09/20/96	Leather Boots.
32,844	American Fiber & Finish (Wrks).	Colrain, MA	10/10/96	Diaper & Wiping Cloths, Cotton Balls.
32,845	Ryobi Motor Products Corp (Comp).	Anderson, SC	10/14/96	Table Saw.

[FR Doc. 96–28493 Filed 11–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31, 973; TA–W–31, 973A; TA–W–31, 973B]

Key Tronic Corporation; Spokane, Washington and Key Tronic Southwest, El Paso, Texas and Las Cruces, New Mexico; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on March 26, 1996, applicable to all workers of Key Tronic Corporation located in Spokane, Washington. The notice was published in the Federal Register on April 9, 1996 (61 FR 15832).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers produce computer keyboards and peripherals. New information provided by the company shows that workers separations have occurred at the subject firms' El Paso, Texas and Las Cruces, New Mexico locations.

The intent of the Department's certification is to include all workers of Key Tronic Corporation who were adversely affected by imports. Accordingly, the Department is amending the certification to cover the workers separated from Key Tronic Southwest, El Paso, Texas and Las Cruces, New Mexico.

The amended notice applicable to TA–W–31, 973 is hereby issued as follows:

All workers of Key Tronic Corporation, Spokane, Washington (TA–W–31, 973) who became totally or partially separated from employment on or after February 2, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and all workers of Key Tronic Southwest, El Paso, Texas (TA–W–31, 973A) and Key Tronic Southwest, Las Cruces, New Mexico who became totally or partially separated from employment on or after October 13, 1996 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of October 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–28488 Filed 11–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,685, 685A, 685B, and 685C]

Lee Apparel Company; St. Joseph, Seymour, and Lebanon, Missouri and Dalton, Georgia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued an Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on October 9, 1996, applicable to all workers of Lee Apparel Company located in Seymour, Missouri. The notice will soon be published in the Federal Register.

At the request of the State agency, petitioners and a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of jeans. New information received by the Department shows that worker separations are occurring at Lee Apparel Company facilities in Lebanon, Missouri and Dalton, Georgia.

The intent of the Department's certification is to include all workers of Lee Apparel Company who were adversely affected by imports. Accordingly, the Department is amending the certification to cover the workers separated from Lee Apparel Company, Lebanon, Missouri and Dalton, Georgia.

The amended notice applicable to TA–W–31,685 is hereby issued as follows:

All workers of Lee Apparel Company, St. Joseph, Missouri (TA–W–31,685), Seymour, Missouri (TA–W–31,685A), Lebanon, Missouri (TA–W–31,685B) and Dalton, Georgia (TA–W–31,685C) engaged in employment related to the production of jeans who became totally or partially separated from employment on or after November 6, 1994, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of October 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–28495 Filed 11–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–31,742]

Quantum Corporation, High Capacity Storage Group, Shrewsbury, Massachusetts, Including Contract Workers of the Following Firms: Accountpros, Marlboro, Massachusetts; et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 13, 1996, applicable to all workers of Quantum Corporation, High Capacity Storage Group, Shrewsbury, Massachusetts. The notice was published in the Federal Register on February 28, 1996 (61 FR 18758). The worker certification was amended July 22, 1996, to include leased workers of TAD Technical Services, Shrewsbury, Massachusetts, and of workers of Select Temporary Services, Inc., Worcester, Massachusetts, engaged in the production of computer drives and other computer components for Quantum Corporation, Shrewsbury. The amended notice was published in the Federal Register on August 26, 1996 (61 FR 42,782).

Based on new findings, the Department is amending the certification to include all workers, including contract workers, at Quantum Corporation, High Capacity Storage Group, Shrewsbury, Massachusetts adversely affected by imports.

The amended notice applicable to TA–W–31,742 is hereby issued as follows:

All workers of Quantum Corporation, High Capacity Storage Group, Shrewsbury, Massachusetts, and contract workers from the firms listed below engaged in the production of computer drives and other computer components for the Quantum Corporation, who became totally or partially separated from employment on or after December 4, 1994, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Accountpros, Marlboro, Massachusetts
Additional Technical Support, Inc., Waltham, Massachusetts
Apollo Design, Inc., Haverhill, Massachusetts
Eliassen Group, Wakefield, Massachusetts
EDP/Temps & Contract Services, Newton, Massachusetts
Interstate Technical Services, Nashua, New Hampshire
Microtemps Systems & Programming, Newton, Massachusetts
National Engineering Service Corp., Woburn, Massachusetts
New Boston Systems, Woburn, Massachusetts

Select Temporary Services, Inc., Worcester, Massachusetts
Sullivan & Cogliano Company, Waltham, Massachusetts
TAD Technical Services, Framingham, Massachusetts
TAC/Temps, Worcester, Massachusetts
Tech/Aid, Worcester, Massachusetts
Total Technical Services, Inc., Waltham, Massachusetts.

Signed at Washington, DC, this 23rd day of October 1996.

Linda G. Poole,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–28491 Filed 11–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,393; TA–W–32,393A]

Todd Uniforms, Maury City, Tennessee and Todd Uniforms, Ripley, Tennessee; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 24, 1996, applicable to all workers of Todd Uniforms located in Maury City, Tennessee. The notice was published in the Federal Register on July 9, 1996 (61 FR 36085).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that workers separations have occurred at the subject firms' Ripley, Tennessee location. Workers at the Ripley, Tennessee plant produce uniform pants.

The intent of the Department's certification is to include all workers of Todd Uniforms who were adversely affected by imports. Accordingly, the Department is amending the certification to cover the workers separated from Todd Uniforms, Ripley, Tennessee.

The amended notice applicable to TA–W–32,393 is hereby issued as follows:

All workers of Todd Uniforms, Maury City, Tennessee (TA–W–32,393) and Ripley, Tennessee (TA–W–393A) who became totally or partially separated from employment on or after May 7, 1995 are eligible to apply for adjustment assistance under Sections 223 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of October 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–28490 Filed 11–5–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32, 261; TA–W–32, 261A; TA–W–32, 261B]

United Technologies Automotive Wiring Systems Division Plants #80 and #92, Plymouth, Indiana and United Technologies Automotive Wiring Systems Group, North Manchester, Indiana and United Technologies Automotive Wiring Systems Group, Newton, Illinois; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), the Department of Labor issued a certification of eligibility to apply for worker adjustment assistance on June 19, 1996, applicable to workers of United Technologies Automotive, Wiring Systems Division Plants #80 and #92, located in Plymouth, Indiana.

The certification notice was published in the Federal Register on July 9, 1996 (61 FR 24,817).

At the request of a company official of United Technologies Automotive the Department reviewed the certification for workers of the subject firm. The Department is amending the certification to include workers of United Technologies Automotive, Wiring Systems Group, North Manchester, Indiana, and Newton, Illinois. Workers at these plants are engaged in employment related to the production of automotive wiring harnesses and battery cables.

The intent of the Department's certification is to include all workers of United Technologies Automotive who were adversely affected by increased imports.

The amended notice applicable to TA–W–32, 261A–B is hereby issued as follows:

All workers of United Technologies Automotive, Wiring Systems Division Plants #80 & #92, Plymouth, Indiana, and at United Technologies Automotive, Wiring System Group plants in North Manchester, Indiana, and Newton, Illinois, who became totally or partially separated from employment on or after April 9, 1995, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. this 23rd day of October, 1996.

Linda G. Poole,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–28492 Filed 11–5–96; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–1132]

Dale Electronics, Inc., Bradford Electronics, Bradford, Pennsylvania; Notice of Revised Determination on Reconsideration

On August 14, 1996, the Department issued a Negative Determination Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance, applicable to all workers of Dale Electronics, Bradford Electronics located in Bradford, Pennsylvania. The notice was published in the Federal Register on September 13, 1996 (61 FR 48505).

By letter of September 27, 1996, the petitioners requested administrative reconsideration of the Department's findings. The petitioners presented new evidence that was not considered in the original determination. Additional new evidence was subsequently transmitted to the Department by officials of Dale Electronics in Bradford.

The workers at Dale Electronics produce electronic components. The initial NAFTA–TAA petition for workers at Dale Electronics was denied because criteria (3) and (4) of the Group Eligibility Requirements of Section 250 the Trade Act of 1974, as amended were not met. There was no shift in production of electronic components from Bradford Electronics to Mexico or Canada, nor did the subject firm import electronic components. Layoffs at the Bradford plant were attributable to the transfer of production to other domestic plants.

New findings on reconsideration show that the company does import electronic components. Other new findings on reconsideration reveal that the company is shifting production of electronic components to Mexico.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports from Mexico and Canada of articles like or directly competitive with electronic components contributed importantly to the declines in sales or production and to the total or partial separation of workers at Dale Electronics, Bradford Electronics, Bradford, Pennsylvania. In accordance with the provisions of the

Act, I make the following revised determination:

All workers of Dale Electronics, Inc., Bradford Electronics, Bradford, Pennsylvania, who became totally or partially separated from employment on or after June 5, 1995, are eligible to apply for NAFTA–TAA under Section 250 of the Trade of 1974.

Signed at Washington, DC this 28th day of October 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–28487 Filed 11–5–96; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Sidney Coal Company, Inc.

[Docket No. M–96–98–C]

Sidney Coal Company, Inc., 115 North Big Creek Road, P.O. Box 299, Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.901(a) (protection of low- and medium-voltage three-phase circuits used underground) for its Sidney Coal Company, No. 1 Preparation Plant (I.D. No. 15–09724) and their subsidiaries: The Black Diamond Coal Company, Mine No. 1 (I.D. No. 15–17356); Clean Energy Mining Company, Mine No. 1 (I.D. No. 15–10753); Freedom Energy Mining Company, No. 1 Mine (I.D. No. 15–07082); Rockhouse Energy Mining Company, Mine No. 1 (I.D. No. 15–17651); and Solid Energy Mining Company, Mine No. 1 (I.D. No. 15–07475) all located in Pike County, Kentucky. The petitioner proposes to use a diesel generator to move equipment in and out of its underground mines. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Dominion Coal Corporation

[Docket No. M–96–99–C]

Dominion Coal Corporation, P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.360(a)(1) (preshift examination) to its Dominion No. 7 Mine (I.D. No. 44–06499) VA MI #13963AA, Dominion No. 8 Mine (I.D. No. 44–06555) VA MI #14024AA, Dominion No. 16 Mine (I.D. No. 44–06643) VA MI #14160AA, Dominion No. 21 Mine (I.D. No. 44–06644) VA MI #14161AA, Dominion No. 22 Mine (I.D. No. 44–06645) VA MI #14162AA, Dominion No. 30 Mine (I.D. No. 44–06748) VA MI #14293AD, Dominion No. 35 Mine (I.D. No. 44–06793) VA MI #14353AC, and its Dominion 36B Mine (I.D. No. 44–06759) VA MI #14314AA all located in Buchanan County, Virginia. The petitioner proposes to have a certified person designated by the operator make a preshift examination within 3 hours preceding the beginning of any 8½ hour interval during which any person is scheduled to work or travel underground. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Dominion Coal Corporation

[Docket No. M–96–100–C]

Dominion Coal Corporation, P.O. Box 70, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.388 (boreholes in advance of mining) to its Dominion No. 7 Mine (I.D. No. 44–06499) VA MI #13963AA, Dominion No. 8 Mine (I.D. No. 44–06555) VA MI #14024AA, Dominion No. 16 Mine (I.D. No. 44–06643) VA MI #14160AA, Dominion No. 21 Mine (I.D. No. 44–06644) VA MI #14161AA, Dominion No. 22 Mine (I.D. No. 44–06645) VA MI #14162AA, Dominion No. 30 Mine (I.D. No. 44–06748) VA MI #14293AD, Dominion No. 35 Mine (I.D. No. 44–06793) VA MI #14353AC, and its Dominion 36B Mine (I.D. No. 44–06759) VA MI #14314AA, all located in Buchanan County, Virginia. The petitioner proposes to take cuts from a 50-foot barrier block of coal created by parallel paneling without test drilling each individual cut taken. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Dominion Coal Corporation

[Docket No. M–96–101–C]

Dominion Coal Corporation, P.O. Box 90, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.501–2(a)(2) (permissible electric face equipment) to its Dominion No. 7 Mine (I.D. No. 44–06499) VA MI #13963AA, Dominion No. 8 Mine (I.D. No. 44–06555) VA MI #14024AA, Dominion No. 16 Mine (I.D. No. 44–06643) VA MI #14160AA, Dominion No. 21 Mine (I.D. No. 44–06644) VA MI #14161AA, Dominion No. 22 Mine (I.D. No. 44–06645) VA MI #14162AA, Dominion No. 30 Mine (I.D. No. 44–06748) VA MI #14293AD, Dominion No. 35 Mine (I.D. No. 44–06793) VA MI #14353AC, and its Dominion 36B Mine (I.D. No. 44–06759) VA MI #14314AA, all located in Buchanan County, Virginia. The petitioner requests relief from the requirement that hand-held battery-powered drills taken inby the last open crosscut or returns for use in drilling holes in the mine roof for installing survey spads be permissible. The petitioner states that application of the mandatory safety standard would result in diminution of safety to the miners. In addition, petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. CONSOL of Kentucky, Inc.

[Docket No. M–96–102–C]

CONSOL of Kentucky, Inc., has filed a petition to modify the application of 30 CFR 75.1101–8 to its Mill Creek E–3 Mine (I.D. No. 15–17720) located in Letcher County, Kentucky. The petitioner proposes to use a single overhead pipe system with ½-inch orifice automatic sprinklers located on 10-foot centers, to cover 50 feet of fire-resistant belt or 150 feet of non-fire-resistant belt, with actuation temperatures between 200 and 250 degrees Fahrenheit, and with water pressure equal to or greater than 10 psi. The sprinklers would be located to discharge water over the belt drive, belt take-up, electrical control, and gear reducing unit. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Left Fork Mining, Inc.

[Docket No. M–96–103–C]

Left Fork Mining, Inc., P.O. Box 405, Arjay, Kentucky 40902 has filed a petition to modify the application of 30 CFR 75.1103–4 (automatic fire sensor and warning device systems installation; minimum requirements) to its Straight Creek No. 1 Mine (I.D. No. 15–12564) located in Bell County, Kentucky. The petitioner proposes to use one carbon monoxide monitoring device to monitor a belt head and tail piece when located adjacent to each other. The petitioner is presently using the Pyott-Boone Model 950 Monitor and Control system instead of the conventional heat type sensors. The petitioner states that the monitoring device would be located at each belt and tail piece and at intervals not to exceed 2,000 feet along each conveyor belt

entry. The petitioner asserts that the elimination of an additional monitor would not diminish the safety of the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Little Buck Coal Company

[Docket No. M–96–105–C]

Little Buck Coal Company, RR 4, Box 395, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 3 Slope (Buck Mountain Vein) (I.D. No. 36–08568) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit the use of the slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices, but instead use an increased rope strength/safety factor and secondary safety rope connection in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. S & M Coal Company

[Docket No. M–96–106–C]

S & M Coal Company, 189 North Street, Lykens, Pennsylvania 17048 has filed a petition to modify the application of 30 CFR 75.1002–1 (location of other electrical equipment; requirements for permissibility) to its Buck Mountain Slope (I.D. No. 36–02022) located in Daupin County, Pennsylvania. The petitioner requests a modification of the standard to permit use of nonpermissible electric equipment within 150 feet of the pillar line due in part to the method of mining used in pitching anthracite mines. As an alternative, the petitioner proposes to evaluate the mine air quality for methane on an hourly basis during operation and record one of the gas test results in the on-shift examination record. The petitioner also proposes to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent or when found during a preshift examination. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Old Ben Coal Company

[Docket No. M–96–107–C]

Old Ben Coal Company, 50 Jerome Lane, Fairview Heights, Illinois 62208 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Ziegler No. 11 Mine (I.D. No. 11–02408) located in Randolph County, Illinois. The petitioner proposes to use the split-tail system of face ventilation allowing the belt to be blended with the air to the faces from the intake entries. The petitioner proposes to install a low-level carbon monoxide detection system as an early warning fire detection system in all belt entries used as intake air courses. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Maple Creek Mining, Inc.

[Docket No. M–96–108–C]

Maple Creek Mining, Inc., P.O. Box 517, 981 Route 917, Bentleyville, Pennsylvania 15314 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Maple Creek Mine (I.D. No. 36–00970) located in Washington County, Pennsylvania. The petitioner requests that Item 24 of the MSHA Proposed Decision and Order for its previously granted Petition for Modification, Docket No. M–95–029–C, be amended to read as follows: The maximum width of longwall panels shall not exceed 1,000 feet and maximum length shall not exceed 14,000 feet. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. The Ohio Valley Coal Company

[Docket No. M–96–109–C]

The Ohio Valley Coal Company, 56854 Pleasant Ridge Road, Alledonia, Ohio 43902 has filed a petition to modify the application of 30 CFR 75.364 (weekly examinations) to its Powhatan No. 6 Mine (I.D. No. 33–01159) located in Belmont County, Ohio. Due to deteriorating roof and riblines in certain areas of the mine, the area cannot be traveled safely. The petitioner proposes to establish evaluations stations to monitor the affected area; to have a certified person to: (1) Test the evaluation stations on a weekly basis to determine the volume of air, and methane and oxygen concentrations; and (2) record on a date board located at each checkpoint the initials of the examiner and the date and time of the examination; and to maintain the air measurement stations in a safe and travelable condition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

12. Harlan Cumberland Coal Company

[Docket No. M–96–110–C]

Harlan Cumberland Coal Company, Grays Knob, Kentucky 40829 has filed a petition to modify the application of 30 CFR 75.1711–2 (sealing of slope or drift openings) to its D–1 Mine (I.D. No. 15–08415) located in Harlan County, Kentucky. The petitioner proposes to use the water that has filled the mine and that is flowing out of the fan entry at approximately 50 gallons per minute in conjunction with barricades, as an alternative to filling slope and drift openings with incombustible material. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

13. CONSOL of Kentucky, Inc.

[Docket No. M–96–111–C]

CONSOL of Kentucky, Inc., Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1101–8 (water sprinkler systems; arrangement of sprinklers) to its Loves Branch H–4 (I.D. No. 15–17814) located in Letcher County, Kentucky. The petitioner proposes to use a single overhead pipe system with ½-inch orifice automatic sprinklers located on 10-foot centers, to cover 50 feet of fire-resistant belt or 150 feet of nonfire- resistant belt, with actuation temperatures between 200 and 230 degrees Fahrenheit, and with water pressure equal to or greater than 10 psi. The sprinklers would be located to discharge water over the belt drive, belt take-up, electrical control, and gear reducing unit. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

14. K & M Coal Company, Inc.

[Docket No. M–96–112–C]

K & M Coal Company, Inc., H.C. 73, Box 194, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its No. 18 Mine (I.D. No. 15–17823) located in Knox County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane and oxygen indicators instead of machine mounted methane monitors on permissible three-wheel tractors with drag type buckets. The petitioner asserts that this petition for modification is

based on the safety of the miners involved.

15. Jackstone Coal Company

[Docket No. M–96–113–C]

Jackstone Coal Company, 21 Wood Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Buck Mountain Slope (I.D. No. 36–01889) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing the inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

16. Jackstone Coal Company

[Docket No. M–96–114–C]

Jackstone Coal Company, 21 Wood Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Buck Mountain Slope (I.D. No. 36–01889) located in Schuylkill County, Pennsylvania. The petitioner proposes to visually examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

17. Jackstone Coal Company

[Docket No. M–96–115–C]

Jackstone Coal Company, 21 Wood Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.364(b) (1), (4), and (5) (weekly examinations) to its Buck Mountain Slope (I.D. No. 36–01889) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake haulage slope and primary escapeway cannot be traveled safely. The petitioner proposes to examine these areas from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and throughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

18. Jackstone Coal Company

[Docket No. M–96–116–C]

Jackstone Coal Company, 21 Wood Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1100–2 (quantity and location of firefighting equipment) to its Buck Mountain Slope (I.D. No. 36–01889) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

19. Jackstone Coal Company

[Docket No. M–96–117–C]

Jackstone Coal Company, 21 Wood Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1200 (d) & (i) (mine map) to its Buck Mountain Slope (I.D. No. 36–01889) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope; and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

20. Jackstone Coal Company

[Docket No. M–96–118–C]

Jackstone Coal Company, 21 Wood Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Buck Mountain Slope (I.D. No. 36–01889) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

21. Utah Fuel Company

[Docket No. M–96–119–C]

Utah Fuel Company, P.O. Box 719, Helper, Utah 84526 has filed a petition to modify the application of 30 CFR 75.360(b)(9) (preshift examination) to its Skyline Mine No. 1 (I.D. No. 42–01435), and its Skyline Mine No. 3 (I.D. No. 42–01566) both located in Carbon County, Utah. The petitioner proposes to continuously monitor electrical installations for carbon monoxide or temperature rather than conduct preshift examinations and to physically examine these installations for other hazardous conditions at least weekly; and to have the miners entering these areas certified and conduct an examination for themselves or to have a certified person examine the areas prior to other employees entering these areas. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

22. Red Baron, Inc.

[Docket No. M–96–120–C and M–96–121–C]

Red Baron, Inc., P.O. Box 728, Rosedale, Virginia 24280 has filed a petition to modify the application of 30 CFR 75.1710–1 (canopies or cabs; self-propelled electric face equipment; installation requirements) to its Mine No. 3 (I.D. No. 44–06758) VA MI #14313AC, and its Mine No. 1 (I.D. No. 44–06719) VA MI #14259AD, both located in Buchanan County, Virginia. The petitioner proposes to operate self-propelled electric face equipment without cabs or canopies in seam heights of 48 inches or less. The petitioner states that application of the standard would result in a diminution of safety to the equipment operator.

23. Keystone Coal Mining Corporation

[Docket No. M–96–122–C]

Keystone Coal Mining Corporation, P.O. Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.364(b)(1) (weekly examinations) to its Urling No. 1 Mine (I.D. No. 36–04852) located in Indiana County, Pennsylvania. Due to hazardous conditions in the intake air course between the 002 air seals and the 2 right air seals, the area cannot be

traveled safely to make weekly examinations. The petitioner proposes to establish two monitoring stations to evaluate the affected area; to post a sign in an adjacent travel entry indicating the safe travel route to each monitoring station; to have a certified person conduct weekly examinations at each of the monitoring station to measure the quantity and quality of air entering or exiting the monitoring station; to post at each monitoring station, a diagram showing the normal quantity and quality of methane, oxygen measurements, and the direction of the air flow; to have the examiner record their initials, date and time of examinations on a date board provided at the monitoring stations; and to record the results of the tests in a weekly examination book kept on the surface and made available to all interested parties. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

24. Eagle Coal Company

[Docket No. M–96–123–C]

Eagle Coal Company, P.O. Box 399, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.388(3) to its Mine No. 2 (I.D. No. 15–16724) located in Martin County, Kentucky. The petitioner requests a variance to mine adjacent to old works leaving a 50-foot unmined barrier without boring test holes within 200 feet of old works at all times. The petitioner states that Beech Fork Processing, Inc. is in the process of permitting a boundary of coal adjacent to the Eagle Coal Company's No. 2 Mine; that check survey controls and conventional levels was maintained by Abbott Engineering, Inc., at the Eagle No. 2 Mine and would be maintained at the proposed new mine; and that underground surveys at the Eagle No. 2 Mine are tied into permanent outside control stations and would be ran to the proposed new mine face-up from these common control stations. Because this is the same mining company and the same engineering company, essentially using the same control surveys in the same seam of coal, the petitioner requests that the mandatory standard be waived or modified for the new mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

25. Akzo Salt, Inc.

[Docket No. M–96–02–M]

Azko Salt, Inc., P.O. Box 6920, Cleveland, Ohio 44101 has filed a petition to modify the application of 30 CFR 57.19109 to its Cleveland Mine (I.D. No. 33–01994) located in Cuyahoga County, Ohio. The petitioner requests a modification of the standard to allow regular inspections of the production lined-shaft prior to all maintenance assignments instead of providing additional overhead protection, regarding Citation No. 4546277 of January 29, 1996. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

26. Tintic Utah Metals LLC (formerly Chief Consolidated Mining Company)

[Docket No. M–96–03–M]

Tintic Utah Metals LLC, P.O. Box 51, Eureka, Utah 84628 has filed a petition to modify the application of 30 CFR 57.19054 to its Burgin Mine (I.D. No. 42–00148) located in Utah County, Utah. The petitioner requests a variance from the standard. The petitioner was issued Citation No. 3908636 on June 17, 1996, which stated that the guide ropes used on the Apex No. 2 Auxiliary Emergency hoist conveyance was not of a lock coil construction. The petitioner requests modification of the standard to allow the use of non-lock coil ropes on their emergency hoist. The primary and sole purpose of the hoist is an emergency hoist; it is used infrequently, and inspected and maintained regularly. The petitioner states that the safety of the miners would not be enhanced by installing lock coil construction rope guides. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 6, 1996. Copies of these petitions are available for inspection at that address.

Dated: October 29, 1996.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 96–28463 Filed 11–5–96; 8:45 am]

BILLING CODE 4510–43–P

Pension and Welfare Benefits Administration

[Application No. D–10079, et al.]

Proposed Exemptions; Pikeville National Bank

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507,

200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.Pikeville National Bank & Trust Company; Trust Company of Kentucky; and First American Bank (collectively, the Banks) Located in Pikeville and Ashland, Kentucky [Application Numbers D–10079 through D–10082]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the cash sales on December 28, 1994 and January 13, 1995, of certain collateralized mortgage obligations (CMOs) and other mortgage-backed securities (collectively, the Securities) held by eighty-nine (89) employee benefit plans, Keogh plans and individual retirement accounts (IRAs) for which the Banks act as trustee (the Plans) to Pikeville National Corporation (PNC), a party in interest with respect to the Plans; (2) the ''makewhole'' payments made by PNC to the Plans on January 20, 1995, in connection with the sale of certain Securities by the Plans on the open market on November 2, 1994; and (3) the proposed additional ''makewhole'' and interest payments to be made by PNC to the Plans, as of the date the exemption is granted, as a result of: (i) the additional amounts owed to such Plans based on the amortized cost of the Securities at the time of the transactions in situations where the amortized cost exceeded the outstanding principal balance of the Securities (plus a reasonable rate of interest on such amounts), and (ii) the additional accrued but unpaid interest on the Securities which was owed to the Plans at the time of the sale to PNC on December 28, 1994 (plus a reasonable rate of interest on such amounts); provided that the following conditions are met:

(a) Each sale was a one-time transaction for cash;

(b) Each Plan has received or will receive a total amount for the Securities owned by the Plan, including the sale proceeds and ''makewhole'' payments for transactions that occurred either on the open market or with PNC, which is equal to the greater of: (i) the outstanding principal balance for each Security owned by the Plan, plus accrued but unpaid interest, at the time of the sale; (ii) the amortized cost for each Security owned by the Plan on the date of the sale, plus accrued but unpaid interest, as determined by the Banks; or (iii) the fair market value of each Security owned by the Plan as determined by the Banks from broker-dealers or pricing services independent of the Banks at the time of the sale;

(c) With respect to the ''makewhole'' payments made by PNC to the Plans on January 20, 1995, the Plans receive a reasonable rate of interest for the period from November 2, 1994 (the date of the sale of certain Securities on the open market) until January 20, 1995 (the date such payments were made), to the extent this amount is not already accounted for under the additional ''makewhole'' payments which are due for the Securities based on the amounts referred to above in Item (3)(i);

(d) The Plans did not pay any commissions or other expenses with respect to the transactions;

(e) The Banks, as trustee of the Plans, determined that the sale of the Securities was in the best interests of each of the Plans and their participants and beneficiaries at the time of the transaction;

(f) The Banks took all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the transactions; and

(g) Each Plan received a reasonable rate of return on the Securities during the period of time that it held the Securities.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of December 28, 1994, and January 13, 1995, for the sales of the Securities made to PNC, and as of January 20, 1995, for the ''makewhole'' payments made by PNC in connection with the sale of the Securities to an unrelated party on November 2, 1994. In addition, this proposed exemption will be effective for the additional ''makewhole'' and interest payments due to the Plans as of the date such payments are made to the affected Plans.

Summary of Facts and Representations

1. The Banks are wholly-owned subsidiaries of PNC, a bank holding company organized under federal and Kentucky laws which is located at 208 North Mayo Trail in Pikeville, Kentucky. The Banks are: (a) the Pikeville National Bank and Trust Company, located at 208 North Mayo Trail in Pikeville, Kentucky; (b) the Trust Company of Kentucky, located at 1544 Winchester Avenue in Ashland, Kentucky; and (c) the First American Bank, located at 1544 Winchester Avenue in Ashland, Kentucky. The Banks offer traditional banking services (e.g. checking, savings, loans and trusts) to both individuals and entities in their localities.

2. The Banks serve as trustees for the Plans and have investment discretion for either some or all of the assets of such Plans. The Plans consist of a total of eighty-nine (89) plans, including various profit sharing plans, money purchase pension plans, 401(k) plans, simplified employee benefit plans (SEPs), Keogh plans and IRAs. The Plans that are employee benefit plans covered under Title I of the Act, such as the profit sharing and money purchase pension plans, are maintained by small businesses in the Pikeville and Ashland, Kentucky areas. All of these Plans have fewer than 100 participants.[1]

[1] Examples of some of these Plans are: (i) the Sandy Valley Explosive Co., 401(k) Plan, which had 28 participants and total assets of $90,398 as of September 30, 1994; (ii) the Corbin Coal Co., Inc. Profit Sharing Plan, which had 9 participants and

Some of the Plans are Keogh plans (a/k/s HR 10 plans) and IRAs which are not employee benefit plans covered under the Act.[2] Of the eighty-nine (89) Plans involved in the subject transactions by the Banks, twenty-nine (29) are IRAs and ten (10) are Keogh plans.

3. The Banks represent that at various times during the period from July 1992 until January 1994, assets of the Plans were invested in the Securities. The Securities were purchased from broker-dealers that were independent of the Plans and their sponsoring employers as well as the Banks and their affiliates.

The Securities are collateralized mortgage obligations (i.e. CMOs) and other mortgage-backed securities. The Securities are investment products through which investors purchase interests in pools of residential mortgage loans. In general, investors in these securities receive payments of principal and interest or, in some cases, either principal or interest only, depending upon the type of security purchased. Interest payments change monthly in relation to a specific index, such as the London Interbank Offered Rate (LIBOR) or the U.S. Federal Reserve's Cost of Funds Index (COFI), contained in a formula used to calculate the interest rate for such securities. Principal payments on the Securities vary in amount and timing depending upon how quickly the outstanding principal amounts on the underlying mortgages held in the mortgage pools are prepaid by the obligors. The repayment of principal and interest on the underlying mortgages in the various pools is usually guaranteed by U.S. Government Agencies, such as the Federal Home Loan Mortgage Corporation (FHLMC or ''Freddie Mac'') or the Federal National Mortgage Association (FNMA or ''Fannie Mae'').

4. The Securities consisted of twenty-six (26) separate securities. All of the Securities were CMOs or Real Estate Mortgage Investment Conduits (REMICs), except for one ''structured'' note issued by the Federal Home Loan Bank (FHLB) and three fixed coupon notes issued by FNMA, which were backed by pools of residential mortgages.

The CMOs are described as follows: (a) FHLMC REMIC—Planned Amortization Class (PAC) Series 1059, Class F, CUSIP #312905MB5; (b) FHLMC REMIC—PAC Series 1459, Class P, CUSIP #312914DV3; (c) FHLMC REMIC—PAC Series 1551, Class E, CUSIP #312916XX2; (d) FHLMC REMIC—Targeted Amortization Class (TAC) Series 1580, Class H, CUSIP #3133TOA7; (e) FNMA REMIC—Scheduled Amortization Class Series 1993–168, Class N, CUSIP #31359DQH9; (f) General Electric (GE) Capital Mortgage Services REMIC—PAC Series 1993–13, Class A6, CUSIP #36157LSB5; (g) FHLMC REMIC—Z Tranche Series 1393, Class J, CUSIP #312912SQ2; (h) FHLMC REMIC—Z Tranche Series 1411, Class ZA, CUSIP #312912X45; (i) FHLMC REMIC—Inverse Floater Series 1438, Class F, CUSIP #312913TJ5; (j) FHLMC REMIC—Inverse Floater Series 1625, Class SB, CUSIP #3133T22Q2; (k) FHLMC REMIC—Inverse Floater Series 1660, Class S, CUSIP #3133T3QK7; (l) FHLMC REMIC—Inverse Floater Series 1665, Class S, CUSIP #3133T3RD2; (m) FNMA REMIC—Inverse Floater Series 1993–102, Class S, CUSIP #31359AR43; (n) FNMA REMIC—Inverse Floater Series 1993–115, Class SE, CUSIP #31359BDT1; (o) FNMA REMIC—Inverse Floater Series 1993–185, Class SH, CUSIP #31359DU50; (p) FNMA REMIC—Inverse Floater Series G93–31, Class SD, CUSIP #31359DZW6; (q) FHLMC REMIC—Inverse Floater Series 1385, Class S, CUSIP #312912KK3; (r) FNMA REMIC—Z Tranche Series 1992–123, Class Z, CUSIP #31358N4F6; (s) FNMA REMIC—Inverse Floater Series 1992–129, Class S, CUSIP #31358N7D8; (t) FNMA REMIC—Inverse Floater Series G93–14, Class S, CUSIP #31358TX87; (u) FNMA REMIC—Principal Only (PO) Series 1993–161, Class GC, CUSIP #31359BXX0; and (v) GE Capital Mortgage Services REMIC—Inverse Floater Series 1993–17, Class A20, CUSIP #36157LUY2.

The other Securities that were not CMOs are described as follows: (a) FHLB Structured Note, CUSIP #313389FC7, an inverse floater indexed bond with a coupon formula based on six-month LIBOR; (b) FNMA Note, CUSIP #31359CAL9, a fixed coupon note paying 6.43 percent annually, due to mature on January 13, 2004, but callable on or after January 13, 1997; (c) FNMA Medium Term Note, CUSIP #31364AJ37, a fixed coupon note paying 6.17 percent annually, due to mature on December 2, 2003, but callable on or after December 2, 1996; and (d) FNMA Medium Term Note, CUSIP #31364AVX7, a fixed coupon note paying 6.80 percent annually, due to mature on October 23, 2002, but callable on or after October 23, 1995.

Of the twenty-six (26) Securities, twenty-four (24) had their underlying mortgages guaranteed by either the FNMA, FHLMC, or FHLB. The Banks represent that most of the CMOs would be considered ''guaranteed governmental mortgage pool certificates'' (see 29 CFR 2510.3–101).[3] The Banks state that it is unclear whether the Securities that are not CMOs would be so considered because they are debt, rather than equity, instruments issued by a U.S. Government agency. However, the Banks state that all of the Securities are ''publicly-offered securities'' (see 29 CFR 2510.3–101(a)(2) and (b)).[4]

5. All of the CMOs mentioned above were structured as REMICs pursuant to section 860D of the Code. The various classes of these Securities receive principal and, possibly, interest payments in differing portions and at differing times from the cash flows provided from the monthly payments received on the underlying mortgages.

The repayment of principal from the underlying mortgages fluctuates significantly. To facilitate the structuring of such REMICs, the prepayments on the pools of mortgages are commonly measured relative to a variety of prepayment models. The model used for these REMICs is the Public Securities Association's standard prepayment model or ''PSA''. For example, this model may assume that mortgages will prepay at an annual rate of .2 percent in the first month after origination, then the prepayment rate would increase at an annual rate of .2

total assets of $440,772 as of September 30, 1994; and (iii) the Baird, Baird, Baird & Jones P.S.C. Retirement Plan, which had 49 participants and total assets of $2,539,844 as of September 30, 1994.

[2] Pursuant to 29 CFR 2510.3–2(d) and 2510.3–3(b), the IRAs and Keogh plans would not be employee benefit plans under of Title I of the Act. However, such plans are subject to the provisions of Title II of the Act and, specifically, the prohibited transaction provisions of section 4975 of the Code.

[3] In this regard, under 29 CFR 2510.3–101(i), if a plan acquires a ''guaranteed governmental mortgage pool certificate'', the plan's assets would include the certificate but not any of the mortgages underlying such certificate. A ''guaranteed governmental mortgage pool certificate'' is a certificate (i) that is backed by, or evidences an interest in, specified mortgages or participation interests, and (ii) whose interest and principal payments are guaranteed by the Government National Mortgage Association (GNMA), FHLMC (i.e. ''Freddie Mac'') or FNMA (i.e. ''Fannie Mae''). Thus, the Banks represent that since most of the CMOs that were owned by the Plans had interest and principal payments payable under the CMOs guaranteed by FHLMC or FNMA, the assets of the Plans did not include any of the mortgages underlying such CMOs.

[4] In addition, under 29 CFR 2510.3–101(a)(2) and (b), if a plan acquires a ''publicly-offered security'' that grants the plan an equity interest in an entity, the plan's assets would include the security but not any of the underlying assets of the entity. Therefore, the Banks represent that the assets of the Plans that owned the CMOs issued by GE Capital Mortgage Services did not include any of the mortgages underlying such CMOs even though such CMOs would not be considered a ''guaranteed governmental mortgage pool certificate'' under the Department's ''plan assets'' regulation.

percent per month up to the 30th month after origination and then the prepayment rate would remain constant at 6 percent per annum in the 30th and later months. Such an assumption is called 100 PSA.

The REMIC structure allocates principal payments to the various classes or ''tranches'' in varying amounts as principal payments are made according to the allocations specified in the prospectuses. The exact date of repayment of all principal to any REMIC class is not known until the mortgage-backed securities are paid in full. The maturity for the various classes is referred to as the ''weighted average life'' (WAL). The WAL for a particular class of securities refers to the average amount of time, expressed in years, which will elapse from the date of the issuance of such securities until each dollar of principal has been repaid to the investor based on the PSA assumption. The holders of all classes will receive all of their principal back. The timing of when that principal is returned is dependent on how quickly the underlying mortgages are repaid or refinanced. However, in no event will the time for the recovery of principal exceed the final maturity date of the underlying mortgages.

Each month the monthly payments on the underlying mortgages are collected and distributed to the holders of the various REMIC classes. Depending upon the structure of the REMIC, interest may be paid monthly according to a specific formula. The CMOs owned by the Plans, referred to above, included ''principal only'' (POs) tranches, ''Z class'' tranches, and inverse floating rate classes (i.e. so-called ''inverse floaters'') with coupon rate formulas based on either LIBOR or COFI.

The ''principal only'' CMOs are similar to other bonds where an investor purchases the security at a discount and receives the principal cash flow off the collateral. The difference in the principal amount invested and the face value equates to the investment's yield. The timing of the cash flows received determines the ultimate yield on the investment. With a ''principal only'' CMO, the faster the collateral pays down, the higher the yield the investor receives. Income is recognized by accreting the discount over the expected life of the security. There are no regular interest payments received on ''principal only'' CMOs.

There is no loss of principal because the investor will ultimately receive the face value of the CMO, assuming that the underlying mortgages are guaranteed by a U.S. Government agency (e.g. FNMA or FHLMC). However, there is no guarantee as to the timing of the cash flows for such CMO's and the ultimate yields to the investors can be difficult to predict.

The CMOs that are ''Z tranche'' classes of such Securities are the last tranches entitled to repayment of principal from the underlying mortgages. Therefore, such CMOs are the most susceptible to principal payment extensions which lengthen the duration of the security beyond the initially determined WAL, based on the PSA assumptions for prepayments on the underlying mortgages. As noted above, the timing for when all principal payments will be made is dependent on how quickly the underlying mortgages are repaid or refinanced. If interest rates increase significantly for a period of time, then there will be significantly fewer mortgages that are repaid or refinanced. Such interest rate increases can dramatically change the WAL for a ''Z tranche'' CMO, as well as other lower ranked CMO tranches. In addition, the amount of principal payments that a ''Z tranche'' CMO investor will receive during such periods will be much less.

The CMOs that are ''inverse floaters'' are so described because the formulas used to calculate the interest payments, which adjust monthly for each class of the Security, usually raise the interest rate when the index falls and lower the interest rate when the index rises.

Most of the coupon rate formulas are based on an interest rate index known as ''LIBOR''. LIBOR refers to the arithmetic mean of the London Interbank offered quotations for one-month Eurodollar deposits. LIBOR moves up or down as interest rates move up or down. The movement of LIBOR has an inverse relationship with respect to the interest paid on the inverse floating rate classes. The CMOs with interest rate formulas based on the COFI rate operate in the same manner. Therefore, significant interest rate increases can have a dramatically adverse affect on the investor's coupon rate and can lower the market value of the security vis a vis other fixed income securities of comparable duration (see Paragraph 7 below).

6. The Securities were purchased by the Banks, as trustee of the Plans, from the following entities: (a) Kemper Securities; (b) Crews & Associates; (c) Marcus, Stowell & Beye; (d) Bear Stearns; (e) Morgan Keegan; (f) Merrill Lynch; and (g) First Institutional Securities. As noted earlier, these entities were all independent of the Plans as well as the Banks and their affiliates. In addition, the applicant notes that the Banks acted as a trustee with investment discretion for the assets of the Plans that were invested in the Securities and the entities that sold the Securities to the Plans were not acting as fiduciaries for such Plans.[5]

7. With respect to the CMOs, at the time of the purchase of these Securities by the Plans, the Banks anticipated that most of the CMOs would be retired within two to five years of the date of purchase due to prepayments of the underlying mortgages in each pool as obligors refinanced their mortgages at lower interest rates. The Banks thought that the CMOs would yield the Plans a high rate of return which would be superior to the yields available on other fixed income securities of comparable duration at the time of the transactions.[6] The Banks note that the ideal time to buy CMOs that are ''inverse floaters'' would be when interest rates, as measured by indices such as LIBOR or COFI, are high and are expected to go down during the time the investor is holding the CMOs. However, when interest rates rise, the rate of return on these CMOs goes down and the securities become less valuable.

The Banks note that initially the Plans were receiving monthly interest payments on the CMOs at rates that were significantly above the market rate for comparable securities, as measured by interest rate indexes at the time. However, increases in such interest rates during 1994 changed the investment outlook for the Securities. As a result, the Banks anticipated that the CMOs would not be retired for many years because of the projected decrease in the prepayments of mortgages held in each pool. Furthermore, the increases in interest rates caused both the rate of return on the CMOs (as measured by the monthly interest payments) and the market value of the CMOs to decrease significantly.

In addition, the Banks state that similar decreases in market value were occurring with respect to the other Securities that were not CMOs. This was particularly true for the FHLB Structured Note because it had a coupon rate formula, based on LIBOR, that was similar to the CMOs that were ''inverse

[5] The Department is not providing any views in this proposed exemption as to fiduciary status and related decisions involved in the investment of the Plans in the subject transactions.

[6] For example, the Banks state that a five-year U.S. Treasury Note yielded 8.7 percent on March 31, 1990, but yielded only 4.7 percent on September 28, 1993. The Banks note that this interest rate ''environment'' led to the development of new structured products, such as ''inverse floaters'', which many investors believed would produce superior returns based on interest rate projections at the time.

floaters''.[7] The FNMA Medium Term Notes, which paid fixed coupon rates, were also declining in market value vis a vis other fixed income securities of comparable duration (e.g. US Treasury Notes) although to a lesser extent than the ''inverse floaters''.

Therefore, by the end of 1994, the Banks state that the Plans were faced with the prospect of incurring significant losses on their investments in the Securities, particularly the ''inverse floaters'' and ''Z tranche'' CMOs.[8]

8. In November and December 1994, the Banks obtained bids from various broker-dealers and pricing services in order to establish the fair market value of the CMOs and other Securities. The Banks received market price information on the Securities from Bloomberg Financial Markets (i.e. a well-known pricing service for CMOs), as well as bid quotations from Bear Stearns, Smith Barney, Alex Brown & Sons, Morgan Keegan, DLJ (i.e. Donaldson, Lufkin & Jenrette), and Prudential Securities (the Broker-Dealers). All of the information received confirmed that the fair market value of the Securities was below their book value (i.e. either the outstanding principal balance or the amortized cost).

The Banks represent that ten (10) of the twenty-six (26) total Securities held by the Plans were sold on the open market on November 2, 1994, for $1,156,028.46.[9] This transaction included six (6) of the CMOs and all four (4) of the Securities that were not CMOs. The Securities were sold after the Banks obtained bids for the Securities, on an all or nothing basis, from all of the Broker-Dealers. After obtaining bids from the Broker-Dealers, the Banks sold these Securities to Prudential Securities (Prudential) because it was the broker with the highest average total bid for all of the Securities that were involved. The bids obtained by the Banks for all of these Securities were as follows:

(a) Alex Brown—77.944; (b) Bear Stearns—76.996; (c) Morgan Keegan—76.996; (d) Smith Barney—77.913; (e) DLJ—77.364; and (f) Prudential—78.068.[10]

After the sale of these Securities to Prudential, the Banks made the Plans ''whole'' for their losses on the investments. In this regard, the Plans received separate ''makewhole'' payments from PNC, the Banks' holding company, on January 20, 1995, of $210,725. These ''makewhole'' payments equalled the difference between the book value (as discussed in Paragraph 12 below) of the Securities at the time of sale and the market price received from the sale of the Securities to Prudential. The Banks represent that the Plans involved will also receive additional payments, as of the date the proposed exemption is granted, reflecting a reasonable rate of interest for the period from November 2, 1994 (the date of the sale of these Securities on the open market) until January 20, 1995 (the date such payments were made to the Plans).[11]

Since the ''makewhole'' payments made on January 20, 1995 were a transaction between the Plans and PNC, a party in interest with respect to the Plans, the Banks request that the proposed exemption cover such ''makewhole'' payments. There will also be additional ''makewhole'' payments made to the Plans, as of the date the proposed exemption is granted, to reflect the additional amounts owned to the Plans based on the difference between the book value (i.e. outstanding principal balance) and the amortized cost of some of the Securities, where the latter amount would have been greater at the time of the transaction (as discussed further below).

9. On December 28, 1994, the Banks sold fifteen (15) of the remaining sixteen (16) Securities from the Plans to PNC for $3,069,187.54.[12]

The Securities were sold for cash at an amount equal to the book value of the Securities, as calculated by the Banks, at the time of the transaction (as discussed further in Paragraph 12 below).

10. Prior to the transaction on December 28, 1994, the Banks obtained bid quotations for each of the Securities from Bear Stearns, Smith Barney, and Alex Brown & Sons, as well as market price information from Bloomberg Financial Markets (Bloomberg). All of the quotations received from these Broker-Dealers and the information

[7] The coupon formula for the FHLB Structured Note was 14.375 percent—(2 × six-month LIBOR). This Security's coupon had a cap of 14.375 percent and a floor of 0 percent. The coupon rate was reset annually on April 6 and October 6. The coupons ranged from 8 percent as of April 6, 1993 to 2.6875 percent as of October 6, 1994.

[8] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the CMOs by the Plans violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act.

The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

In this regard, the Department is not providing any opinion as to whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a–1). The Department also notes that in order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than comparable investments offering a similar return or result.

[9] These Securities were the following: (1) FHLMC REMIC—PAC Series 1059, Class F, CUSIP #312905MB5; (2) FHLMC REMIC—PAC Series 1459, Class P, CUSIP #312914DV3; (3) FHLMC REMIC—PAC Series 1551, Class E, CUSIP #312916XX2; (4) FHLB Structured Note, CUSIP #313389FC7; (5) FHLMC REMIC—TAC Series 1580, Class H, CUSIP #3133TOA7; (6) FNMA Note, CUSIP #31359CAL9; (7) FNMA REMIC—Scheduled Amortization Class Series 1993–168, Class N, CUSIP #31359DQH9; (8) FNMA Medium Term Note, CUSIP #31364AJ37; (9) FNMA Medium Term Note, CUSIP #31364AVX7; and (10) GE Capital Mortgage Services REMIC—PAC Series 1993–13, Class A6, CUSIP #36157LSB5.

[10] The Broker-Dealers' bids represent a price quoted per $100 of principal. To determine the price for the Securities received by the Banks based on the average bid quoted, the par value of the Securities would be multiplied by the particular quote, expressed as a percentage of 100. For example, if the par value of the Securities was $100,000 and the average bid for the Securities was $78.50 per $100 of principal, the quoted price would have been $78,500 since $100,000 × .7850 = $78,500.

[11] The Banks state that the interest on this ''makewhole'' payment for the 2.5 month period would be approximately $1,720.43.

[12] These Securities were the following: (1) FHLMC REMIC—Z Tranche Series 1393, Class J, CUSIP #312912SQ2; (2) FHLMC REMIC—Z Tranche Series 1411, Class ZA, CUSIP #312912X45; (3) FHLMC REMIC—Inverse Floater Series 1438, Class F, CUSIP #312913TJ5; (4) FHLMC REMIC—Inverse Floater Series 1625, Class SB, CUSIP #3133T22Q2; (5) FHLMC REMIC—Inverse Floater Series 1660, Class S, CUSIP #3133T3QK7; (6) FHLMC REMIC—Inverse Floater Series 1665, Class S, CUSIP #3133T3RD2; (7) FNMA REMIC—Inverse Floater Series 1993–102, Class S, CUSIP #31359AR43; (8) FNMA REMIC—Inverse Floater Series 1993–115, Class SE, CUSIP #31359BDT1; (9) FNMA REMIC—Inverse Floater Series 1993–185, Class SH, CUSIP #31359DU50; (10) FNMA REMIC—Inverse Floater Series G93–31, Class SD, CUSIP #31359DZW6; (11) FHLMC REMIC—Inverse Floater Series 1385, Class S, CUSIP #312912KK3; (12) FNMA REMIC—Z Tranche Series 1992–123, Class Z, CUSIP #31358N4F6; (13) FNMA REMIC—Inverse Floater Series 1992–129, Class S, CUSIP #31358N7D8; (14) FNMA REMIC—Inverse Floater Series G93–14, Class S, CUSIP #31358TX87; and (15) FNMA REMIC—Principal Only (PO) Series 1993–161, Class GC, CUSIP #31359BXX0.

obtained from Bloomberg showed that the fair market value of the Securities was below their book value as of December 15, 1994. The following chart shows the market price information from Bloomberg for each of the Securities involved in the sale to PNC on December 28, 1994.

Securities (CMOs)	Bloomberg market price
FHLMC REMIC—Z Tran. 1393, Class J	89.688
FHLMC REMIC—Z Tran. 1411, Class ZA	57.500
FHLMC REMIC—Inv. Fl. 1438, Class F	82.000
FHLMC REMIC—Inv. Fl. 1625, Class SB	77.313
FHLMC REMIC—Inv. Fl. 1660, Class S	60.094
FHLMC REMIC—Inv. Fl. 1665, Class S	66.469
FNMA REMIC—Inv. Fl. 1993–102, Class S	39.281
FNMA REMIC—Inv. Fl. 1993–115, Class SE	33.219
FNMA REMIC—Inv. Fl. 1993–185, Class SH	78.063
FNMA REMIC—Inv. Fl. G93–31, Class SD	71.188
FHLMC REMIC—Inv. Fl. 1385, Class S	63.656
FNMA REMIC—Z Tran. 1992–123, Class Z	79.719
FNMA REMIC—Inv. Fl. 1992–129, Class S	98.813
FNMA REMIC—Inv. Fl. G93–14, Class S	20.500
FNMA REMIC—PO 1993–161, Class GC	19.375

11. On January 13, 1995, the Banks sold the last remaining Security (i.e. the GE Capital Mortgage Services REMIC—Inverse Floater Series 1993–17, Class A20) from the Plans to PNC for $187,055.19, an amount which represented the book value of the Securities at the time of the transaction. The Banks represent that no bids were obtained from any of the Broker-Dealers for this transaction because information from Bloomberg indicated that the market price for the Security would be approximately 21.65, an amount far below its book value at the time of the transaction.

12. The total sales proceeds received by the Plans for the Securities (including the ''makewhole'' payments of $210,725 paid in connection with certain Securities sold on the open market) was $4,622,996.19. The Banks state that this amount, which was based on the book value of the Securities at the time of the transactions, far exceeded the fair market value of the Securities at the time of the transactions.[13]

In this regard, the ''book value'' of the Securities was determined by the Banks to be equal to the outstanding principal balance of the Securities at the time of the transaction, plus accrued but unpaid interest. However, the Banks subsequently determined that in some cases the amortized cost of the Securities,[14] as calculated by the Banks, was greater than the outstanding principal balance of the Securities. The amortized cost of certain Securities slightly exceeded their outstanding principal balance in situations where the Securities were initially purchased by the Plans at a discount to their face value. The Banks state that a total of eleven (11) of the Securities were bought by the Plans at a discount. The difference between the amount paid by PNC to the Plans, based on the outstanding principal balance of the Securities, and the amount that would have been paid if the amortized cost method had been used for the Securities bought at a discount, resulted in an ''underpayment'' of $21,876.89.

The Banks represent that PNC is prepared to pay this additional amount (plus a reasonable rate of interest on such amount)[15] to the affected Plans as of the date this proposed exemption is granted.

In addition, the Banks state that there is accrued but unpaid interest of approximately $12,194.62, which is still owed to the Plans on the Securities involved in the transaction with PNC that occurred on December 28, 1994. The Banks represent that PNC will pay this remaining accrued interest due on the Securities (plus a reasonable rate of interest on such amount)[16] to the affected Plans as of the date this proposed exemption is granted.

Therefore, the Plans will receive a total amount that is equal to the greater of: (i) the outstanding principal balance for each Security owned by the Plan, plus accrued but unpaid interest, at the time of the sale; (ii) the amortized cost for each Security owned by the Plan on the date of the sale, plus accrued but unpaid interest, as determined by the Banks; or (iii) the fair market value of each Security owned by the Plan as determined by the Banks from broker-dealers or pricing services independent of the Banks at the time of the sale. In addition, the Plans will receive a reasonable rate of interest on any additional amounts owed to the Plans.

13. The Banks represent that the Plans received a reasonable rate of return on the Securities during the period of time that such Securities were held by the Plans. The annualized rate of return for each Security during this time varied from between 24.63 percent to 0.53 percent. The weighted average annual rate of return on the Securities was approximately 8.32 percent. The Banks state that the expected yield on the Securities at the time of purchase exceeded the yield for other similar fixed income securities of comparable duration. With respect to the actual yields to the Plans on the Securities, the Banks state that an analysis of each of the Securities held by the Plans reveals that the Securities outperformed the rate of return of leading investment indices for similar fixed-income securities during the period of time that they were held by the Plans. Therefore, the Banks represent that each of the Plans that held these Securities outperformed the rate of return of an appropriate index of fixed-income securities during this period.

14. The Banks, as trustee of the Plans, represent that the sale of the Securities was in the best interests of the Plans and their participants and beneficiaries at the time of the transactions. The Banks state that the sale transactions insulated the Plans from further decreases in the fair market value of the Securities. Specifically, the Banks state that the sale of the Securities by the Plans to Prudential on November 2, 1994, at their fair market value, plus the ''makewhole'' payments made to the Plans by PNC on January 20, 1995, made the Plans involved ''whole'' for the

[13] The Banks note that the original cost of the Securities for the Plans totalled $5,681,892.89. The Plans had been paid $427,284.38 in interest and $1,156,914.74 in principal prior to the transactions.

[14] The Banks state that the formula used to determine the amortized cost of these Securities was as follows: [[Purchase Price—100/WAL×12]×[WAL×12—months held]]+100. For example, assume that a particular CMO investment has been held by a Plan for 6 months. If the WAL was 2.02 years and the purchase price was 90 based on the par value being 100, the formula would be:

$$[[(90-100)/(2.02\times12)]\times[(2.02\times12)-6)]]+100$$
$$=[(-10/24.24)\times(24.24-6)]+100$$
$$=(-.4125413\times18.24)+100$$
$$+-7.5247533+100$$
$$=92.475247$$

As the formula indicates, the amortized cost using the average life at purchase would be $92.475247 as compared to the purchase price of $90.00. This amortized cost formula allows the ''book value'' to reflect the yield to the Plan based on the purchase of the security at a discount from the face value and accretes this discount over the WAL for the security.

[15] The Banks state that as of September 1996, the interest on the additional amount owed would be equal to approximately $2,297.07, using an annual rate of 6 percent for the 21-month period since the transaction.

[16] The Banks state that as of September 1996, the interest on this remaining interest amount would be equal to approximately $1,280.44, using an annual rate of 6 percent for the 21-month period since the transaction.

actual losses they would have otherwise incurred. In addition, the Bank states that the sale of the other Securities (CMOs) by the Plans to PNC on December 28, 1994 and January 13, 1995 provided the Plans with an amount which exceeded the fair market value of the Securities at the time of the transactions. Finally, the Banks state that the additional ''makewhole'' payments for the book value adjustments based on the amortized cost of some of the Securities, and the additional payments for accrued but unpaid interest on some of the Securities (plus a reasonable rate of interest on such amounts), will be paid to the Plans as of the date that the exemption is granted.

15. The Banks represent that they took all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the sale transactions. The Banks ensured that each Plan received the appropriate amount of cash from PNC in exchange for such Plan's Securities. The Banks also ensured that the Plans did not pay any commissions or other expenses in connection with the sale of the Securities.

16. In summary, the Bank represents that the sale satisfied the statutory criteria of section 408(a) of the Act and section 4975 of the Code because: (a) each sale was a one-time transaction for cash; (b) each Plan has received or will receive a total amount for its Securities, including the sale proceeds and ''makewhole'' payments for transactions that occurred either on the open market or with PNC, which is equal to the greater of: (i) the outstanding principal balance for each Security owned by the Plan, plus accrued but unpaid interest, at the time of the sale, (ii) the amortized cost for each Security owned by the Plan on the date of the sale, plus accrued but unpaid interest, as determined by the Banks; or (iii) the fair market value of each Security owned by the Plan as determined by the Banks based on information obtained from independent third party sources at the time of the transactions; (c) the Plans will receive a reasonable rate of interest on any additional amounts owed to the Plans as of the date this proposed exemption is granted; (d) the Plans did not pay any commissions or other expenses with respect to the sales; (e) the Banks, as trustee of the Plans, determined that the sale of the Securities would be in the best interests of the Plans; (f) the Banks took all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the transactions; and (g) the Plans received a reasonable rate of return on the Securities during the period of time that they were held by the Plans.

Notice to Interested Persons

The applicant states that notice of the proposed exemption shall be made by first class mail to the appropriate Plan fiduciaries within fifteen days following the publication of the proposed exemption in the Federal Register. This notice shall include a copy of the notice of proposed exemption as published in the Federal Register and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five days following the publication of the proposed exemption in the Federal Register.

For Further Information Contact: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Univar Corporation Uni$aver Tax Savings Investment Plan (the Plan), Located in Kirkland, Washington

[Application No. D–10143]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed extension of credit in the form of guarantees and loans of funds (the Loans), not to exceed $1,466,785.38, to the Plan by Univar Corporation (the Employer), the sponsor of the Plan, or its successors, with respect to Guaranteed Investment Contract No. 62127 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation), and the repayment of the Loans by the Plan to the Employer, or its successors, provided the following conditions are satisfied: (a) All terms and conditions of the transactions are no less favorable to the Plan than those the Plan could receive in arm's-length transactions with unrelated parties; (b) No interest payments or other expenses will be incurred by the Plan with respect to the transactions; (c) Repayment of the loans will be made from proceeds realized from the GIC (the GIC Proceeds) as paid to the Plan by Confederation, its successors, or any other third-party, and made only if the repayments do not interfere with the liquidity needs of the Plan for payment of benefits, transfer of investments, hardship withdrawals or loans as determined by BZW Barclays Global Investors, N.A., the Plan trustee; (d) Repayment of the Loans will be waived by the Employer and its successors to the extent the Loans exceed the GIC Proceeds, and (e) All unpaid principal and interest that was due under the GIC on August 12, 1994, minus any Loans from the Employer and/or payments received under the GIC after August 12, 1994, will be completely paid by January 1, 2000, by a Loan to the Plan from the Employer or its successors.

Summary of Facts and Representations

1. The Employer, a Washington corporation, is an international distributor of industrial, agricultural, and pest control chemicals and related products and services. The Employer purchases chemicals from manufacturers in truck, railcar, or tank car quantities and sells the chemicals in smaller quantities to its customers. The Employer operates through three wholly-owned subsidiaries: Van Waters & Rogers, Inc.; Van Waters & Rogers, Ltd.; and Univar Europe, N.V.

On September 30, 1996, all of the Employer's outstanding shares of common stock were acquired by Royal Pakhoed, N.V. (Pakhoed), a Netherlands company, through a friendly tender offer and merged with Pakhoed USA, Inc. a United States subsidiary of Pakhoed. The applicant represents that the surviving corporation is subject to all the obligations and liabilities of the Employer and is expected to continue the business and operations of the Employer substantially as they have been conducted.

2. The Plan is a defined contribution plan that is intended to satisfy the provisions of sections 401(a) and 401(k) of the Code, with employer matching contributions. As of June 30, 1996, the Plan had 2,218 participants and beneficiaries and total assets of $60,687,828.85.

The fiduciaries of the Plan are the Finance Committee of the Board of Directors of the Employer (the Finance Committee), the Pension Management Committee (Pension Committee), and the trustee, BZW Barclays Global Investors, N.A. (Barclays). The Finance Committee establishes the funding policy for the Plan and appoints and monitors the Pension Committee. The

Pension Committee consists of executives of the Employer, who *inter alia,* supervise the daily administration of the Plan. Barclays, a national bank of the United States, represents that it is a fiduciary with respect to the Plan and performs as trustee, investment manager, and outside recordkeeper for the Plan.

The Pension Committee selects various funds that are offered by the Plan to its participants as investment vehicles for their individual accounts. Participants of the Plan can daily direct investments of the assets in their individual accounts among the various funds offered by the Plan.

One of the funds offered by the Plan to participants is the Fixed Income Fund (the Fixed Fund), which invests in various guaranteed investment contracts issued by insurance companies. There are currently 969 individual participant accounts of the Plan invested in the Fixed Fund.

3. Among the assets of the Fixed Fund is the GIC, which represents approximately 2.4 percent of the total assets of the Plan. The GIC has an effective date of April 2, 1990, and an expiration date of April 5, 1995, and was issued for the principal amount of $1,000,000 with a guaranteed interest rate of 9.18 percent compounded annually. The applicant represents that the GIC had a Book Value of $1,466,758.38 (the Book Value), as of August 12, 1994, which represents the principal deposit plus accrued interest, and minus any withdrawals to that date.

The applicant represents that the insurance regulators of Canada seized the assets of Confederation on August 11, 1994. The following day the Ingham County Circuit Court, Mason, Michigan placed the assets of Confederation located in the United States in conservatorship and rehabilitation proceedings under the administration of state insurance regulators, and all withdrawals and interest payments with respect to the GIC were suspended.[17]

After August 12, 1994. The trustee of the Plan has continued to value the GIC at its Book Value of $1,466,758.38, and has not placed restrictions with respect to contributions, loan withdrawals, transfers, and distributions into or out of the Fixed Fund.

4. In order to maintain the Book Value of the GIC and the liquidity of the Fixed Fund and to avoid having to segregate the GIC from the Fixed Fund or suspend transfers from the Fixed Fund because of the GIC, the Employer proposes to guarantee and loan funds (the Loans) for a total amount not to exceed the Book Value of the GIC, as determined on August 12, 1994.[18]

The Loans will be unsecured and interest-free and made, as needed, to provide for withdrawals from the Fixed Fund of the Plan for benefit distributions, investment transfers, or hardship withdrawals and loans.

The Employer also represents that it will make a final Loan to the Plan by January 1, 2000, that totals $1,466,785.38, minus any other Loans made to the Plan after August 12, 1994, and/or minus any payments received by the Plan from the GIC Proceeds after August 12, 1994.

In addition, the applicant represents that the Plan will not incur any interest payments or other expenses from the Loans, and repayment of the Loans will be restricted to proceeds from the GIC as paid to the Plan by Confederation, its successors, or any other third-party. Also, the applicant represents that repayment of the Loans will be waived by the Employer, or its successors, to the extent the loans exceed the proceeds realized from the GIC by the Plan.

Barclays in an agreement dated July 10, 1996, agrees to monitor and enforce the Employer's fulfillment of its obligations to the Plan to make the Loans to the Plan. In addition, if the Employer fails in its obligation of the Loans, Barclays will take prudent and appropriate action required to protect the interests of the Plan and its participants and beneficiaries. Barclays pledges to perform its duties in accordance with the fiduciary requirements of the Act.

Barclays further represents that the undertakings by the Employer with respect to its promise to make the Loans as described in the exemption application, and the acceptance by the Plan of such undertakings are in the best interests of the Plan and its participants and beneficiaries.

5. In summary, the applicant represents that the proposed transactions will satisfy the criteria for an exemption under section 408(a) of the Act because (a) the Loans will enable the Plan to fund benefit payments and make loans, withdrawals, transfers, and distributions from the Fixed Fund of the Plan; (b) repayments of the Loans will be restricted to the proceeds realized from the GIC; (c) repayments will be restricted by liquidity needs of the Plan and waived by the Employer, or its successors, to the extent the Loans exceed the proceeds realized from the GIC by the Plan; and (d) no interest payments or other expenses will be incurred by the Plan with respect to the transactions.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

BA Securities, Inc. (BA) Located in San Francisco, California

[Application No. D–10335]

Proposed Exemption

I. Transactions

A. Effective August 29, 1996, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[19]

B. Effective August 29, 1996, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section

[17] The Department notes that the decision to acquire and hold the GIC is governed by the fiduciary responsibility provisions of Part 4, Subtitle B of Title I of the Act. In this regard, the Department is not herein proposing relief for any violation of Part 4 which may have arisen as a result of the acquisition and holding of the GIC by the Plan.

[18] The Department notes that the exemption, if granted will not affect the ability of a participant or beneficiary to bring a civil action against plan fiduciaries for any breaches of section 404 of the Act which may have occurred in connection with any aspect of the GIC transaction.

[19] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) the plan is not an Excluded Plan;

(ii) solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[20] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. Effective August 29, 1996, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) the pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[21]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a ''qualified administrative fee'' as defined in section III.S.

D. Effective August 29, 1996, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D & P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance

[20] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[21] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. *Certificate* means:

(1) a certificate—

(a) that represents a beneficial ownership interest in the assets of a trust; and

(b) that entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) a certificate denominated as a debt instrument—

(a) that represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) that is issued by and is an obligation of a trust;

with respect to certificates defined in (1) and (2) above for which BA or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to ''certificates representing an interest in a trust'' include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) either

(a) secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T);

(c) obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property);

(d) obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) ''guaranteed governmental mortgage pool certificates,'' as defined in 29 CFR 2510.3–101(i)(2);

(f) fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);[22]

(2) property which had secured any of the obligations described in subsection B.(1);

(3) undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term ''trust'' does not include any investment pool unless: (i) the investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D & P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

(1) BA;

(2) any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with BA; or

(3) any member of an underwriting syndicate or selling group of which BA or a person described in (2) is a manager or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master Servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, ''obligor'' shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) each underwriter;

(2) each insurer;

(3) the sponsor;

(4) the trustee;

(5) each servicer;

(6) any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section

[22] It is the Department's view that the definition of ''trust'' contained in III.B. includes a two-tier structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues securities that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be ''independent'' of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(1) The trust holds a security interest in the lease;

(2) The trust holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, ''Pooling and Servicing Agreement'' also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. *BA* means BA Securities, Inc. and its affiliates.

The Department notes that this proposed exemption is included within the meaning of the term ''Underwriter Exemption'' as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts at 35932.

Summary of Facts and Representations

1. BA is the wholly-owned, separately capitalized investment banking subsidiary of BankAmerica Corporation (the Bank), a multi-bank holding company which was incorporated in Delaware in 1968. On March 31, 1996 the Bank's consolidated assets were approximately $234.2 billion. The Bank is headquartered in San Francisco and, through its various subsidiaries, provides a diversified range of financial services to its customers. The Bank's depository subsidiaries provide consumer banking and other retail banking services. The Bank, through its banking and other subsidiaries, also provides wholesale banking and financial products and services throughout the United States and in overseas markets to business customers. These products and services encompass corporate lending, business finance, leasing, cash management, trade finance and investment banking services.

BA was incorporated in 1986. It maintains its principal place of business in San Francisco, California, and has branch operations in Chicago, Los Angeles, New York, Atlanta and Portland.

BA is a member of the National Association of Securities Dealers and a primary dealer in U.S. Treasury securities. BA also underwrites and deals in corporate debt securities, commercial paper, municipal securities, high-yield securities and asset-backed securities, provides private placement and corporate finance advisory services, including merger and acquisition advisory services, publishes research on a wide range of securities and issuers, and engages in syndication, arranging and trading of bank loans.

BA and its predecessors, including Security Pacific Corporation and Continental Bank Corporation, have extensive experience in asset securitizations. BA has participated in securitization transactions as lead or co-manager of underwritten public offerings, and as private placement agent or commercial paper conduit agent/dealer for transactions backed by retail auto receivables, bank and retail credit cards, equipment loans and leases, manufactured housing loans, auto leases, unsecured consumer loans, dealer floor plan accounts, trade receivables and student loans.

BA represents that it received Federal Reserve Board authorization to underwrite and deal in commercial paper, municipal revenue bonds, residential mortgage-related securities and consumer receivable-related securities. In October 1994, BA received Federal Reserve Board approval to underwrite and deal in corporate debt and equity securities. These orders are subject to the condition that BA does not derive more than 10% of its total gross revenues from such activities. In addition, BA's affiliates have the power to sell interests in their own assets in the form of asset-backed securities.

Trust Assets

2. BA seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) single and multi-family residential or commercial mortgage investment trusts;[23] (2) motor vehicle

[23] The Department notes that PTE 83–1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally

Continued

receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[24]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[25]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee. The sponsor or servicer of a trust selects assets to be included in the trust. These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.[26]

On or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. BA, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated are to be underwritten by BA on a firm commitment basis.

In addition, BA anticipates that it may privately place certificates on both a firm commitment and an agency basis. BA may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive monthly, quarterly or semi-annual installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. BA requests exemptive relief for two types of multi-class certificates: ''strip'' certificates and ''fast-pay/slow-pay'' certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[27]

''Fast-pay/slow-pay'' certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[28]

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apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. BA requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, BA has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[24] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of plan assets (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[25] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

[26] It is the view of the Department that section III.B.(4) includes within the definition of the term ''trust'' rights under any yield supplement or similar arrangement which obligates the sponsor or master servicer, or another party specified in the relevant pooling and servicing agreement, to supplement the interest rates otherwise payable on the obligations described in section III.B.(1), in accordance with the terms of a yield supplement arrangement described in the pooling and servicing agreement, provided that such arrangements do not involve swap agreement or other notional principal contracts.

[27] It is the Department's understanding that where a plan invests in REMIC ''residual'' interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this exemption.

[28] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department

6. For tax reasons, the trust must be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

Parties to Transactions

7. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a homeowner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their business, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

8. The *sponsor* will be one of three entities: (i) a special-purpose or other corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

9. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to BA, the trust sponsor or the servicer. BA represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer or sponsor. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

10. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, the receivables may be ''subserviced'' by their respective originators and a single entity may ''master service'' the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as having been sold. To protect the investor's interest, the servicer ordinarily covenants that this ''sold flag'' will be included in all records relating to the sold receivables, including the master file, archives, tape extracts and printouts.

The sold flags are invisible to the obligor and do not affect the manner in which the servicer performs the billing, posting and collection procedures related to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purpose of reporting all activity on those receivables after their sale to investors.

Depending on the type of receivable and the details of the servicer's computer system, in some cases the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsibilities. These calculations can be performed on the servicer's main computer, or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investors are reconciled to the servicer's books and reviewed by public accountants.

The *underwriter* will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placement of certificates may be made on a firm commitment or agency basis. It is anticipated that the lead and co-managing underwriters will make a market in certificates offered to the public.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (although they may themselves be related) will be unrelated to BA. In other cases, however, affiliates of BA may originate or service receivables included in a trust or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

11. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables itself.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters.

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notes that the exemption does not provide relief for plan investment in such subordinated certificates.

12. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[29] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

13. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer typically will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This ''credit support fee'' may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

14. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

15. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due.

In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

16. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor.

In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

17. The applicant represents that as the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the receivables in the case of a trust that is not a REMIC.

Certificate Ratings

18. The certificates will have received one of the three highest ratings available from either S&P's, Moody's, D&P or Fitch. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or overcollateralization) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

19. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be the master servicer or an affiliate thereof) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or

[29] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into ''principal'' and ''interest'' components based on an implicit interest rate.

on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the master servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a ''floor'' dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount thereafter is subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

20. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors; and

(j) Information about the scope and nature of the secondary market, if any, for the certificates.

21. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

22. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and

Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission, a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates. While the Securities and Exchange Commission's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

23. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets, payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer, paying agent or trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

24. To date, no forward delivery commitments have been entered into by BA in connection with the offering of any certificates, but BA may contemplate entering into such commitments. The utility of forward delivery commitments has been recognized with respect to offering similar certificates backed by pools of residential mortgages, and BA may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

25. It is BA's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter. BA anticipates that it will make a market in certificates.

Retroactive Relief

26. BA represents that it has not engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would be granted prior to the date of their application. However, BA requests the exemptive relief granted to be retroactive to August 29, 1996, the date of their application, and would like to rely on such retroactive relief for transactions entered into prior to the date exemptive relief may be granted.

Summary

27. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain ''fixed pools'' of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) Certificates in which plans invest will have been rated in one of the three highest rating categories by S&P's, Moody's, D&P or Fitch. Credit support will be obtained to the extent necessary to attain the desired rating;

(c) All transactions for which BA seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(d) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(e) BA anticipates that it will make a secondary market in certificates.

Discussion of Proposed Exemption

I. Differences Between Proposed Exemption and Class Exemption PTE 83–1

The exemptive relief proposed herein is similar to that provided in PTE 81–7 [46 FR 7520, January 23, 1981], Class Exemption for Certain Transactions Involving Mortgage Pool Investment Trusts, amended and restated as PTE 83–1 [48 FR 895, January 7, 1983].

PTE 83–1 applies to mortgage pool investment trusts consisting of interest-bearing obligations secured by first or second mortgages or deeds of trust on single-family residential property. The exemption provides relief from sections 406(a) and 407 for the sale, exchange or transfer in the initial issuance of mortgage pool certificates between the trust sponsor and a plan, when the sponsor, trustee or insurer of the trust is a party-in-interest with respect to the plan, and the continued holding of such certificates, provided that the conditions set forth in the exemption are met. PTE 83–1 also provides exemptive relief from section 406(b)(1) and (b)(2) of the Act for the above-described transactions when the sponsor, trustee or insurer of the trust is a fiduciary with respect to the plan assets invested in such certificates, provided that additional conditions set forth in the exemption are met. In particular, section 406(b) relief is conditioned upon the approval of the transaction by an independent fiduciary. Moreover, the total value of certificates purchased by a plan must not exceed 25 percent of the amount of the issue, and at least 50 percent of the aggregate amount of the issue must be acquired by persons independent of the trust sponsor, trustee or insurer. Finally, PTE 83–1 provides conditional exemptive relief from section 406(a) and (b) of the Act for transactions in connection with the servicing and operation of the mortgage trust.

Under PTE 83–1, exemptive relief for the above transactions is conditioned upon the sponsor and the trustee of the mortgage trust maintaining a system for insuring or otherwise protecting the pooled mortgage loans and the property securing such loans, and for indemnifying certificateholders against reductions in pass-through payments due to defaults in loan payments or property damage. This system must provide such protection and indemnification up to an amount not less than the greater of one percent of the aggregate principal balance of all trust mortgages or the principal balance of the largest mortgage.

The exemptive relief proposed herein differs from that provided by PTE 83–1 in the following major respects: (1) The proposed exemption provides individual exemptive relief rather than class relief; (2) The proposed exemption covers transactions involving trusts containing a broader range of assets than single-family residential mortgages; (3) Instead of requiring a system for insuring the pooled receivables, the proposed exemption conditions relief upon the certificates having received one of the three highest ratings available from S&P's, Moody's, D&P or Fitch (insurance or other credit support would be obtained only to the extent necessary for the certificates to attain the desired rating); and (4) The proposed exemption provides more

limited section 406(b) and section 407 relief for sales transactions.

II. Ratings of Certificates

After consideration of the representations of the applicant and information provided by S&P's, Moody's, D&P and Fitch, the Department has decided to condition exemptive relief upon the certificates having attained a rating in one of the three highest generic rating categories from S&P's, Moody's, D&P or Fitch. The Department believes that the rating condition will permit the applicant flexibility in structuring trusts containing a variety of mortgages and other receivables while ensuring that the interests of plans investing in certificates are protected. The Department also believes that the ratings are indicative of the relative safety of investments in trusts containing secured receivables. The Department is conditioning the proposed exemptive relief upon each particular type of asset-backed security having been rated in one of the three highest rating categories for at least one year and having been sold to investors other than plans for at least one year.[30]

III. Limited Section 406(b) and Section 407(a) Relief for Sales

BA represents that in some cases a trust sponsor, trustee, servicer, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates may be a pre-existing party in interest with respect to an investing plan.[31] In these cases, a direct or indirect sale of certificates by that party in interest to the plan would be a prohibited sale or exchange of property under section 406(a)(1)(A) of the Act.[32] Likewise, issues are raised under section 406(a)(1)(D) of the Act where a plan fiduciary causes a plan to purchase certificates where trust funds will be used to benefit a party in interest.

Additionally, BA represents that a trust sponsor, servicer, trustee, insurer, and obligor with respect to receivables contained in a trust, or an underwriter of certificates representing an interest in a trust may be a fiduciary with respect to an investing plan. BA represents that the exercise of fiduciary authority by any of these parties to cause the plan to invest in certificates representing an interest in the trust would violate section 406(b)(1), and in some cases section 406(b)(2), of the Act.

Moreover, BA represents that to the extent there is a plan asset ''look through'' to the underlying assets of a trust, the investment in certificates by a plan covering employees of an obligor under receivables contained in a trust may be prohibited by sections 406(a) and 407(a) of the Act.

After consideration of the issues involved, the Department has determined to provide the limited sections 406(b) and 407(a) relief as specified in the proposed exemption.

Notice to Interested Persons: The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the Federal Register. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the Federal Register.

For Further Information Contact: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Zions Bancorporation and Affiliated Companies (Zions) Located in Salt Lake City, Utah

[Application No. L–10338]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Zions Life Insurance Company (ZLIC) in connection with an insurance contract sold by American Bankers Life Insurance Company (AB) to provide group life and accidental death and dismemberment insurance to employees of Zions (the Plan), provided the following conditions are met:

(a) ZLIC—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with Zions that is described in section 3(14) (E) or (G) of the Act,

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act,

(3) Has obtained a Certificate of Authority from the Insurance Commissioner of its domiciliary state which has neither been revoked nor suspended, and

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, Arizona) by the Insurance Commissioner of the State of Arizona within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred.

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) No commissions are paid with respect to the direct sale of such contracts or the reinsurance thereof; and

(d) For each taxable year of ZLIC, the gross premiums and annuity considerations received in that taxable year by ZLIC for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which ZLIC is a party in interest by reason of a relationship to such employer described in section 3(14) (E) or (G) of the Act does not exceed 50% of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by ZLIC. For purposes of this condition (d):

(1) the term ''gross premiums and annuity considerations received'' means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance or

[30] In referring to different ''types'' of asset-backed securities, the Department means certificates representing interests in trusts containing different ''types'' of receivables, such as single family residential mortgages, multi-family residential mortgages, commercial mortgages, home equity loans, auto loan receivables, installment obligations for consumer durables secured by purchase money security interests, etc. The Department intends this condition to require that certificates in which a plan invests are of the type that have been rated (in one of the three highest generic rating categories by S&P's, D&P, Fitch or Moody's) and purchased by investors other than plans for at least one year prior to the plan's investment pursuant to the proposed exemption. In this regard, the Department does not intend to require that the particular assets contained in a trust must have been ''seasoned'' (e.g., originated at least one year prior to the plan's investment in the trust).

[31] In this regard, we note that the exemptive relief proposed herein is limited to certificates with respect to which BA or any of its affiliates is either (a) the sole underwriter or manager or co-manager of the underwriting syndicate, or (b) a selling or placement agent.

[32] The applicant represents that where a trust sponsor is an affiliate of BA, sales to plans by the sponsor may be exempt under PTE 75–1, Part II (relating to purchases and sales of securities by broker-dealers and their affiliates), if BA is not a fiduciary with respect to plan assets to be invested in certificates.

annuity contracts to such plans (and their employers) by ZLIC. This total is to be reduced (in both the numerator and the denominator of the fraction) by experience refunds paid or credited in that taxable year by ZLIC.

(2) all premium and annuity considerations written by ZLIC for plans which it alone maintains are to be excluded from both the numerator and the denominator of the fraction.

Preamble

On August 7, 1979, the Department published a class exemption [Prohibited Transaction Exemption 79–41 (PTE 79–41), 44FR 46365] which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales of life insurance, health insurance or annuity contracts which fund such plans if certain conditions are satisfied.

In PTE 79–41, the Department stated its views that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding, written or oral, under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction.

The Department further stated that as of the date of publication of PTE 79–41, it had received several applications for exemption under which a plan or its employer would contract with an unrelated company for insurance, and the unrelated company would, pursuant to an arrangement or understanding, reinsure part or all of the risk with (and cede part or all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemption, but would instead consider such applications on the merits of each individual case.

Summary of Facts and Representations

1. Zions is a publicly traded bank holding company organized under the laws of the State of Utah in 1955. Zions provides a full range of banking and related services through its subsidiaries located in Utah, Nevada and Arizona. Zions has several subsidiaries, including a mortgage company, a life insurance company (ZLIC), an insurance agency company, and a securities brokerage company.

2. ZLIC is a corporation organized under the laws of Arizona, its domiciliary state. ZLIC is a wholly owned subsidiary of Zions. ZLIC is principally in the business of reinsurance, primarily with respect to mortgage life and other credit life products. The applicant represents that $765,000 in premiums was written by ZLIC in 1995.

3. Zions provides to its employees certain welfare benefits through the Plan. The Plan includes group life, dependent life, supplemental life and accidental death and dismemberment insurance issued by AB with respect to the employees of Zions. The Plan is a fully insured welfare plan within the meaning of section 3(1) of the Act. The Plan currently has approximately 2,400 participants and beneficiaries.

4. The insurance is currently underwritten by AB, an unaffiliated insurance carrier. Zions has entered into a policy with AB for 100% of this coverage. Zions proposes to use its subsidiary, ZLIC, to reinsure 50% of the risk through a reinsurance contract between ZLIC and AB in which AB would pay 50% of the premiums to ZLIC. From the participants' perspective, the participants have a binding contract with AB, which is legally responsible for the risk associated under the Plan. AB is liable to provide the promised coverage regardless of the proposed reinsurance arrangement.

5. The applicant represents that the proposed transaction will not in any way affect the cost to the insureds of the group life insurance contracts, and the Plan will pay no more than adequate consideration for the insurance. Also, Plan participants are afforded insurance protection from AB at competitive rates arrived at through arm's-length negotiations. AB is rated ''A'' by the A. W. Best Company, whose insurance ratings are widely used in financial and regulatory circles. AB has assets in excess of $600 million. AB will continue to have the ultimate responsibility in the event of loss to pay insurance benefits to the employee's beneficiary. The applicant represents that ZLIC is a sound, viable company which is dependent upon insurance customers that are unrelated to itself and its affiliates for premium revenue.

6. The applicant represents that the proposed reinsurance transaction will meet all of the conditions of PTE 79–41 covering direct insurance transactions:

(a) ZLIC is a party in interest with respect to the Plan (within the meaning of section 3(14)(G) of the Act) by reason of stock affiliation with Zions, which maintains the Plan.

(b) ZLIC is licensed to do business in Arizona.

(c) ZLIC has undergone an examination by an independent certified public accountant for 1995.

(d) ZLIC has received a Certificate of Authority from its domiciliary state, Arizona, which has neither been revoked nor suspended.

(e) The Plan will pay no more than adequate consideration for the insurance. The proposed transaction will not in any way affect the cost to the insureds of the group life insurance transaction.

(f) No commissions will be paid with respect to the acquisition of insurance by Zions from AB or the acquisition of reinsurance by AB from ZLIC.

(g) For each taxable year of ZLIC, the ''gross premiums and annuity considerations received'' in that taxable year for group life and health insurance (both direct insurance and reinsurance) for all employee benefit plans (and their employers) with respect to which ZLIC is a party in interest by reason of a relationship to such employer described in section 3(14)(E) or (G) of the Act will not exceed 50% of the ''gross premiums and annuity considerations received'' by ZLIC from all lines of insurance in that taxable year. All of the premium income of ZLIC comes from reinsurance. ZLIC has received no premiums for the Plan insurance in the past. ZLIC wrote $765,000 in premiums in 1995, and the applicant estimates that the 1996 premiums should be 15–25% higher. In 1995, the premium income for ZLIC all came from AB, and represented reinsurance premiums relating to policies sold by AB to entities unrelated to Zions and its affiliates. Thus, 100% of ZLIC's premiums for 1995 were derived from insurance (or reinsurance thereon) sold to entities other than Zions and its affiliated group.

7. In summary, the applicant represents that the proposed transaction will meet the criteria of section 408(a) of the Act because: a) Plan participants and beneficiaries are afforded insurance protection by AB, an ''A'' rated group insurer, at competitive market rates arrived at through arm's-length negotiations; b) ZLIC is a sound, viable insurance company which does a substantial amount of public business outside its affiliated group of companies; and c) each of the protections provided to the Plan and its participants and beneficiaries by PTE 79–41 will be met under the proposed reinsurance transaction.

For Further Information Contact: Gary H. Lefkowitz of the Department,

telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 1st day of November, 1996.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 96–28504 Filed 11–5–96; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL EDUCATION GOALS PANEL

Meeting

AGENCY: National Education Goals Panel.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel. This notice also describes the functions of the Panel.

DATE AND TIME: Tuesday, November 19, 1996 from 9:00 a.m. to 11:30 a.m.

ADDRESS: Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW, Columbia Ballroom B, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Ken Nelson, Executive Director, 1255 22nd Street, NW, Suite 502, Washington, DC 20037. Telephone: (202) 632–0952.

SUMMARY: The National Education Goals Panel was established to monitor, measure and report state and national progress toward achieving the eight National Education Goals, and report to the states and the Nation on that progress.

AGENDA ITEMS: The meeting of the Panel is open to the public. Agenda items include: 1) The release of the sixth annual report on state and national progress toward achievement of the National Education Goals; 2) Representatives from California and Ohio will discuss the controversies they have encountered as they developed high academic standards and assessments systems; 3) An overview of the different findings that will be released during the next few months by the Third Mathematical and Science Study (TIMSS); 4) A presentation of the TIMSS' findings on curriculum frameworks and textbooks; and 5) passing the gavel to the next chair of the Panel.

Dated: October 31, 1996.

Ken Nelson,

Executive Director, National Education Goals Panel.

[FR Doc. 96–28451 Filed 11–5–96; 8:45 am]

BILLING CODE 4010–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences (1186); Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Astronomical Sciences (1186) will be holding panel meetings for the purpose of reviewing proposals submitted to the Advanced Technologies and Instrumentation Program in the area of Astronomical Sciences. In order to review the large volume of proposals, panel meetings will be held on November 26 (2). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 8:30 AM to 5:00 PM each day.

Contact Person: Dr. Benjamin B. Snavely, Program Director, Advanced Technologies and Instrumentation, Division of Astronomical Sciences, National Science Foundation, Room 1045, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1828.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 1, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–28525 Filed 11–5–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation —(1194).

Date and Time: November 25, 1996, 8:00 a.m.–5:00 p.m.

Place: Rooms 310, 320, 330, 340, 360, 365, 370, 380, 390, and 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. George A. Hazelrigg, Program Director, Design and Integration Program (703) 306–1330, Dr. Georgia-Ann Klutke, Program Director, (703) 306–1330, Operations Research and Production Systems Program, (703) 306–1330, Dr. Jay Lee, Program Director, Materials Processing and Manufacturing Program, (703) 306–1330, Dr. Ming Leu, Program Director, Manufacturing Machines and Equipment Program, (703) 306–1330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 1, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–28527 Filed 11–5–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information Robotics & Intelligent Systems (1200).

Date and Time: November 21–22, 1996, 8:30 a.m. to 5:00 p.m.

Place: Holiday Inn, 4610 North Fairfax Drive, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Maria Zemankova, Deputy Division Director, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1929.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Knowledge Models and Cognitive Systems Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 31, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–28524 Filed 11–5–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Polar Programs (#1209).

Date and Time: November 25 & 26, 1996: 8:00 am to 5:00 pm.

Place: Room 730 & 770, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Odile de la Beaujardiere, Program Director, Arctic Natural Sciences, Office of Polar Programs, Room 740, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1029.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Arctic Natural Sciences Submarine proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 1, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–28526 Filed 11–5–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revised, or extension: Revision.

2. The title of the information collection: Final amendments to 10 CFR 35.75, ''Criteria for the Release of Individuals Administered Radioactive Material.''

3. The form number if applicable: Not applicable.

4. How often is the collection required: On occasion; when the release of a patient is based on other than standard assumptions or requires interruption or discontinuation of breast-feeding to meet the 5-millisievert (0.5-rem) dose limit.

5. Who will be required or asked to report: Medical licensees administering radiopharmaceuticals and permanent implants and releasing patients under the provisions of 10 CFR 35.75.

6. An estimate of the number of responses: Approximately 90,350 responses per year (includes 89,000 reports, i.e., written instructions, and 1,350 recordkeepers).

7. The estimated number of annual respondents: Approximately 1,350 NRC and Agreement State licensees.

8. An estimate of the number of hours needed annually to complete the requirement or request: 17,126 hours (includes NRC and Agreement State licensees).

9. The average annual burden per respondent: 13 hours.

10. An indication of whether Section 3504(h), Public Law 96–511 applies: Applicable.

11. Abstract: The Nuclear Regulatory Commission (NRC) is amending the criteria for release of individuals administered radioactive material under 10 CFR Part 35. The amendment requires the licensee to provide the patient with written instructions on how to maintain doses to other individuals as low as is reasonably achievable if the dose to an individual exposed to the patient is likely to exceed 0.1 rem. In those cases where the released individual may be a breast-feeding woman, the instructions must also include guidance on the interruption or discontinuation of breast-feeding and information on the consequences of failure to follow the guidance. The amendment also requires the licensee to maintain a record of the basis for the release if the release is authorized using other than standard assumptions or that instructions were provided to a breast-feeding woman if the dose to the child from continued breast feeding could result in a total effective dose equivalent exceeding 0.5 rem. These requirements are necessary to ensure adequate protection of the public health and safety and that doses to other individuals are maintained as low as reasonably achievable.

Submit, by December 6, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by December 6, 1996: Edward Michlovich, Office of Information and Regulatory Affairs (3150–0010), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by phone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 7th day of October, 1996.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior, Official for Information Resources Management.

[FR Doc. 96–28505 Filed 11–5–96; 8:45 am]

BILLING CODE 7590–01–P

Biweekly Notice

Applications and Amendments to Facility Operating LicensesInvolving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 11, 1996, through October 25, 1996. The last biweekly notice was published on October 23, 1996.

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 6, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be

made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket No. 50-317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of amendment request: October 3, 1996

Description of amendment request: The proposed amendment changes the provision for receiving, possessing and using byproducts, source and special nuclear material at Calvert Cliffs Unit 1.

Currently, Unit 1 is licensed under 10 CFR Part 30 to receive, possess, and use 100 millicuries of byproduct material for sample analysis or instrument calibration, 500 millicuries of byproduct material in the form of equipment; and 500 millicuries of Sodium-24 for steam turbine acceptance testing. In addition, Unit 1 is licensed to receive, possess and use 100 milligrams each of source or special nuclear material under 10 CFR Parts 40 and 70. Unit 2 is licensed under 10 CFR Parts 30, 40, and 70 to receive, possess, and use in amounts as required any byproduct, source, or special nuclear material for sample analysis or instrument calibration or associated with radioactive apparatus or components. This proposed amendment would change the Unit 1 license to be consistent with the Unit 2 license by replacing license conditions 2.B.3 and 2.B.4 with the same wording as Unit 2's license condition 2.B.4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident.

Currently, Unit 1 is licensed under 10 CFR Part 30 to receive, possess, and use 100 millicuries of byproduct material for sample analysis or instrument calibration, 500 millicuries of byproduct material in the form of equipment; and 500 millicuries of Sodium-24 for steam turbine acceptance testing. Unit 1 is also licensed under 10 CFR parts 40 and 70 to receive, possess, and use 100 milligrams of source or special nuclear material. Unit 2 is licensed under 10 CFR Parts 30, 40, and 70 to receive, possess, and use in amounts as required any byproduct, source, or special nuclear material for sample analysis or instrument calibration or associated with radioactive apparatus or components. This proposed amendment would change the Unit 1 license to be consistent with the Unit 2 license. The reason for this proposed change is that it is sometimes necessary to receive and use byproduct material, sources, or special nuclear material with different activity levels, and in different quantities than is specified by the Unit 1 license.

The current licenses for the two units allow radioactive materials to be accepted and used at Unit 2, although these same materials would not be acceptable for use at Unit 1. These byproduct, source, and special nuclear materials are used by the same people and for the same function in either

unit. Training and procedures for handling radioactive material have been developed and used at both Units over the last 20 years. These procedures are adequate to control the acceptance and use of radioactive material at Unit 2 and, therefore, adequate to control radioactive material at Unit 1.

Receiving, possessing, and using byproduct, source, or special nuclear material is not related to accident conditions. Therefore, changing the Unit 1 license conditions to be the same as the Unit 2 license condition does not involve a significant increase in the probability or consequences of an accident.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

Procedures and training governing the acceptance and use of radioactive materials are the same for both Unit 1 and Unit 2. These procedures will not be changed as a result of this license change. In addition, receiving, possessing, and using radioactive material is not related to accident conditions. Therefore, making the Unit 1 license the same as the Unit 2 license will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in the margin of safety.

The margin of safety in this case is exposure to contaminated material or equipment. Exposure is controlled by adequate training and procedures. Radioactive material is received by personnel assigned to the Radiation Safety Section. These personnel are trained in receiving and shipping contaminated material. Once the material is onsite, it becomes the responsibility of the radiation protection staff who are trained in the handling of all levels of radioactive material. Training and procedures for handling radioactive materials have been developed and used over the 20-year life of the plant, and are currently deemed adequate for compliance with the Unit 2 license. Therefore, making the Unit 1 license the same as the Unit 2 license will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: S. Singh Bajwa, Acting Director

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: September 20, 1996

Description of amendment request: The proposed amendments would add a footnote to specification 4.3.1.B.4.A.10.a which refers to a letter that describes enhancements made to the Combustion Engineering sleeve installation process.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment continues to allow the Combustion Engineering sleeves to be used as an alternate tube repair method for Zion steam generators, along with the process enhancements which are described in the letter identified in the proposed Technical Specification note. The sleeve configuration, which was designed and analyzed in accordance with the criteria of Regulatory Guide (RG) 1.121 and Section III of the ASME Code, is unaffected by the enhancements. Fatigue and stress analyses of the sleeved tube assemblies as described in the currently approved Topical Report, CEN-331-P, Revision 1-P, are unaffected by the enhancements.

Mechanical testing which has shown that the structural integrity of the sleeves under normal, faulted, and upset conditions is within the acceptable limits and is unaffected by the enhancements. Leakage rate testing for the tube sleeves which has demonstrated that primary to secondary leakage is not expected during any plant condition is unaffected by the enhancements. The consequences of leakage through the sleeved region of the tube, including the enhancements, is bounded by the existing steam generator tube rupture (SGTR) analysis included in the Zion Updated Final Safety Analysis Report.

The proposed Technical Specification change reflects enhancements to the installation and inspection process identified in Topical Report CEN-331-P, Revision 1-P, which is currently referenced in the Technical Specifications. These enhancements do not increase the probability or consequences of an accident previously evaluated. The enhancement which disallows the installation of the tube plugs made from Inconel 600 material was done so based upon industry information and is addressed by NRC Bulletin 89-01. The use of the Plus Point Probe, its associated data acquisition equipment, and improved visual inspection equipment, are conservative actions and improve the quality of the sleeving process. The use of the mechanical plug in lieu of the welded plug meets the established design requirements and is advantageous in the area of dose reduction, because of reduced time to install. Minor changes to the sleeve installation equipment as described in the Topical Report, represent equipment enhancements and do not alter the sleeve design or qualification testing.

The proposed Technical Specification change does not adversely impact any previously evaluated design basis accident. Installation of the sleeves, with the described enhancements, can be used to repair degraded tubes by returning the condition of the tubes to their original design basis condition for tube integrity and leak tightness during all plant conditions. Therefore, the currently approved sleeving process with the described enhancements will not increase the probability of occurrence of an accident previously evaluated.

Therefore, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The implementation of the enhancements to the proposed sleeving process will not affect the plant design basis. The current stress and fatigue analyses of the repair identified in Topical Report CEN-331-P, Revision 1-P, has shown the ASME Code and RG 1.121 allowable values are met and are unaffected by the described enhancements. The current sleeving design, with the described enhancements, will continue to maintain overall tube bundle structural integrity and leak tightness at a level consistent with that of the originally supplied tubing. Leak and mechanical testing of the sleeves, are unaffected by the proposed enhancements and continue to support the conclusions that the sleeve retains both structural integrity and leak tightness during all operating and accident conditions. Repair of a tube with a sleeve, utilizing the described enhancements, does not provide a mechanism that results in an accident outside of the area affected by the sleeve.

The described change to implement the cited enhancements will not create a new or different type of accident. The change only reflects enhancements to the currently approved installation/inspection process and, would not change or impact any hypothetical accident previously discussed. Use of improved Non-Destructive Examination, data acquisition and visual inspection equipment improves the quality of the sleeving process and has no negative effect on the margin of safety. The elimination of the use of the Inconel 600 plug also improves the margin of safety.

Any hypothetical accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing SGTR analysis. The sleeve design, including described enhancements, does not affect any other component, or affect any location on the tube outside of the immediate area repaired.

Therefore, the proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The currently approved sleeving repair of degraded steam generator tubes has been shown by analysis to restore the integrity of the tube bundle to its original design basis condition. By implementing the described enhancements, the consistent quality of the upper sleeve weld has increased thereby reducing the potential for rework and reducing the potential for leaving a weld indication in service.

The proposed change does not involve a reduction in the margin of safety. The change reflects enhancements to the installation/inspection processes which are currently referenced in the Technical Specifications. These enhancements would not have any adverse effects on the previously evaluated design transient or accident analyses. The enhancements represent acceptable industry standards.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 21, 1996

Description of amendment request: The proposed amendment will modify Containment Penetrations Nos. 53 and 65 design by modifying the design of instrumentation lines for Containment Vacuum Relief (CVR) system that pass through these containment penetrations. The proposed change will correct the error in previously docketed information that was used by NRC during licensing process.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change will not increase the probability of previously analyzed accidents. The proposed change seeks to clearly document the design and licensing bases for acceptance of the CVR sensing instrument lines. The proposed change to the monitoring lines will provide greater assurance that containment integrity will be maintained following a LOCA concurrent with a single active failure. The design change to the non-essential monitoring line will reduce the potential bypass leakage from penetrations 53 and 65 by adding a redundant automatic containment isolation valve on penetration 53 and isolating the non-essential instrument line on penetration 65. This design change can be performed at power without violating any license/regulatory requirements that ensure containment integrity is maintained.

There is no change in the function of the instrumentation. The only difference is that CVR-IDPT-5017B and C non-safety differential transmitters that monitor the CVR system will be sensing containment pressure from penetration 53. If the non-essential line coming from penetration 53 becomes inoperable, containment to annulus differential pressure can be obtained from alternate instrumentation. The essential sensing line that actuates the CVR system to protect containment within design vacuum pressure is not affected by the design change.

Adding a redundant automatic containment isolation valve in penetration 53's non-essential instrument line instead of the excess flow check valve and isolating the non-essential line in penetration 65's will significantly reduce the potential bypass leakage. The proposed change will credit the essential instrument lines as a closed system outside containment. The appropriate testing and acceptance criteria will be applied to ensure that any leakage associated with these potential bypass leakage paths, will not exceed the limits used in the Waterford 3 safety analysis or result in a significant increase in analyzed dose consequences. Therefore, the proposed change will not involve significant increase in the probability or consequences of any accident previously evaluated.

The proposed change will credit the essential sensing lines outside containment as a closed system and will not affect the plant or the manner in which the plant [is] operated.

The failure modes associated with containment isolation remain unchanged as a result of the design change to the non-essential monitoring lines. The function of the non-safety instrumentation is not affected. The only difference is that all of the non-safety instrumentation will be sensing containment pressure from penetration 53. However, if the non-essential line coming from penetration 53 becomes inoperable, containment pressure can be obtained from alternate instrumentation. Adding a redundant automatic containment isolation valve in series with CVR 401A in the non-essential instrument line ensures containment isolation following a LOCA with a concurrent a single active failure. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The addition of a redundant automatic containment isolation valve in series with CVR 401A in the non-essential instrument line breaching penetration 53 ensures containment isolation postulating a single active failure on a Containment Isolation Actuation Signal (CIAS). While this modification is performed, administrative controls will require containment integrity to be maintained by a seismic Category 1, ASME Section III, Class 2, passive containment isolation device.

The essential CVR instrument sensing lines form a seismically qualified, closed system outside containment which is designed for pressure equal to or greater than containment. The instrument cabinets C-3A(B) are seismic Category I and safety related. The instruments are Safety Class 1E and have a static pressure rating of 1000 psig. These lines meet the criteria of BTP CSB 6-3 for crediting a closed system as a leakage boundary to preclude bypass leakage by being designed, fabricated, erected, and tested to standards commensurate with the safety function to be performed. The proposed change will apply the appropriate testing and acceptance criteria to ensure that any leakage associated with these potential bypass leakage paths, will not exceed the limits used in the Waterford 3 safety analysis or result in a significant increase in analyzed dose consequences. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: October 4, 1996 (TSCR No. 250)

Description of amendment request: The proposed Technical Specification (TS) change reflects a change in the Safety Limit Minimum Critical Power Ratio (SLMCPR) and as a result, a change in the operating Minimum Critical Power Ratio limit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the revised SLMCPR for Oyster Creek for incorporation into the TS,

and its use to determine cycle-specific thermal limits, have been performed using NRC-approved methods. Additionally, interim implementing procedures, which incorporate cycle-specific parameters, have been used. Based on the use of these calculations, the revised SLMCPR will not increase the probability or consequences of an accident.

The basis of the MCPR Safety Limit calculation is to ensure that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. The new SLMCPR preserves the existing margin to transition boiling and fuel damage in the event of a postulated accident. The probability of fuel damage is not increased.

Revising the operating MCPR limit for stability will ensure that adequate margin is retained to the SLMCPR.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The MCPR Safety Limit is a Technical Specification numerical value designed to ensure that fuel damage from transition boiling does not occur as a result of the limiting postulated accident. The stability MCPR limit ensures an adequate operating MCPR margin to the SLMCPR. These revised limits cannot create the possibility of any new type of accident. The new SLMCPR has been calculated using NRC-approved methods. Additionally, interim procedures, which incorporate cycle-specific parameters, have been used. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident, from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS Bases will remain the same. The new SLMCPR is calculated using NRC-approved methods which are in accordance with the current fuel design and licensing criteria. Additionally, interim implementing procedures, which incorporate cycle-specific parameters, have been used. The MCPR Safety Limit remains high enough to ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving fuel cladding integrity. The revised stability MCPR limit retains the existing margin to the SLMCPR. Therefore, the proposed TS change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: October 10, 1996 (TSCR No. 203)

Description of amendment request: The proposed Technical Specification revision will extend the instrumentation surveillances for Condenser Low Vacuum, High Temperature Main Steamline Tunnel, Recirculation Flow, and Reactor Coolant Leakage. Additionally, the change will extend the equipment tests/operability checks for Containment Vent and Purge Isolation, Electromagnetic Relief Valve Operability, and Drywell to Torus Leakage Test. The above change extensions conform with the 24 month refueling interval.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

The proposed amendment extends the period between successive refueling interval surveillance(s) to once every 24 months for those surveillance(s) evaluated herein. The proposed surveillance interval changes do not involve any change to the actual surveillance requirements, nor does it involve any change to the limits and restrictions on plant operations. The reliability of systems and components relied upon to prevent or mitigate the consequences of accidents previously evaluated is not degraded by the proposed change to the surveillance interval. Assurance of system and equipment availability is maintained. This change does not involve any change to system or equipment configuration. Therefore, this change does not increase the probability of occurrence or the consequences of an accident previously evaluated.

Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment extends the period between successive refueling interval surveillance(s) to once every 24 months for those surveillance(s) evaluated herein. The proposed surveillance interval changes do not involve any change to the actual surveillance requirements, nor does it involve any change to the limits and restrictions on plant operation. This change does not involve any change to system or equipment configuration. Therefore, this change is unrelated to the possibility of creating a new or different kind of accident from any previously evaluated.

Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendment extends the period between successive refueling interval surveillance(s) to once every 24 months (+/-25% or 30 months) for the surveillances evaluated herein. The proposed surveillance interval changes do not involve any change to the actual surveillance requirements, nor does it involve any change to the limits and restrictions on plant operation. The reliability of systems and components is not degraded by the proposed change to the surveillance interval. Assurance of system and equipment availability is maintained. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: October 10, 1996 (TSCR No. 243)

Description of amendment: The proposed Technical Specification (TS) will change the trip setting for TS Table 3.1.1 Item G.3, Automatic Depressurization System (ADS) by clarification of the functional requirement to provide an interlock permissive which ensures that a source of cooling water is available via the Core Spray System prior to depressurization. This will be accomplished by replacing the present interlock description ''AC Voltage'' with core spray booster pump differential pressure, as the permissive required for initiation of ADS. A corresponding surveillance requirement is being added to TS Table 4.1.1 which reflects the need to test and calibrate the core spray booster pump differential pressure switches pursuant to existing

plant procedures. Additionally, allowed outage time (AOT) is addressed in the footnote ''i'' for the differential pressure switches based upon the currently designed ADS logic trains and footnote ''h'' to parallel the ''Low-Low Reactor Water Level'' and ''High Drywell Pressure'' AOTs associated with Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

The implementation of this TSCR does not involve an increase in the probability of occurrence or the consequences of an accident previously evaluated, as no plant modifications are proposed by the change request, and no changes in instrument set or reset setpoints are required in order to implement the change. This change serves to clarify and to incorporate the ''as-built'' ADS system logic parameter (core spray booster pump differential pressure) as the functional permissive required for initiation of ADS. This ''interlock'' permissive compares closely with that of the BWR [boiling-water reactor] STS [Standard Technical Specifications] requirement to monitor core spray discharge pressure for initiation of ADS. In addition, the AOTs for the ADS initiation signals are being revised to align with the AOTs provided for such signals in the STS. The performance and function of the Automatic Depressurization System is unchanged by this request. However, by implementation of the change the specific functions of the ADS as-built d/p permissives would then be clearly identified in and controlled by T.S. Table 3.1.1, ''Protective Instrumentation Requirements,'' including the associated surveillance requirements as shown on the revised T.S. Table 4.1.1.

Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The implementation of this TSCR does not impact upon the operation of the facility, and would not create the possibility of a new or different kind of accident from any previously evaluated because no plant modifications are proposed by this change request, and no changes in instrument set or reset setpoints are required in order to implement the change. This change clarifies the technical specifications by incorporating the ''as-built'' ADS system logic parameter (core spray booster pump differential pressure) as the functional permissive required for initiation of ADS. This ''interlock'' permissive compares closely with that of the BWR STS requirement to monitor core spay discharge pressure. The revised AOTs for ADS initiation signals are also being changed to conform with those allowed by and provided in the STS. The performance and function of the Automatic Depressurization System (ADS) is unchanged by this request.

OC plant surveillance procedures for both ADS and the Core Spray system presently incorporate the calibration requirements and both the set and reset setpoints calculated for the core spray booster pump d/p switch permissive to the ADS initiation logic. Hence, a new or different kind of accident from any previously evaluated is not created.

Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The implementation of this TSCR does not involve a reduction in the margin of safety for operation of the ADS or the Core Spray system. The Technical Specification Bases which presently define the margin of safety are not impacted as the core spray booster pump d/p ''interlock'' permissives are not described in the specifications for ''Protective Instrumentation Requirements'' or its surveillance requirements. In addition, the margin of safety for ADS initiation is not reduced by this TSCR because the required system response is not affected by the proposed changes as no plant modifications are required which could create a potential impact upon the margins of safety previously established.

The revision of AOTs associated with ADS actuation signals by extension form 72 hours to 4 days is consistent with that presently provided in the STS. This does not decrease the margin of safety associated with availability of ADS as placement of the initiation signals into the ''tripped condition'' maintains the operability of the ADS trip systems while in the automatic mode. Additionally, the Bases for STS Specification 3.1 provides justifications for AOTs using the GE [General Electric] reliability analyses referenced therein and therefore 4 days is both justified and conservative. The margin of safety with respect to the instrument channels ability to perform its intended actuation function is not impacted; therefore, there is no reduction in the margin of safety.

Lastly, the surveillance frequency for the new surveillance interval created on Table 4.1.1 for the d/p [s]witches is consistent with that established in Reference 2 of the Bases for Technical Specification 4.1. Therefore, there is no reduction in the margin of safety as a result of this change request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: October 17, 1996

Description of amendment request: The proposed amendment would revise Facility Operating License NPF-62 to acknowledge the transfer of Soyland Power Cooperative's 13.21% minority ownership interest in the Clinton Power Station to Illinova Power Marketing, Inc., the unregulated power marketing affiliate of Illinois Power, and a wholly owned subsidiary of Illinova Corporation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because it merely revises the Operating License to indicate the transfer of a minority ownership interest to the corporate parent of the majority owner and licensee. This proposed amendment represents an administrative rather than operational change and, therefore, has no impact on accidents previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because Illinois Power will continue to be the operator of Clinton

Power Station, and further, there will be no change to the plant's physical configuration or operating philosophy as a result of this proposed amendment.

3. The proposed amendment does not involve a significant reduction in the margin of safety because it is only an administrative change and will have no impact on any margin of safety related to the design or operation of the facility.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th Street, Decatur, Illinois 62525

NRC Project Director: Gail H. Marcus

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: September 13, 1996

Description of amendment request: The proposed amendment would revise the Maine Yankee containment testing technical specification (TS 4.4) to implement 10 CFR Part 50, Appendix J, Option B, by referring to Regulatory Guide 1.163, ''Performance-Based Containment Leakage-Test Program'' dated September 1995.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated, because the proposed changes to the Technical Specification do not affect the assumption, parameters or results of any FSAR accident analysis.[...] These changes potentially result in a minor increase in the consequences of an accident previously evaluated due to the increased testing intervals. However, the proposed changes do not result in an increase in the probability of an accident previously identified since the containment system is used for mitigation purposes only. The changes are also expected to result in increased attention to components with poor leakage test history as part of the performance-based nature of Option B such that the marginally increased consequences from the expanded testing intervals may be further reduced or negated. The addition of the ''...[as modified by approved] exemptions'' phrase is an administrative change. Any specific exemptions from the requirements of Appendix J will continue to require a submittal under 10 CFR 50.12 and subsequent review and approval by the NRC prior to implementation. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of Maine Yankee in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) nor alter the function of the containment system. The changes only provide for additional time between leakage tests and an increase in the test pressure value equal to the containment design pressure which bounds the containment peak accident pressure. Thus, these changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of Maine Yankee in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes do not alter the manner in which safety limits, limiting safety system setpoints, or limiting conditions for operation are determined. The changes are expected to result in an increased focus on components demonstrating poor leakage test history without excessive testing of components which continue to demonstrate good test history. Therefore, these changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration. *Local Public Document Room location:* Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578

Attorney for licensee: Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 329 Bath Road, Brunswick, ME 04011NRC Deputy Director: John A. Zwolinski

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine YankeeAtomic Power Station, Lincoln County, Maine

Date of amendment request: September 13, 1996, as supplemented September 25, 1996

Description of amendment request: The proposed amendment would revise TS 5.5.B to eliminate references to the Vice President (YNSD) and designate the President, Maine Yankee, as the responsible official for matters related to the composition, review and audit responsibilities, authority and recordkeeping responsibilities of the Nuclear Safety Audit and Review (NSAR) Committee. Minor editorial changes are also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is administrative in nature and will not have a direct effect on the physical plant or the maintenance of the physical plant. The audit and review functions of the NSAR Committee will continue to be required. The proposed changes will not, of themselves, decrease the effectiveness of these functions. This authority and responsibility realignment will continue to assure that NSAR Committee has direct access to a level of management necessary to perform their audit and review functions.

Since, the proposed change will not adversely effect the audit and review functions of the NSARC and since the proposed change will not have a direct effect on the physical plant or maintenance of the physical plant, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is administrative in nature and does not introduce any new structures, systems, or components into the plant design. This change continues to ensure that the NSAR Committee reports to a management level such that there is sufficient authority and organizational freedom to execute their audit and review functions. Consequently, an unbiased oversight of the programs and procedures is not compromised by this proposed change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change realigns the authority and responsibility relationship of the NSAR Committee. The NSAR Committee will continue to maintain effective oversight of programs and procedures. The proposed change will continue to ensure that the NSAR Committee is sufficiently independent from cost and schedule when opposed to safety considerations. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578

Attorney for licensee: Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 329 Bath Road, Brunswick, ME 04011NRC Deputy Director: John A. Zwolinski

Northeast Nuclear Energy Company (NNECO), Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: July 2, 1996

Description of amendment request: The proposed amendment incorporates limiting conditions for operation and surveillance requirements for the safety/relief valve (SRV) electrical lift design modification. The proposed amendment also makes clarification and editorial changes, as well as revising the associated Bases section.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10CFR50.92, NNECO has reviewed the proposed change and concludes that the change does not involve a significant hazards consideration (SHC) since the proposed change satisfies the criteria in 10 CFR 50.92(c). That is, the proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The safety relief valves are considered for two analyzed accidents, an overpressure transient (such as MSIV [main steam isolation valve] closure with flux scram) and an inadvertent SRV opening.

The new technical specifications do not affect normal operation, therefore, they cannot increase the probability of an overpressure event. Since the mechanical function will not be affected by the new equipment, the new LCOs [limiting conditions for operation], or the new surveillance requirements, there is no adverse affect on the consequences of an overpressure event. The SRVs will be expected to lift mechanically. If they do not open at the design setpoints, the electrical actuation, which has the same setpoints, will cause the valves to open less than 400 milliseconds later.

Sufficient redundancy and diversity is established for the electrical lift by the use of two sensors in a two-out-of-two-taken-once configuration. Therefore, the failure of any single component cannot result in an inadvertent opening of an SRV. The only proposed surveillance performed while at power is the daily instrument check. This surveillance does not require the manipulation of any controls and, as such, cannot affect the probability of an accident.

Therefore, based on the above, the proposed change to the Technical Specifications does not involve a significant increase in the probability or consequences of any previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

None of the proposed new LCOs or surveillance requirements has a potential for creating a new or different kind of accident. Expanding the LCO and surveillance requirements to address both the mechanical actuation and the pressure sensor lift does not change the type of action that these valves are expected to perform, nor does it change the initial ''as-left'' requirements for the valves. Plant operating parameters have also not changed.

Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The margin of safety previously analyzed for the SRVs was based on the current nominal setpoints and allowable percent drift. The electrical lift system improves the confidence that the SRVs will lift within the specified range. The setpoint uncertainty of the electrical lift system is similar to the drift allowed for the mechanical lift in the Technical Specifications. All existing functions that may actuate the SRVs (safety, manual, or automatic lift) remain unaffected. The design of the pressure transmitters, combined with the logic configuration, minimizes the possibility of inadvertently opening the SRVs.

Therefore, this change has no impact on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270

NRC Project Director: Phillip F. McKee

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: March 29, 1996

Description of amendment request: The proposed Technical Specifications (TS) changes would revise TS Surveillance Requirement (SR) 4.5.1.d.2.b to delete the requirement to perform in-situ functional testing of the Automatic Depressurization System (ADS) valves once every 24-months as part of start-up testing activities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change does not involve any physical changes to plant structures, systems, or components (SSC). The ADS will continue to function as designed. The ADS is an Emergency Core Cooling System (ECCS) designed to mitigate the consequences of an accident, and therefore, can not contribute to the initiation of any accident. The ADS utilizes five (5) of the 14 main steam line SRVs as the primary method for depressurizing the reactor pressure vessel to permit low pressure core cooling capability in the event of a small break Loss-of-Coolant-Accident (LOCA) if the high pressure cooling systems (i.e., High Pressure Coolant Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) systems) fail to maintain adequate reactor vessel water level.

Deleting the TS SR to perform the in-situ testing of the ADS/SRVs during start-up, as proposed, should reduce the probability of an inadvertent opening of an SRV as discussed in Section 15.1.4 of the LGS Updated Final Safety Analysis Report (UFSAR) since deleting this testing requirement will eliminate a known initiator of SRV pilot leakage and subsequent erosion. This proposed TS change will have a tendency to increase, rather than decrease, the reliability of the ADS/SRVs by eliminating the in-situ ADS functional start-up testing. The probability of the ADS/SRVs to open on demand has been demonstrated to be extremely high and is not measurably improved through the in-situ ADS functional start-up testing.

This proposed TS change will not increase the probability of occurrence of a malfunction of any plant equipment important to safety. Alternate testing methods at LGS, Units 1 and 2, and at the off-site test facility, adequately demonstrate proper ADS valve operation and assure that the valves will continue to function as designed. Existing surveillance testing and inspections of the ADS/SRVs at LGS verify that the ADS initiation logic, solenoid valve operation, pneumatic gas supply integrity and air operator assembly (including pilot rod) will operate as designed. Offsite testing verifies pilot disc operation, setpoint calibration and main valve disc operation.

Deleting the in-situ testing requirement, as proposed, will reduce the probability of inflating SRV leakage which should reduce the probability of an inadvertent SRV opening. It has been documented throughout the BWR industry that pilot disc leakage leads to pilot disc and rod erosion, which can ultimately result in an inadvertent opening of an SRV. Therefore, any SRV pilot leakage that can be eliminated would reduce the probability of occurrence of a malfunction of that SRV.

Deleting the ADS/SRV in-situ functional test will in no way increase any consequences of a malfunction of plant equipment important to safety. The consequences of a malfunction of an ADS/SRV as discussed in the LGS UFSAR remain unchanged.

In addition, eliminating a known initiator of SRV leakage, as proposed in this TS change, would help to reduce operator workarounds in the form of suppression pool cooling and letdown operation activities. As a result, this will reduce the unnecessary operation of the Residual Heat Removal (RHR) and Residual Heat Removal Service Water (RHRSW) systems.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed TS change does not involve any physical changes to plant SSC. The design and operation of the ADS/SRVs is not changed from that currently described in the Safety Analysis Report (SAR). The ADS will continue to function as designed to mitigate the consequences of an accident. No changes of any kind are being made to the valves, auxiliary components, or ADS logic. Deleting the requirement to perform the ADS in-situ functional test during plant start-up as proposed in this TS Change Request reduces the likelihood of a SRV developing a leak and degrading throughout the subsequent operating cycle. There is no possibility that implementing this proposed TS change would create a different type of malfunction to the ADS/SRVs than any previously evaluated.

Eliminating the requirement to perform the in-situ testing of the ADS/SRVs during start-up activities, does not create a new or different type of accident than any previously evaluated. There is no accident scenario associated with testing the ADS/SRVs other than the inadvertent opening of a relief valve which is currently discussed in Section 15.1.4 of the LGS UFSAR. This proposed TS change does not alter the conclusions described in the UFSAR regarding an inadvertent opening of an SRV. No new or different type of accident will be created as a result of this proposed TS change.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed TS change does not involve any physical changes to plant SSC. The design and functional requirements of the ADS will not change. The ADS will still function as designed to mitigate the consequences of an accident.

This proposed TS change involves deleting the requirement to perform in-situ functional testing of the ADS/SRVs during start-up activities. This testing imposes an unnecessary challenge on the ADS/SRVs and has been linked to SRV degradation (e.g., pilot valve and/or main valve leakage). This proposed TS change should reduce SRV leakage and improve ADS/SRV reliability by reducing the potential for spurious SRV actuation. The LGS TS Bases do not identify specific testing requirements for ADS. ADS operability can be readily demonstrated with extremely high confidence by the existing additional surveillance tests and inspections performed for the ADS. There will be no reduction in any margin of safety resulting from this proposed TS change.

Therefore, the proposed TS change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, PA 19101

NRC Project Director: John F. Stolz

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: August 8, 1996

Description of amendment request: The proposed Technical Specifications (TS) changes would revise TS Sections 3/4.3.1, ''Reactor Protection System Instrumentation,'' 3/4.3.2, ''Isolation Actuation Instrumentation,'' 3/4.3.3, ''Emergency Core Cooling System Actuation Instrumentation,'' and the associated TS Bases Sections 3/4.3.1 and 3/4.3.2 to eliminate selected response time testing requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes do not make any physical alterations or modifications to the plant systems or equipment. The proposed changes do not affect the capability of the associated systems to perform their intended functions within their required response times, nor do the proposed changes adversely impact the operation of any plant equipment. The affected plant systems will continue to function as designed. Elimination of the response time testing requirements as proposed by this TS change for selected components in RPS Instrumentation, Isolation Actuation System Instrumentation, and ECCS Actuation Instrumentation will not adversely affect the operation of these components.

The supporting analysis provided in NEDO-32291, demonstrates that response time testing is redundant to other TS required testing. NEDO-32291 demonstrated that these other required tests (i.e., channel checks, channel calibrations, channel functional tests, and logic system functional tests), in conjunction with actions taken in response to NRC Bulletin 90-01 and NRCB 90-01, Supplement 1, are sufficient to identify failure modes or degradation in instrument response times, and ensure operation of the associated systems within acceptable limits. There are no known failure modes that can be detected by response time testing that cannot also be detected by other TS required testing. The continued application of other existing TS required testing such as channel checks, channel calibrations, channel functional tests, and logic system functional tests, ensures that the response times for these systems will be maintained within the acceptance limits. The capability of these systems to perform their intended functions within their required response times is not adversely impacted by this proposed TS change. NEDO-32291 evaluated the potential failure modes of the affected instrumentation loops which could impact the instrument loop response times. Industry operating experience was also reviewed to identify failures that affect response times and how they are detected. The failure modes identified were evaluated to determine if other TS required surveillances and actions taken in response to NRC Bulletin 90-01, and NRCB 90-01, Supplement 1, would detect any effects on response time. There are no failures [sic] [failure] modes identified that can be detected by response time testing that cannot also be detected by other TS required testing.

PECO Energy has confirmed the applicability of the generic evaluation provided in NEDO-32291 to LGS, Units 1 and 2. By letter dated December 28, 1994, the NRC concluded that response time testing can be eliminated from the TS for the selected instrumentation identified in NEDO-32291, with certain provisions, and that NEDO-32291 can be referenced in license amendment requests.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not involve any physical changes to plant systems or equipment. The proposed changes apply only to the testing requirements for the selected components involved and do not result in any physical modifications to these components, or to other plant system components. Elimination of the response time testing requirements as proposed by this TS change for selected components in RPS Instrumentation, Isolation Actuation System Instrumentation, and ECCS Actuation Instrumentation will not adversely affect the operation of these components. These components will continue to function as designed. Consequently, no new failure modes are introduced as a result of the proposed TS changes.

Eliminating the response time testing requirements as proposed, does not create a new or different type of accident than any previously evaluated. No new or different type of accident will be created as a result of this proposed TS change.

NEDO-32291 demonstrates that other required tests (i.e., channel checks, channel calibrations, channel functional tests, and logic system functional tests), in conjunction with actions taken in response to NRC Bulletin 90-01 and NRCB 90-01, Supplement

1, are sufficient to identify failure modes or degradation in instrument response times, and ensure operation of the associated systems within acceptable limits. There are no known failure modes that can be detected by response time testing that cannot also be detected by other TS required testing, and therefore, response time testing for the selected components is redundant to the other TS required testing.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed TS changes do not involve any physical changes to plant systems or equipment. The proposed TS changes do not affect the capability of the associated systems or equipment from performing their intended functions. The systems involved will continue to respond within their allowed response times. Elimination of the response time testing requirements are based on the evaluation provided in NEDO-32291 which demonstrates that response time degradation can be detected by other TS required testing. The evaluation concluded that other TS required tests (i.e., channel checks, channel calibrations, channel functional tests, and logic system functional tests), in conjunction with actions taken in response to NRC Bulletin 90-01 and NRCB 90-01, Supplement 1, are sufficient to identify failure modes or degradation in instrument response times, and ensure operation of the associated systems within acceptable limits.

In addition, although not specifically evaluated, the proposed TS changes will provide an improvement to plant safety and operation by reducing the time safety systems are unavailable, reducing the potential for safety system actuations, reducing plant operating and shutdown risk, limiting radiation exposure to plant personnel, and eliminating the diversion of key personnel to conduct unnecessary testing. Therefore, PECO Energy considers that the proposed TS changes will result in an overall increase in the margin of safety and that the changes do not constitute an unreviewed safety question.

Therefore, the proposed TS changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, PA 19101

NRC Project Director: John F. Stolz

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of amendment request: August 1, 1996

Description of amendment request: The proposed Technical Specifications (TS) changes would revise TS Section 3/4.4.6 (i.e., Figure 3.4.6.1-1) to reflect the addition of two hydrotest curves, effective for 6.5 and 8.5 Effective Full Power Years (EFPY), to the existing Pressure-Temperature Operating Limit (PTOL) curves for LGS Unit 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification (TS) change includes Pressure-Temperature Operating Limit (PTOL) curves which were conservatively generated in accordance with the fracture toughness requirements of 10CFR50, Appendix G. The Adjusted Reference Temperatures to the initial nil ductility reference temperatures (RTNDT) used to evaluate the pressure/temperature limits for the beltline materials were based on Regulatory Guide 1.99, Revision 2. Future analyses of the Reactor Pressure Vessel (RPV) surveillance capsule contents and future revisions to the PTOL curve as required, ensure that the reactor pressure boundary will behave in a non-brittle manner during plant testing, startup, and operation throughout the life of the plant. The current schedule for removal of the surveillance specimens from Limerick Generating Station (LGS) Unit 2 RPV is during 2R05. The proposed change does not impact the existing PTOL curves for 10 Effective Full Power Years (EFPY), currently shown in the LGS Unit 2 TS. The proposed change only provides additional information (i.e., two new curves) related to the RPV condition following 6.5 and 8.5 EFPY, in order to facilitate hydrostatic testing performed after 2R04 and 2R05, respectively. The added PTOL curves are established in compliance with the methodology used to calculate the predicted irradiation effects on vessel beltline materials as documented in the LGS Updated Final Safety Analysis Report (UFSAR). There are no physical changes to the plant being introduced by the added PTOL curves.

Therefore, the proposed (TS) change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification (TS) change includes Pressure-Temperature Operating Limit (PTOL) curves which were conservatively generated in accordance with the fracture toughness requirements of 10CFR50, Appendix G. The Adjusted Reference Temperatures to the initial nil ductility reference temperatures (RTNDT) used to evaluate the pressure/temperature limits for the beltline materials were based on Regulatory Guide 1.99, Revision 2. The proposed changes do not impact the existing PTOL curves for 10 Effective Full Power Years (EFPY), currently shown in the TS. They only provide additional information (i.e., two new curves) related to the reactor pressure vessel condition for 6.5 and 8.5 EFPY, in order to facilitate hydrostatic testing performed after 2R04 and 2R05, respectively. The added PTOL curves are established in compliance with the previous methodology used to calculate the predicted irradiation effects on vessel beltline materials as documented in the LGS [Updated Final Safety Analysis Report] UFSAR. The proposed TS change does not involve any physical changes to safety-related equipment.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident, from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed change to Technical Specifications (TS) does not reduce the margin of safety as defined in the Bases for any TS. The added Pressure-Temperature Operating Limit (PTOL) curves for 6.5 and 8.5 Effective Full Power Years (EFPY) corresponding to 2R04 and 2R05, respectively, have been calculated in accordance with the existing methodology used to calculate the PTOL curves currently existing in the LGS Unit 2 TS (i.e., complying with the requirements of 10CFR50 Appendix G, and Regulatory Guide 1.99, Revision 2) and will more closely reflect the actual required reactor pressure vessel condition at the time in which the hydrotest is performed. Therefore, the margin of safety is not affected.

Therefore, the proposed TS change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, PA 19101

NRC Project Director: John F. Stolz

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of amendment request: August 5, 1996

Description of amendment request: The proposed Technical Specifications (TS) changes would revise TS Section 2.1 and its associated TS Basis to reflect the change in the Minimum Critical Power Ratio (MCPR) Safety Limit due to the plant specific evaluation performed by General Electric Co. (GE), for LGS Unit 2 Cycle 4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The revised Minimum Critical Power Ratio (MCPR) Safety Limit for LGS Unit 2 Technical Specifications, and its use to determine cycle-specific thermal limits have been performed using NRC-approved methods within the existing design and licensing basis, and cannot increase the probability or severity of an accident.

The basis of the MCPR Safety Limit calculation is to ensure that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. The new MCPR Safety Limit preserves the existing margin to transition boiling and fuel damage in the event of a postulated accident. The probability of fuel damage is not increased.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The MCPR Safety Limit is a Technical Specification numerical value, designed to ensure that fuel damage from transition boiling does not occur as a result of the limiting postulated accident. It cannot create the possibility of any new type of accident. The new Minimum Critical Power Ratio (MCPR) Safety Limit is calculated using NRC-approved methods and is based on LGS Unit 2 Cycle 4 specific inputs.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident, from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS Bases will remain the same. The new Minimum Critical Power Ratio (MCPR) Safety Limit is calculated using NRC approved methods which are in accordance with the current fuel design and licensing criteria. The MCPR Safety Limit remains high enough to ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity.

Therefore, the proposed TS change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, PA 19101

NRC Project Director: John F. Stolz

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: September 30, 1996

Description of amendments request: The proposed amendments would revise Technical Specifications (TSs) 3/4.1.1, 3/4.1.3, 3.1.3.6, 3.2.1, 3/4.2.2, and 3.2.3 and associated Bases to remove certain cycle-specific parameter limits from the TSs and relocate them to the Core Operating Limits Report (COLR). These changes result from NRC Generic Letter (GL) 88-16, dated October 4, 1988, which provided guidance to licensees on requests for removal of the values of cycle-specific parameter limits from the TSs. The licensee's proposed amendments are consistent with the GL.

The COLR has been included in the Definitions section of the TSs. The definition notes that it is the unit-specific document that provides these limits for the current operating reload cycle. The values of these cycle-specific parameter limits are to be determined in accordance with TS 6.9.1.11. This TS requires that the core operating limits be determined for each reload cycle in accordance with the referenced NRC-approved methodology for these limits and consistent with the applicable limits of the safety analysis. The COLR shall be provided to the NRC upon issuance.In addition, the above TS changes would produce administrative changes to the TS Table of Contents.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The removal of cycle-specific core operating limits from the FNP [Farley Nuclear Plant] Technical Specifications has no influence or impact on the probability or consequences of a Design Basis Accident (DBA) occurrence. The cycle-specific core operating limits, although not in Technical Specifications, will be followed in the operation of FNP. The proposed amendment retains the same required actions to be taken when or if limits are exceeded as stipulated by current Technical Specifications. In addition, the associated surveillance requirements are not altered by the proposed changes.

Each accident analysis addressed in the FNP FSAR [Final Safety Analysis Report] will be examined with respect to changes in cycle-dependent parameters, which are obtained from application of the NRC-approved reload design methodologies, to ensure that the transient evaluation of new reloads are bounded by previously accepted analyses. This examination, which will be performed per requirements of 10 CFR 50.59, ensures that future reloads will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

As stated earlier, the removal of the cycle-specific variables has no influence or impact, nor does it contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operation will be altered as a result of this proposed change. The cycle-specific variables are calculated using the NRC-approved methods and submitted to the NRC to allow the Staff to continue to trend the values of these limits. The Technical Specifications will continue to require operation within the required core operating limits and appropriate actions will be taken when or if limits are exceeded. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not result in a significant reduction in the margin of safety.

The margin of safety is not affected by the removal of cycle-specific core operating limits from the Technical Specifications. The margin of safety presently provided by current Technical Specifications remains unchanged. Appropriate measures exist to control the values of these cycle-specific limits. The proposed amendment continues to require operation within the core limits, as obtained from the NRC-approved reload design methodologies. The required actions to be taken or if limits are violated remain unchanged.

The development of the limits for future reloads will continue to conform to those

methods described in NRC-approved documentation. In addition, each future reload involves a 10 CFR 50.59 safety review to assure that operation of FNP within the cycle-specific limits will not involve a significant reduction in [the] margin of safety. Therefore, the proposed changes are administrative in nature and do not impact the operation of FNP in a manner that involves a reduction to the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Herbert N. Berkow

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone NuclearPower Station, Unit No. 1, New London County, Connecticut

Date of amendment request: August 29, 1996

Description of amendment request: The proposed amendment would modify the applicability requirements for certain radiation monitors so that the radiation monitors are required to be operable only when secondary containment integrity is required to be operable; delineate when secondary containment integrity is required; modify standby gas treatment operability requirements; make editorial corrections to clarify the configuration of the radiation monitors; and revise the associated Bases section.

Date of publication of individual notice in Federal Register: October 17, 1996 (61 FR 54242)

Expiration date of individual notice: November 18, 1996

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: September 6, 1996

Brief description of amendment request: The proposed amendment would change Technical Specification (TS) requirements related to steam generator tubes to allow a laser-welded repair of Westinghouse hybrid expansion joint (HEJ) sleeved steam generator tubes. Date of individual notice in Federal Register: October 15, 1996 (61 FR 53769)

Expiration date of individual notice: November 14, 1996

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the Federal Register as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: June 17, 1996

Brief description of amendments: The amendment modifies the technical specifications (TS) to change (1) the reference method for calculating dose conversion factors (DCFs) to be used in dose calculations, and (2) the upper and lower limits for operating pressurizer pressure to account for new instrument uncertainties and to reduce the allowed operating band.

Date of issuance: October 23, 1996

Effective date: October 23, 1996, to be implemented within 45 days of issuance

Amendment Nos.: Unit 1 - 109; Unit 2 - 101; Unit 3 - 81

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 11, 1996 (61 FR 47963). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 23, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: June 9, 1995

Brief description of amendments: The amendments implement changes to radiological effluent Technical Specifications in accordance with Generic Letter 89-01 ''Implementation of Programmatic for Radiological Effluent Technical Specification in the Administrative Controls Section of the Technical Specifications and Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or to the Process Control Program.''

Date of issuance: October 18, 1996

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 217 and 194

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 15, 1995 (60 FR 35062) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated October 18, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: May 1, 1996

Brief description of amendment: The proposed amendment will reflect the implementation of 10 CFR Part 50 Appendix J, Option B at the Pilgrim Nuclear Power Station.

Date of issuance: October 4, 1996

Effective date: October 4, 1996

Amendment No.: 167

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 5, 1996 (61 FR 28606) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 1996. No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, et al., Docket No. 50-325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of amendment request: April 8, 1996, as supplemented on July 30, 1996, October 4, 1996, October 8, 1996, and October 16, 1996.

Brief description of amendment: The amendment changes the Technical Specifications to (1) reflect the use of a new type of fuel (GE13) and (2) modify the minimum critical power ratio safety limit and the standby liquid control system sodium pentaborate limits to accommodate the GE13 fuel.

Date of issuance: October 17, 1996

Effective date: October 17, 1996

Amendment No.: 182

Facility Operating License No. DPR-71: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: August 14, 1996 (61 FR 42276) which superseded a Federal Register notice published on June 5, 1996 (61 FR 28607) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: January 5, 1996, as supplemented July 12, 1996

Brief description of amendment: The amendment revises the shutdown cooling (SDC) requirement to allow one train of the SDC system to be rendered inoperable for testing or maintenance provided that a filled refueling cavity is available to provide backup decay heat removal capability in the event that the operating train of SDC becomes inoperable.

Date of issuance: October 10, 1996

Effective date: October 10, 1996

Amendment No.: 173

Facility Operating License No. DPR-20. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 28, 1996 (61 FR 44348) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 10, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: August 8, 1996

Brief description of amendments: The amendments revise the Technical Specifications, Section 6.9.1.9, to reference updated or recently approved topical reports used to calculate cycle-specific limits contained in the Core Operating Limits Report.

Date of issuance: October 24, 1996

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 154 and 146

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 11, 1996 (61 FR 47977) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 24, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2, Pope County, Arkansas

Date of amendment request: May 9, 1996

Brief description of amendments: The amendments revised the name from Arkansas Power & Light Company to Entergy Arkansas, Inc.

Date of issuance: October 23, 1996

Effective date: October 23, 1996

Amendment Nos.: 187 and 177

Facility Operating License Nos. DPR-51 and NPF-6. Amendments revised the Technical Specifications and the licenses.

Date of initial notice in Federal Register: August 28, 1996 (61 FR 44357) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 23, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: May 8, 1996, as supplemented by letters dated July 18 and September 19, 1996

Brief description of amendment: The amendment modified the frequency requirements in Surveillance Requirement 3.6.1.3.5 of the Technical Specifications, on the leakage rate testing for each containment purge

isolation valve with resilient seals, to place these purge valves on a performance basis in accordance with Appendix J of 10 CFR Part 50, as modified by any exemptions to Appendix J. In addition, the purge valves would be required to be leakage rate tested every 36 months with at least two pairs tested every 18 months and, if any purge valve fails to meet the leakage rate acceptance criterion, all remaining valves must be tested within 92 days (i.e., a quarter of a year) if not successfully tested within the previous 92 days.

Date if issuance: October 18, 1996

Effective date: October 18, 1996

Amendment No.: 128

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: June 5, 1996 (61 FR 28614) The additional information contained in the supplemental letters dated July 18 and September 19, 1996, revised the proposed amendment in the application of May 8, 1996; however, the revisions were within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 18, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: June 20, 1996, as supplemented by the letter of September 11, 1996

Brief description of amendment: The amendment redefined the secondary containment boundary to allow the enclosure building to be inoperable during the upcoming refueling Outage 8 (RFO 8) scheduled to begin in October 1996. The amendment added a condition to the license that the enclosure building may be inoperable during core alterations and movement of non-recently irradiated fuel (i.e., fuel that has not occupied part of a critical reactor core for 12 days) during RFO 8 and the standby gas treatment (SGT) system may be unable to automatically start or achieve and maintain the required vacuum, provided the following conditions exist:

a. All dampers communicating between the auxiliary building and the enclosure building are closed.

b. The access door between the auxiliary building and the enclosure building is closed, except when the access opening is being used for entry and exit.

c. The SGT system is blocked from automatic initiation.

d. The SGT system is available for manual initiation or the actions for Limiting Condition for Operation 3.6.4.3 in the Technical Specifications for GGNS are complied with.

The non-recently irradiated fuel is spent fuel that has decayed at least 12 days after the reactor was shut down for refueling.

Date of issuance: October 18, 1996

Effective date: October 18, 1996

Amendment No: 129

Facility Operating License No. NPF-29. Amendment adds a condition to the license.

Date of initial notice in Federal Register: July 17, 1996 (61 FR 37299) The additional information contained in the supplemental letter of September 11, 1996, was clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 18, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: February 22, 1996, and as supplemented by letters dated July 22 and September 20, 1996

Brief description of amendment: The amendment revises Clinton Power Station Technical Specification 3.4.11, ''Reactor Coolant System (RCS) Pressure and Temperature (P/T) Limits,'' to incorporate specific P/T limits for the bottom head region of the reactor vessel, separate and apart from the core beltline region of the reactor vessel.

Date of issuance: October 23, 1996

Effective date: October 23, 1996

Amendment No.: 109

Facility Operating License No. NPF-62: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 24, 1996 (61 FR 18169) The letters of July 22 and September 20, 1996, provided clarifying information and did not alter the staff's initial finding that the proposed changes involve no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 23, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: November 21, 1995

Brief description of amendment: The amendment changes Technical Specification Section 5.2.2, ''Design Pressure and Temperature,'' to clarify that the reactor containment design temperature is an equilibrium liner temperature and not the air temperature. The supporting Technical Specification Bases is updated to reflect the change and to include the main steam line break accident, in addition to the loss-of-coolant accident, as the limiting events affecting the containment temperature and pressure.

Date of issuance: October 21, 1996

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 204

Facility Operating License No. DPR-65: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 20, 1995 (60 FR 65684) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 21, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment requests: July 15, 1996, as supplemented by letters dated September 3, 1996, October 22, 1996, October 23, 1996, and August 23, 1996

Brief description of amendment: The amendment revises Technical Specifications (TS) Section 4.3.2 to allow the use of zircaloy or ZIRLO fuel

cladding and to use depleted uranium as reactor fuel material. The amendment also changes TS Section 5.9.5 to add Westinghouse Topical Reports, WCAP-12610-P-A, ''VANTAGE + Fuel Assembly Report,'' and WCAP-13027-P, ''Westinghouse ECCS Evaluation Model for Analysis of CE-NSSS,'' to the list of approved analytical methods for determining the core operating limits.

Date of issuance: October 25, 1996

Effective date: October 25, 1996

Amendment No.: 178

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 31, 1996 (61 FR 40026) and August 30, 1996 (61 FR 45995). The September 3, 1996, October 22, 1996, and October 24, 1996, supplemental letters provided additional clarifying and correcting information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 25, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: June 7, 1996

Brief description of amendments: The amendments revised the combined Technical Specifications (TS) for the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 by revising Technical Specifications 3/4.9.14.1, ''Spent Fuel Assembly Storage - Spent Fuel Pool Region 2,'' and TS 3/4.9.14.3, ''Spent Fuel Assembly Storage - Spent Fuel Pool Region 1,'' to allow storage of fuel assemblies in a checkerboard pattern in Region 2 of the spent fuel pool (SFP).

Date of issuance: October 25, 1996

Effective date: October 25, 1996, to be implemented within 30 days from date of issuance.

Amendment Nos.: Unit 1 - 116; Unit 2 - 114

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 25, 1996 (61 FR 50346) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 25, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: December 19, 1995, as supplemented by letter dated August 8, 1996.

Brief description of amendments: The amendments revised the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to relocate Technical Specification (TS) 6.5, ''Review and Audit,'' 6.8, ''Procedures and Programs,'' Sections 6.8.1c., 6.8.1d., 6.8.2, and 6.8.3, in accordance with guidance in an NRC letter dated October 25, 1993, from William T. Russell to the chairpersons of industry owners groups and the Commission's Final Policy Statement on TS Improvements for Nuclear Power Reactors on relocation of TS that do not satisfy the retention criteria. As part of the relocation of TS 6.8.2, TS 6.1.1 would be revised to require that proposed tests, experiments, or modifications that affect nuclear safety be approved by the plant manager or his designee prior to implementation.

Date of issuance: October 25, 1996

Effective date: October 25, 1996, to be implemented within 90 days of issuance.

Amendment Nos.: Unit 1 - 117; Unit 2 - 115

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: January 22, 1996 (61 FR 1633) The August 8, 1996, supplemental letter provided additional clarifying information and did not change the staff's initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 25, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: May 20 and 28, 1996, as supplemented by letter dated July 25, 1996

Brief description of amendments: These amendments, for both units, add a reference to the ANF-B critical power correlation to Section 6.9.3.2 of the Technical Specifications (TSs); change the values of the minimum critical power ratio (MCPR) in TS Sections 2.1 and 3.4.1.1.2, and make appropriate Bases changes. For Unit 1 only, a reference to ABB licensing methodology report CENPD-300 (for lead use assemblies being used in the reactor core during the upcoming operating cycle) is added to Section 6.9.3.2.

Date of issuance: October 11, 1996

Effective date: For both units, as of date of issuance, to be implemented within 30 days.

Amendment Nos.: 161 and 132

Facility Operating License Nos. NPF-14 and NPF-22. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: Unit 2, August 28, 1996 (61 FR 44362); Unit 1, September 4, 1996 (61 FR 47529)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 11, 1996.No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: March 29, 1996, as supplemented July 12, 1996, and September 6, 1996.

Brief description of amendment: The proposed amendment would change the Indian Point 3 Technical Specifications (TSs) relating to minimum reactor coolant system (RCS) flow and maximum RCS average temperature to make these parameters consistent with an assumption of 100% helium release from the boron coating of the integral fuel burnable absorber rods. The proposed amendment would also add limits associated with Departure from Nucleate Boiling to the IP3 Technical Specifications TSs.

Date of issuance: October 22, 1996

Effective date: As of the date of issuance to be implemented within 30 days

Amendment No.: 170

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 17, 1996 (61 FR 37301) August 14, 1996 (61 FR 42283)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 22, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: July 19, 1995, as supplemented by letters dated December 22, 1995, and March 26, 1996.

Brief description of amendments: These amendments modify Technical Specification (TS) 3.3.8, ''Containment Purge Isolation Signal (CPIS),'' and TS 3.3.9, ''Control Room Isolation Signal (CRIS).'' The revisions are needed to (1) support the upgrading or replacement of existing radiation monitoring system with state-of-the-art equipment that will provide for greater operational flexibility and reliability, and (2) incorporate minor editorial changes to improve clarity of these TS sections.

Date of issuance: October 8, 1996

Effective date: October 8, 1996, to be implemented within 30 days of date of issuance

Amendment Nos.: Unit 2 - Amendment No. 132; Unit 3 - Amendment No. 121

Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 27, 1995 (60 FR 49948). The December 22, 1995, and March 26, 1996, letters provided additional clarifying information and did not change the initial no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 8, 1996.No significant hazards consideration comments received: No.

Temporary Local Public Document Room location: Science Library, University of California, P. O. Box 19557, Irvine, California 92713

Southern Nuclear Operating Company, Inc., Docket No. 50-364, Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama

Date of amendment request: March 29, 1996, as supplemented by letters dated June 27, August 29, and September 16, 1996.

Brief description of amendment: The amendment changes Technical Specification 3/4.4.6, ''Steam Generators'' and associated Bases to modify the steam generator repair limit to clarify that the appropriate method for determining serviceability for tubes with outside diameter stress corrosion cracking at the tube support plate is by a methodology that more reliably assesses structural integrity.

Date of issuance: October 11, 1996

Effective date: As of the date of issuance to be implemented within 30 days

Amendment No.: 115

Facility Operating License No. NPF-8: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 22, 1996 (61 FR 25711) The June 27, August 29, and September 16, 1996, letters provided additional, clarifying information that did not change the scope of the March 29, 1996, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 11, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Southern Nuclear Operating Company, Inc., Docket No. 50-364, Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama

Date of amendment request: April 22, 1996, as supplemented by letters dated May 3, July 15, August 7 and 30, and September 16, 1996

Brief description of amendment: The amendment changes reflect the implementation of a new F* criterion based on maintaining existing safety margins for steam generator tube structural integrity concurrent with allowances for nondestructive examination eddy current uncertainty.

Date of issuance: October 11, 1996

Effective date: As of the date of issuance to be implemented within 30 days

Amendment No.: 116

Facility Operating License No. NPF-8: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: May 22, 1996 (61 FR 25713) The May 3, July 15, August 7 and 30, and September 16, 1996, letters provided clarifying information that did not change the scope of the April 22, 1996, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 11, 1996. No significant hazards consideration comments received: No.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Tennessee Valley Authority, Docket No. 50-390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: June 29, 1996

Brief description of amendment: The amendment revises Technical Specification (TS) Section 5.2.2.f to delete the sentence, ''The Operations Manager shall hold or have held an SRO [Senior Reactor Operator] license on a similar unit.'' The revision also indicates that the Operations Superintendent will hold a valid SRO license on this unit.

Date of issuance: October 15, 1996

Effective date: Octber 15, 1996

Amendment No.: 4

Facility Operating License No. NPF-90: Amendment revises the TS.

Date of initial notice in Federal Register: September 11, 1996 (61 FR 47983)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: July 31, 1996 (TXX-96432) as supplemented by letters dated August 23 and 27 (TXX-96447 and TXX-96451), and September 19, 1996 (TXX-96469).

Brief description of amendments: The amendments (1) change the acceptance values for amperes and voltage for the 18 month surveillance test of the battery chargers; (2) clarify the meaning of the

term ''associated inverter'' used in the context of energizing 118-Volt AC Instrument Buses during MODES 1 through 6; and (3) delete the protection channel and the vital bus ratings for the 118-Volt AC Instrument Buses identified for MODES 1 through 4.

Date of issuance: October 22, 1996

Effective date: October 22, 1996

Amendment Nos.: Unit 1 - Amendment No. 53; Unit 2 - Amendment No. 39

Facility Operating License Nos. NPF-87 and NPF-89. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 28, 1996 (61 FR 44363) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 22, 1996.No significant hazards consideration comments received: No.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

Dated at Rockville, Maryland, this 30th day of October 1996.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II,Office of Nuclear Reactor Regulation

[Doc. 96-28372 Filed 11-5-96; 8:45 am]

BILLING CODE 7590-01-F

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (The Alpine Group, Inc., Common Stock, $0.10 Par Value) File No. 1–9078

October 31, 1996.

The Alpine Group, 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 above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Board of Directors (the ''Board'') adopted a resolution as of September 27, 1996 to withdraw the Security from listing on the Amex and, instead, to list such Security on the New York Stock Exchange (''NYSE''). The decision of the Board on this matter followed an appropriate exploration of means to enhance stockholder value, and was based upon the belief that the listing of the Security on the NYSE will be more beneficial to its shareholders than continued listing on the Amex.

Any interested person may, on or before November 22, 1996, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges 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. 96–28455 Filed 11–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22306; File No. 811–7796]

ILI Endeavor Variable Annuity Account

October 30, 1996.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an order under the Investment Company Act of 1940 (''1940 Act'').

APPLICANT: ILI Endeavor Variable Annuity Account.

RELEVANT 1940 ACT SECTION: Order requested under Section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on July 7, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicant with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 25, 1996, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, Frank A. Camp, Esq., International Life Investors Insurance Company, 4333 Edgewood Road N.E., Cedar Rapids, Iowa 52499.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Branch Chief, or Michael Koffler, Law Clerk, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicant's Representations

1. Applicant, a unit investment trust, is a separate account of International Life Investors Insurance Company (''ILI'') designed as a funding medium for variable annuity contracts (''Contracts''). On June 14, 1993, Applicant filed with the Commission a notification of registration as an investment company on Form N–8A, and a registration statement under Section 8(b) of the 1940 Act and under the Securities Act of 1933 (File No. 33–64414) registering an indefinite amount of securities (*i.e.*, the Contracts). The registration statement was declared effective, August 12, 1993, and Applicant began offering Contracts on August 12, 1993.

2. The boards of directors of ILI and AUSA Life Insurance Company (''AUSA Life'') authorized the adoption of an ''Assumption Reinsurance Agreement'' on September 27, 1994. Contractholders were given the right to reject the assumption of their Contracts by AUSA Life, as required by the law of the State of New York, via a solicitation dated December 1, 1994. No contractholders rejected the assumption of their Contracts pursuant to the terms of the solicitation.

3. The Assumption Reinsurance Agreement, dated as of December 31, 1994, providef for the transfer of the in force variable annuity business of ILI to AUSA Life, as of January 1, 1995. Effective January 1, 1995, ILI ceded and transferred to ASUA Life all variable insurance contracts issued by ILI in connection with its variable annuity business.

AUSA Life agreed to assume the rights, obligations and liabilities of ILI in respect of such variable insurance contracts. Upon the transfer of the variable insurance contracts and assumption of the separate account liabilities under the Contracts, ILI transferred to AUSA Endeavor Variable Annuity Account a pro rata portion of the assets within each subaccount of the Applicant with a statutory carrying value to ILI equal to the statutory reserves held by ILI in support of the separate account liabilities.

4. Applicant currently has no assets, no liabilities and no security holders.

5. Applicant is not a party to any litigation or administrative proceeding, and is not now engaged, nor does it intend to engage, in any business activities other than those necessary for winding up its affairs.

6. The expenses incurred in implementing the Assumption Reinsurance Agreement were borne by ILI and had no impact on Contractholders.

7. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust.

8. ILI intends to merge with ASUA Life during 1996, and intends to file, pursuant to state law, such merger agreements or other documents as may be required by the law of the State of New York.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28458 Filed 11–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22307; 812–10380]

International Series Release No. 1025, Osmanli Bankasi A.S., Turkiye Garanti Bankasi A.S.; Notice of Application

October 31, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Osmanli Bankasi A.S. (''Ottoman Bank'') and Turkiye Garanti Bankasi A.S. (''Garanti Bank'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act that would exempt applicants from section 17(f) of the Act.

SUMMARY OF APPLICATION: Applicants request an order permitting Ottoman Bank to act as custodian in the Republic of Turkey for registered investment companies.

FILING DATE: The application was filed on October 3, 1996 and amended on October 24, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 25, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Ottoman Bank, Bankalar Caddesi No. 35–37, 8000 Karakoy, Istanbul, Turkey, Garanti Bank, 63 Buyukdere Caddesi, Maslak 80670, Istanbul, Turkey; c/o Thomas W. Christopher, White & Case, 1155 Avenue of the Americas, New York, NY 10036–2787.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Law Clerk, at (202) 942–0517, 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.

Applicants' Representations

1. Garanti Bank is a Turkish banking institution, which is supervised and regulated by banking authorities in Turkey and other countries in which it maintains offices. In Turkey, Garanti Bank is subject to comprehensive supervision by Turkish banking regulators, including the Ministry of State in Charge of the Treasury, the Undersecretariat of the Treasury, the Capital Markets Board, the Istanbul Stock Exchange, and the Ministry of Finance, all of which are agencies of the government of Turkey. Garanti Bank has approximately 160 branches in Turkey and seven foreign offices and branches. As of June 30, 1996, Garanti Bank had total assets of approximately $3.08 billion, and shareholders' equity of approximately $395.4 million (excluding minority interests).

2. Ottoman Bank is a Turkish banking organization. It is regulated by the Ministry of State in Charge of the Treasury, the Undersecretariat of the Treasury, the Capital Markets Board, the Istanbul Stock Exchange, and the Ministry of Finance.[1] As of June 30, 1996, Ottoman Bank had total assets of approximately $450 million and shareholders' equity of approximately $97 million.

3. Ottoman Bank is an indirect subsidiary of Garanti Bank. Garanti Bank indirectly acquired Ottoman Bank in a transaction that closed on June 25, 1996 (the ''Transaction''). The Transaction resulted in an indirect subsidiary of Garanti Bank, Clover Investments Co. Ltd., incorporated in Malta, owning 100% of the equity securities of Compagnie Ottomane d'Investissements BV, a Dutch company, which owns 99.9% of the equity securities of Ottoman Bank.[2]

4. Applicants request an order to permit Ottoman Bank to act as custodian of securities and other assets (''Securities'') of investment companies registered under the Act, other than those registered under section 7(d) of the Act (''Investment Companies''), or as subcustodian of such Securities as to which any other entity is acting as custodian, to accept deposits, or to cause or permit the acceptance of deposits, of such Securities in the Republic of Turkey. As used herein, the term ''Securities'' does not include securities issued by the United States Government, any state or political subdivision thereof, or by any agency thereof, or any securities issued by any entity organized under the laws of the United States or any state thereof (other than certificates of deposit, evidence of indebtedness, and other securities, issued or guaranteed by such entity that have been issued and sold outside the United States).

5. Ottoman Bank would accept deposits from Investment Companies

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[1] Under a prior SEC order, Ottoman Bank has been acting as a subcustodian of investment company assets for which Bankers Trust Company, N.A. act as custodian. *See Bankers Trust Company, N.A.,* Investment Company Act Release Nos. 18046 (Mar. 14, 1991) (notice) and 18085 (Apr. 9, 1991) (order).

[2] Prior to this Transaction, Ottoman Bank was controlled by Banque Paribas, a French banking organization. Under a prior SEC order, Ottoman Bank has been acting as a subcustodian of investment company assets in partial reliance upon the guarantee of Banque Paribus. *See Banque Paribus and Ottoman Bank, A.S.,* Investment Company Act Release Nos. 20663 (Oct. 27, 1994) (notice) and 20722 (Nov. 21, 1994) (order). As a result of the Transaction, Banque Paribus has indicated that it intends to terminate its guarantee as of December 31, 1996. Banque Paribus' planned termination has necessitated the requested order.

only in accordance with a three-party agreement (the ''Agreement''). The Agreement would be entered into by (a) an Investment Company or custodian of the Securities of an Investment Company for which Ottoman Bank acts as a subcustodian, (b) Ottoman Bank, and (c) Garanti Bank. The Agreement would provide that Ottoman Bank would act as a custodian or subcustodian, and Garanti Bank would guarantee the Securities against loss while such Securities were in the custody of Ottoman Bank, except such loss resulting from political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife, or armed hostilities) and other risk of loss (excluding bankruptcy or insolvency of Ottoman Bank) for which neither Garanti Bank nor Ottoman Bank would be liable (*e.g.*, despite the exercise of reasonable care, loss due to acts of God or nuclear incident).

Applicants' Legal Analysis

1. Section 17(f) of the Act requires every registered management investment company to place and maintain its securities and similar investments in the custody of certain enumerated entities, including a bank or banks meeting the requirements of section 26(a) of the Act, a member firm of a national securities exchange, the investment company itself, or a system for the central handling of securities established by a national securities exchange. Section 2(a)(5) of the Act defines ''bank'' to include banking institutions organized under the laws of the United States, member banks of the Federal Reserve System, and certain banking institutions or trust companies doing business under the laws of any state or of the United States. Ottoman Bank does not fall within the definition of ''bank'' as defined in the Act and, under section 17(f), may not act as custodian for registered investment companies.

2. Rule 17f–5 expands the group of entities that are permitted to serve as foreign custodians. Rule 17f–5 defines the term ''Eligible Foreign Custodian'' to include a banking institution or trust company incorporated or organized under the laws of a country other than the United States, that is regulated as such by that country's government or an agency thereof, and that has shareholders' equity in excess of U.S. $200 million or its equivalent.

3. Garanti Bank qualifies as an eligible foreign custodian under rule 17f–5. Ottoman Bank satisfies the requirements of rule 17f–5 insofar as it is a banking institution organized under the laws of Turkey and is regulated by agencies of the government of Turkey. Ottoman Bank, however, does not meet the minimum shareholders' equity requirement of the rule. Accordingly, Ottoman is not an eligible foreign custodian under the rule and, absent exemptive relief, could not serve as a custodian for the Securities of United States Investment Companies.

4. Section 6(c) provides, in relevant part, that the SEC, by order, may exempt any person from any provision of the Act or from any rule thereunder, if such exemption is necessary or appropriate in the public interest, consistent with the protection of investors and consistent with purposes fairly intended by the policy and provisions of the Act. Applicants believe that their request satisfies this standard.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. The foreign custody arrangements with Ottoman Bank will comply with provisions of rule 17f–5 in all respects, except those relating to the minimum shareholders' equity requirements of eligible foreign custodians.

2. An Investment Company or a custodian for an Investment Company will deposit Securities with Ottoman Bank only in accordance with a three-party contractual agreement that will remain in effect at all times during which Ottoman Bank fails to meet the requirement of the rule 17f–5 relating to minimum shareholders' equity. Each agreement will be a three-party agreement among (a) Garanti Bank, (b) Ottoman Bank, and (c) the Investment Company or custodian of the Securities of the Investment Company. Under the agreement, Ottoman Bank will undertake to provide specified custodial or sub-custodial services. The agreement will further provide that Garanti Bank will be liable for any loss, damage, cost, expense, liability, or claim arising out of or in connection with the performance of Ottoman Bank of its responsibilities under the agreement to the same extent as if Garanti Bank had been required to provide custody services under such agreement.

3. Garanti Bank currently satisfies and will continue to satisfy the minimum shareholders' equity requirement set forth in rule 17f–5(c)(2)(i).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28516 Filed 11–5–96; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Pittway Corporation, Common Stock, $1.00 Par Value; Class A Stock $1.00 Par Value) File No. 1–4821

October 31, 1996.

Pittway Corporation (''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 above specified securities (''Securities'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, it has complied with Rule 18 of the American Stock Exchange by filing with such Exchange a certified copy of preambles and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its securities from listing on the Amex and by setting forth in detail to such Exchange the reasons for such proposed withdrawal, and the facts in support thereof. In making the decision to withdraw the Securities from listing on the Amex, the Company considered the best interest of the Company.

Any interested person may, on or before November 22, 1996, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges 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. 96–28454 Filed 11–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22308/812–10146]

Strong Advantage Fund, Inc., et al.; Notice of Application

October 31, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Strong Advantage Fund, Inc., Strong Asia Pacific Fund, Strong Asset Allocation Fund, Inc., Strong Common Stock Fund, Inc., Strong Conservative Equity Funds, Inc., Strong Corporate Bond Fund, Inc., Strong Discovery Fund, Inc., Strong Equity Funds, Inc., Strong Government Securities Fund, Inc., Strong Heritage Reserve Series, Inc., Strong High-Yield Municipal Bond Fund, Inc., Strong Income Funds, Inc., Strong Institutional Funds, Inc., Strong Insured Municipal Bond Fund, Inc., Strong International Bond Fund, Inc, Strong International Stock fund, Inc., Strong Money Market Fund, Inc., Strong Municipal Funds, Inc., Strong Municipal Bond Fund, Inc., Strong Opportunity Fund, Inc., Strong Short-Term Bond Fund, Inc., Strong Short-Term Global Bond Fund, Inc., Strong Short-Term Municipal Bond Fund, Inc., Strong Special Fund II, Inc., Strong Total Return Fund, Inc., Strong Variable Insurance Funds, Inc. (collectively, the ''Funds''), Strong Capital Management, Inc. (''SCM''), and Strong Funds Distributors, Inc. (the ''Distributor'').

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from section 12(d)(1), under sections 6(c) and 17(b) for an exemption from section 17(a), and under section 178(d) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain investment companies to purchase shares of affiliated money market funds in excess of the limits prescribed in section 12(d)(1) for cash management purposes.

FILING DATE: The application was filed on May 14, 1996 and amended on August 14, 1996. Applicants have agreed to file an amendment, the substance of which is incorporated herein, 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 to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 25, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One Hundred Heritage Reserve, Menomonee Falls, Wisconsin 53051.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Alison E. Baur, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are open-end investment companies incorporated under the laws of Wisconsin and registered under the Act, and the shares of the Funds are registered under the Securities Act of 1933. The Funds are organized as series companies. Certain of the Funds are money market funds subject to the requirements of rule 2a–7 under the Act (together with any future money market funds, the ''Money Market Funds''). The other Funds are non-money market funds (together with any future non-money market funds, the ''Non-Money Market Funds''). The Funds include taxable and tax-exempt money market funds, growth funds, growth and income funds, taxable and tax-exempt bond funds, global funds, and international funds.

2. Strong Capital Management, Inc., an investment adviser registered under the Investment Advisers Act of 1940, acts as the investment manager for the majority of the Funds, provides each Fund with various administrative services, and acts as transfer and dividend paying agent for the Funds. Schafer Capital Management, Inc. (''Schafer'') acts as investment adviser for Strong Schafer Value Fund. SCM and Schafer are collectively referred to herein as the ''Adviser.'' Strong Funds Distributors, Inc., a subsidiary of Strong Capital Management, Inc., is registered as a broker-dealer under the Securities Exchange Act of 1934 and acts as each Fund's principal underwriter. Applicants request relief on behalf of the investment companies and series thereof that are currently or in the future part of the same ''group of investment companies,'' as defined under rule 11a–3 of the Act.

3. Each Non-Money Market Fund has, or may be expected to have, uninvested cash (''Uninvested Cash'') held by its custodian bank. Such Uninvested Cash may result from a variety of sources, including dividends or interest received from portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions and dividend payments, and new monies received from investors. Applicants request an order to permit the Non-Money Market Funds to use their Uninvested Cash to purchase shares of one or more of the Money Market Funds (these transactions are collectively referred to hereinafter as the ''Proposed Transactions'').

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 6(c) of the Act provides that the SEC may exempt persons or transactions from any provision of the Act if 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. Applicants' request would permit Non-Money Market Funds to use Uninvested Cash to acquire shares of Money Market Funds in excess of the percentage limitations set out in section 12(d)(1)(A). Applicants propose that each Non-Money Fund be permitted to invest in shares of a Money Market Fund so long as each Non-Money Market Fund's aggregate investment in such Money Market Fund does not exceed 25% of the Non-Money Market Fund's total net assets. Applicants' request also would permit Money Market Funds to sell their securities to Non-Money Market Funds in excess of the percentage limitations set out in section 12(d)(1)(B).

4. Applicants state that while the Non-Money Market Funds typically are fully invested, cash positions fluctuate with shareholder and investment activity and cash positions in excess of 20% of total assets may occasionally occur. The Uninvested Cash available for investment at any particular time (including instances of unusual equity and debt market conditions and unusual cash flow activity in any Money Market Fund) may, in fact, total 25% or more of a Non-Money Market Fund's total net assets. Therefore, in order to allow the Non-Money Market Funds maximum flexibility to invest Uninvested Cash and to maximize the returns on such investments, the Non-Money Market Funds seek the ability to invest up to the full amount of their available Uninvested Cash in each investment option. Applicants believe that permitting a Non-Money Market Fund to invest up to 25% of its total net assets in a Money Market Fund would generally accommodate cash investment requirements.

5. Applicants state that section 12(d)(1) is intended to protect an investment company's shareholders against (a) undue influence over portfolio management through the threat of large scale redemptions; (b) the acquisition of voting control of the company; (c) the layering of fees; and (d) a complex structure that makes it difficult for a shareholder to ascertain the true value of the subject security. Applicants believe that none of these perceived abuses are created by the Proposed Transactions.

6. Applicants state that the Adviser will serve as investment adviser to both the Non-Money Market Funds and the Money Market Funds, and will not receive double advisory fees or other compensation relating to transactions in the shares of the Money Market Funds purchased or sold by the Non-Money Market Funds. Thus, the Adviser is not susceptible to undue influence regarding its management of the Money Market Funds due to threatened redemptions or loss of fees.

7. Applicants represent that the Proposed Transactions would involve no improper layering of fees. The shareholders of the Non-Money Market Funds would not be subject to the imposition of double investment advisory fees. Before approving any advisory contract under section 15, the Board of Directors of the Non-Money Market Fund, including a majority of the Directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, shall consider to what extent, if any, the advisory fees charged to the Non-Money Market Fund by the Adviser should be reduced to account for the fee indirectly paid by the Non-Money Market Fund because of the advisory fee paid by the Money Market Fund to the Adviser. Further, no front-end sales charge, contingent deferred sales charge, rule 12b–1 fee, or other underwriting and distribution fee will be charged in connection with the purchase and sale of shares of the Money Market Funds. If a Money Market Fund offers more than one class of shares, each Non-Money Market Fund will invest only in the class with the lowest expense ratio at the time of the investment.

8. Applicants state that the net asset value of each of the Money Market Funds is, and has been since its inception, maintained at a constant $1.00 per share. Therefore, applicants believe that the value of the investments held by a Non-Money Market Fund will be easily determinable and will not create any difficulty in assessing the true value of the Non-Money Market Fund's holdings.

B. Section 17(a)

1. Section 17(a) (1) and (2) make it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from such investment company. Because the Adviser is an affiliated person of each Fund, as defined in Section 2(a)(3) of the Act, and because the Funds share a common investment adviser and a common Board of Directors, each of the Funds may be deemed to be under common control with all the other Funds, and, therefore, an affiliated person of those Funds. Accordingly, the sale of shares of the Money Market Funds to the Non-Money Market Funds, and the redemption of such shares from the Non-Money Market Funds, would be prohibited under section 17(a).

2. Section 17(b) authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Applicants request an exemption under section 6(c) and 17(b) to permit Non-Money Market Funds to purchase shares of Money Market Funds, and the Money Market Funds to redeem such shares.[1]

3. Section 17(a) is intended to prohibit affiliated persons in a position of influence or control over an investment company from furthering their own interests by selling property they own to an investment company at an inflated price, or by purchasing property from an investment company at less than its fair value. Applicants state that, under the Proposed Transactions, the Non-Money Market Funds will retain their ability to invest their Uninvested Cash directly in money market instruments and other short-term obligations, as permitted by each Non-Money Market Fund's investment objectives and policies, if they believe they can achieve a higher return or for any other reason. By adding shares of the Money Market Funds as another investment option, the Applicants believe that the Non-Money Market Funds may reduce the risk of counterparty default on repurchase agreements and the risks associated with direct purchases of short-term obligations, while providing high current money market rates of return, ready liquidity, and increased diversity of holdings. In addition, Applicants assert the Proposed Transactions would benefit the Money Market Funds by increasing their asset base and would provide an additional, stable market for their shares. Further, each of the Money Market Funds reserves the right to discontinue selling shares to any of the Non-Money Market Funds if the Board of Directors determines that such sales would adversely effect its portfolio management and operations. Therefore, Applicants believe that the Proposed Transactions satisfy the standards of sections 6(c) and 17(b).

C. Section 17(d)

1. Section 17(d) and rule 17d–1 prohibit an affiliated person of an investment company, acting as principal, from participating in or

[1] *See Keystone Custodian Funds*, 21 S.E.C. 295, 298–99 (1945). Section 6(c), along with section 17(b), frequently are used to grant relief from section 17(a) to permit an ongoing series of future transactions.

effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants assert that the Funds, by participating in the Proposed Transactions, and the Adviser, by managing the assets of both the Non-Money Market Funds and the Money Market Funds, could be deemed to be ''joint participants * * * in a transaction'' within the meaning of section 17(d) of the Act, and the Proposed Transactions could be deemed to be ''joint enterprise[s]'' within the meaning of rule 17d–1 under the Act.

2. In passing upon applications submitted pursuant to section 17(d) and rule 17d–1, the SEC will consider whether the participation of such registered or controlled company in such joint enterprise, joint arrangement or profit-sharing plan on the basis proposed is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants assert that the Non-Money Market Funds and the Money Market Funds will not participate in this arrangement on a basis that is different from or less advantageous than the participants that are not investment companies. Thus, Applicants believe that the Proposed Transactions satisfy the standards of rule 17d–1.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The shares of the Money Market Funds sold to and redeemed from the Non-Money Market Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1, or service fee (as defined in rule 2830(b)(9) of the NASD Rules of Conduct).[2]

2. If the Adviser collects a fee from a Money Market Fund for acting as its investment adviser with respect to assets invested by a Non-Money Market Fund, before the next meeting of the Board of Directors of a Non-Money Market Fund that invests in the Money Market Funds is held for the purpose of voting on an advisory contract under section 15 of the Act, the Adviser to the Non-Money Market Fund will provide the Board of Directors with specific information regarding the approximate cost to the Adviser for, or portion of the advisory fee under the existing advisory fee attributable to, managing the assets of the Non-Money Market Fund that can be expected to be invested in such Money Market Funds. Before approving any advisory contract under section 15, the Board of Directors of such Non-Money Market Fund, including a majority of the Directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, shall consider to what extent, if any, the advisory fees charged to the Non-Money Market Fund by the Adviser should be reduced to account for the fee indirectly paid by the Non-Money Market Fund because of the advisory fee paid by the Money Market Fund to the Adviser. The minute books of the Non-Money Market Fund will record fully the Directors' consideration in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each of the Non-Money Market Funds will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Non-Money Market Fund's aggregate investment in the Money Market Funds does not exceed 25% of the Non-Money Market Fund's total net assets. For purposes of this limitation, each Non-Money Market Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of the Money Market Funds will be in accordance with each Non-Money Market Fund's respective investment restrictions, if any, and will be consistent with each Non-Money Market Fund's policies as set forth in its prospectuses and statements of additional information.

5. Each Non-Money Market Fund, the Money Market Funds, and any future fund that may rely on the order shall be part of the same ''group of investment companies,'' as defined in rule 11a–3(a)(5) under the Act.

6. No Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. A majority of the Directors of each Non-Money Market Fund will not be ''interested persons,'' as defined in section 2(a)(19) of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28515 Filed 11–15–96; 8:45 am]

BILLING CODE 8010–01–M

[2] The staff notes that, until recently, rule 2830(b)(9) of the NASD Rules of Conduct was section 26(b)(9) of Article III of the NASD Rules of Fair Practice.

[Investment Company Act Release No. 22305; 811–7942]

Voyageur Arizona Municipal Income Fund II, Inc.; Notice of Application

October 30, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Voyageur Arizona Municipal Income Fund II, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 21, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 25, 1996, and should be accompanied by proof of service on the applicant, 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. Applicants, 90 South Seventh Street, Suite 4400 Minneapolis, Minnesota 55402–4115.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, 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.

Applicant's Representations

1. Applicant is a closed-end, diversified management investment company incorporated under the laws of Minnesota. On August 5, 1993, applicant registered under the Act and filed a registration statement on Form N–2 under the Act and the Securities Act of 1933. Applicant's registration statement was not declared effective,

and applicant made no public offering of its securities.

2. Applicant has no securityholders, debts, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

3. Applicant will statutorily dissolve its existence in Minnesota.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28457 Filed 11–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 22304; 811–8432]

Voyageur Colorado Municipal Income Fund II, Inc.; Notice of Application

October 30, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Voyageur Colorado Municipal Income Fund II, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on October 21, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 25, 1996, and should be accompanied by proof of service on the applicant, 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. Applicants, 90 South Seventh Street, Suite 4400, Minneapolis, Minnesota 55402–4115.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, 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.

Applicant's Representations

1. Applicant is a closed-end, diversified management investment company incorporated under the laws of Minnesota. On March 21, 1994, applicant registered under the Act and filed a registration statement on Form N–2 under the Act and the Securities Act of 1933. Applicant's registration statement was not declared effective, and applicant made no public offering of its securities.

2. Applicant has no securityholders, debts, liabilities or assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

3. Applicant will statutorily dissolve its existence in Minnesota.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28456 Filed 11–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37902; File No. SR–Amex–96–40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Inc. Relating to the Waiver of Transaction Charges for FLEX Equity Options

October 31, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 25, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to waive the imposition of transaction charges for FLEX Equity Options for a period of 90 days to commence on the first day of trading of the product. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange is preparing to commence trading in FLEX Equity Options on October 24, 1996. In an effort to promote the use of this product, the Exchange has determined to waive transaction charges for the first 90 days of trading. The Exchange believes that transaction costs will or could be a meaningful factor in encouraging or deterring trading in this product. The waiver of the imposition and collection of transaction charges for FLEX Equity Option's orders executed on the Exchange will be for all account types e.g., the accounts of floor traders, specialists and customer and firm proprietary off-floor orders.

(b) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number SR–Amex–96–40 and should be submitted by November 27, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28521 Filed 11–5–96; 8:45 am]

BILLING CODE 8010–01–M

[1] 17 CFR 200.30–3(a)(12).

[Release No. 34–37907; File No. SR–DCC–96–11]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Addition of Garban LLC as an Interdealer Broker for Delta Clearing Corp.'s Repurchase Agreement Clearance System

October 31, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 29, 1996, Delta Clearing Corp. (''DCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to give notice that DCC has authorized Garban LLC (''Garban'') to act as an interdealer broker in DCC's over-the-counter clearance and settlement system for repurchase agreement and reverse repurchase agreement (''repos'') transactions involving U.S. Treasury securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Through its repo clearing system, DCC clears repo transactions that have been agreed to by DCC participants through the facilities of interdealer brokers that have been authorized by DCC (''authorized brokers'') to offer their services to DCC participants.[3] Currently, Liberty Brokerage, Inc., RMJ Special Brokerage Inc., Euro Brokers Maxcor Inc., Prebon Securities (USA) Inc., Tullet and Tokyo Securities Inc., Tradition (Government Securities), Inc., Patriot Securities, Inc., and GFI Group Inc. are authorized brokers.[4] The purpose of the proposed rule change is to give notice that DCC has authorized Garban to act as a broker in DCC's clearance and settlement system for repo trades.

The proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions, and therefore, the proposed rule change is consistent with the requirements of the Act, specifically Section 17A of the Act, and the rules and regulations thereunder.[5]

(B) Self-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(e)(4) thereunder[7] in that the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified parts of these statements.

[3] For a complete description of the DCC's repo clearance system, see Securities Exchange Act Release No. 36367 (October 13, 1995), 60 FR 54095.

[4] Securities Exchange Act Release Nos. 36367 (October 13, 1995), 60 FR 54095; 36901 (February 28, 1996), 61 FR 8991; 37042 (March 29, 1996), 61 FR 15330; 37212 (May 14, 1996), 61 FR 25722; 37235 (May 20, 1996), 61 FR 26942; 37392 (July 1, 1996), 61 FR 36095; and 37488 (July 26, 1996) 61 FR 40471.

[5] 15 U.S.C. 78q–1 (1988).

[6] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[7] 17 CFR 240.19b–4(e)(4) (1995).

to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at DCC. All submissions should refer to File No. SR–DCC–96–11 and should be submitted by November 27, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28519 Filed 11–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37906; File No. SR–DTC–96–18]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Revision of Fees

October 31, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 17, 1996, the Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change reduces the fee associated with book-entry deliveries made through DTC and the National Securities Clearing Corporation's (''NSCC'') Continuous Net Settlement (''CNS'') system. DTC is reducing the fee from $0.08 to $0.075 per item delivered.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise the fee associated with book-entry deliveries made through DTC and NSCC's CNS system. The CNS delivery fees were last revised when DTC converted to an all same-day funds settlement (''SDFS'') system in February 1996. At that time, the CNS delivery fee increased from $0.07 to $0.08 per item delivered or received through the CNS system. The revised fee was an estimate of the cost of processing such transactions in an SDFS environment rather than in a next-day funds settlement environment. Since the conversion, DTC has determined that usage of DTC's computer resources supports a reduction in the CNS delivery fee from $0.08 to $0.075 per item delivered or received. The reduced fee became effective on October 15, 1996. DTC believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act[3] and the rules and regulations thereunder because it provides for the equitable allocations of reasonable dues, fees, and other charges among DTC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The forgoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and pursuant to Rule 19b–4(e)(2)[5] promulgated thereunder because the proposal changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–96–18 and should be submitted by November 27, 1996.

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[8] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] 15 U.S.C. § 78q–1(b)(3)(D) (1988).

[4] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[5] 17 CFR 240.19b–4(e)(2) (1996).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28518 Filed 11–5–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37904; File No. SR–NSCC–96–19]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change To Discontinue the Operation of the Securities Clearing Group's Data Base

October 31, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 3, 1996, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–NSCC–96–19) as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend the Securities Clearing Group Agreement of the Securities Clearing Group (''SCG'')[2] to discontinue the operation of the SCG data base.

I. Self-Regulatory Organization's Statement of the Purpose of, the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend the SCG Agreement to discontinue operation of SCG data base. The SCG database contains information on common participants of the SCG members relating to settlement payment obligations and clearing fund and margin requirements and deposits and other related information. The members of the SCG created the SCG data base as a means to coordinate and share information on common participants and increase cooperation among the SCG members.

NSCC believes termination of the SCG data base is desirable for several reasons. First, NSCC has established and agreed to make available to the SCG members access to its Collateral Management Service (''CMS'').[4] The CMS will make available to the SCG members similar information contained in the SCG data base plus provide them with enhanced features and capabilities through a more robust system. For example, the SCG data base contains aggregate information on clearing fund and margin deposits including excess and deficit amounts whereas the CMS contains both aggregate information on clearing fund and margin deposits including excess and deficit amounts as well as detailed information on the underlying collateral (*i.e.*, cash, securities, and letters of credit). The SCG members recognize that termination of the SCG data base is desirable at this point to avoid redundancies with the CMS. Second, the SCG members recognize that termination of the SCG data base will eliminate the occurrence of a significant increase in costs that would be required to maintain the SCG data base. Third, NSCC believes termination of the SCG data base and the availability of the CMS will enable the SCG members to better coordinate and share information and monitor clearing fund and margin deposits.

Accordingly, the SCG members have executed Amendment No. 6 to the SCG Agreement.[5] The Amendment: (i) authorizes the termination of the SCG data base, (ii) authorizes NSCC to use all data, information, computer coding, and programs contained in the SCG data base in establishing and maintaining the operation of CMS, and (iii) grants to each SCG Member a nonexclusive and nontransferable license to use NSCC's CMS.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will promote the prompt and accurate clearance and settlement of securities transactions and will assure the safeguarding of securities and funds in the custody or control of NSCC or for which NSCC is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC consents, the Commission will:

(a) by order approve such proposed rule change or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

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[6] 17 CFR 200.30–3(a)(12) (1996).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The SCG was established in 1989 as a result of developments surrounding the October Market Break and subsequent studies on the causes of the Market Break. The stated purpose of the SCG is to increase cooperation and coordination among securities clearing entities and to facilitate the sharing of certain clearance and settlement information regarding surveillance and member risk monitoring. For a further description of the SCG refer to Securities Exchange Act Release No. 27044 (July 25, 1989), 54 FR 30963 [File Nos. SR–DTC–88–20, SR–MCC–88–10, SR–MSTC–88–07, SR–NSCC–88–09, SR–OCC–89–02, SR–Philadep–89–01, and SR–SCCP–89–01] (order approving the establishment of the SCG).

[3] The Commission has modified the text of the summaries submitted by NSCC.

[4] For a description of the Collateral Management service refer to Securities Exchange Act Release No. 36091 (August 10, 1995), 60 FR 42931 [File No. SR–NSCC–95–06] (order approving a proposed rule change establishing the Collateral Management Service).

[5] A copy of the Amendment is attached as Exhibit A to NSCC's filing. A copy of the filing is available for copying and inspection in the Commission's Public Reference Room or through NSCC.

Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC.

All submissions should refer to the file number SR–NSCC–96–16 and should be submitted by November 27, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28517 Filed 11–5–96; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–37903; File No. SR–PSE–96–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Incorporated Relating to a Requirement that All PSE Floor Brokers Maintain Error Accounts

October 31, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 17, 1996, the Pacific Stock Exchange, Inc. (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules to provide that each floor broker on the Exchange must establish and maintain an error account for carrying positions resulting from errors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt new Rule 4.10(c) to provide that each member organization whose principal business is as a floor broker on the Exchange and who is not self-clearing must establish and maintain an account with a clearing member of the Exchange, for the sole purpose of carrying positions resulting from bona fide errors made in the course of its floor brokerage business. The proposed rule further provides that, with respect to options floor brokers only, such an account for option transactions must be maintained with an entity that is also a member of the Options Clearing Corporation.

The purpose of the rule change is to enhance the Exchange's ability to detect and deter rule violations committed by floor brokers that may arise in connection with trading errors. The Exchange believes that the rule is consistent with Rule 703(c)(vi) of the Philadelphia Stock Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [1] in general and furthers the objectives of Section 6(b)(5) in particular [2] in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

[1] 15 U.S.C. 78f(b).

[2] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PSE–96–36 and should be submitted by November 27, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28520 Filed 11–5–96; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12).

[Release No. 34–37901; File No. SR–PSE–96–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Stock Exchange, Inc. Relating to the Waiver of Transaction Charges for FLEX Equity Options

October 31, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 28, 1996, the Pacific Stock Exchange, Inc. (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to waive the imposition of transaction charges for FLEX Equity Options for a three month period ending January 24, 1997. The text of the proposed rule change is available at the Office of the Secretary, PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange is preparing to commence trading in FLEX Equity Options on October 24, 1996. In an effort to promote the use of this product, the Exchange has determined to waive all customer, firm and market maker transaction fees for transactions in FLEX Equity Options for a three month period ending January 24, 1997. The purpose of the waiver is to encourage customers, firms and market makers to execute transactions in FLEX Equity Options on the Exchange and respond to competitive actions in the industry.

(b) Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to the file number SR–PSE–96–43 and should be submitted by November 27, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28522 Filed 11–5–96; 8:45 am]

BILLING CODE 8010–01–M

[1] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Canaan S.B.I.C., L.P. (License No. 01/71–0361); Notice of Request for Exemption

On October 15, 1996, Canaan S.B.I.C., L.P.(the ''Licensee''), a Delaware limited partnership and SBIC Licensee number 01/71–0361 filed a request to the SBA pursuant to Section 107.730(a) of the Regulations governing small business investment companies (13 C.F.R. 107.730(a) (1996)) for an exemption allowing the Licensee to invest in Visteon Corporation (Visteon), of Orlando, Florida. Visteon received prior financial assistance from an Associate (as defined by Section 107.50 of the SBA Regulations) of the Licensee, and has itself become an Associate of the Licensee.

Visteon is currently in need of additional capital, however, the Licensee can only offer this assistance to Visteon upon receipt of a prior written exemption from SBA. The exemption requested is the basis for this notice, and is required pursuant to § 107.730(g) of the Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on this exemption request to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416. A copy of this Notice will be published in a newspaper of general circulation in Orlando, Florida.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: October 29, 1996.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–28460 Filed 11–5–96; 8:45 am]

BILLING CODE 8025–01–P

Commerce Capital, L.P. (License No. 04/04–0264); Notice of Issuance of a Small Business Investment Company License

On June 15, 1994, an application was filed by Commerce Capital, L.P., 611 Commerce Street, Suite 2723, Nashville, Tennessee, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 C.F.R. 107.102 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04–0264 on September 30, 1996, to Commerce Capital Partners, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 28, 1996.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–28461 Filed 11–5–96; 8:45 am]

BILLING CODE 8025–01–P

Retail & Restaurant Growth Capital, L.P. (License No. 06/06–0312); Notice of Issuance of a Small Business Investment Company License

On September 15, 1995, an application was filed by Retail & Restaurant Growth Capital, L.P., 10,000 N. Central Expressway, Suite 1060, Dallas, Texas, with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 C.F.R. 107.102 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 06/06/–0312 on September 30, 1996, to Retail & Restaurant Growth Capital, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 28, 1996.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 96–28462 Filed 11–5–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2894]

North Carolina; Declaration of Disaster Loan Area (Amendment #4)

In accordance with notices from the Federal Emergency Management Agency, dated October 22 and October 29, 1996, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on September 5, 1996 and continuing through October 21, 1996. This declaration is further amended to extend the deadline for filing applications for physical damage as a result of this disaster to December 4, 1996.

All other information remains the same, i.e., the termination date for filing applications for loans for economic injury is June 6, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 31, 1996.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 96–28564 Filed 11–5–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2895]

Virginia; Declaration of Disaster Loan Area (Amendment #4)

In accordance with a notice from the Federal Emergency Management Agency, dated October 29, 1996, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster to December 23, 1996. This deadline extension applies only to the following jurisdictions in the Commonwealth of Virginia: the Counties of Accomack, Charles City, Chesterfield, Essex, Gloucester, Henrico, Isle of Wight, James City, King & Queen, King George, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Surry and York; and the Independent Cities of Fredericksburg, Hopewell, Newport News, Poquoson, Suffolk and Williamsburg.

All other information remains the same, i.e., the deadline for filing applications for loans for economic injury is June 9, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 31, 1996.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 96–28563 Filed 11–5–96; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2464]

Shipping Coordinating Committee, International Maritime Organization (IMO) Legal Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 1:30 p.m., on Monday, November 18, 1996, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. The purpose of this meeting is to report on the 74th session of the International Maritime Organization (IMO) Legal Committee, which was held October 14–18, 1996, in London, regarding compensation for pollution from ships' bunkers, a draft convention on wreck removal, compulsory liability and compensation insurance for seagoing vessels, the transport of irradiated nuclear fuels, and other matters. Additionally, the purpose of the meeting is to prepare for the ninth session of the UN Conference on Trade and Development (UNCTAD) Joint Intergovernmental Group of Experts (JIGE), which will meet in Geneva from December 2–6, 1996.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information, for copies of conference documents, or to submit views concerning the subjects of discussion, contact either Captain Malcolm J. Williams, Jr., or Lieutenant Commander Bruce P. Dalcher, U.S. Coast Guard (G–LMI), 2100 Second Street, S.W., Washington, D.C. 20593, telephone (202) 267–1527, telefax (202) 267–4496.

Dated: October 31, 1996.

Russell A. LaMantia,

Chairman, Shipping Coordinating Committee.

[FR Doc. 96–28417 Filed 11–5–96; 8:45 am]

BILLING CODE 4710–07–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Functional Advisory Committee for Customs Matters (IFAC 1)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Functional Advisory Committee for Customs Matters (IFAC 1) will hold a meeting on November 18, 1996 from 9:30 a.m. to 12:30 p.m. The meeting will be open to the public from 10:15 a.m. to 12:30 p.m. and closed to the public from 9:30 a.m. to 10:15 a.m.

DATES: The meeting is scheduled for November 18, 1996, unless otherwise notified.

ADDRESS: The meeting will be held at the U.S. Department of Commerce in Room 1414, located at 14th Street and Constitution Avenue, N.W., Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Dan Gardner, Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, (202) 482–3683 or Suzanna Kang, Office of the United States Trade Representative, 600 17th St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The IFAC 1 will hold a meeting on November 18, 1996 from 9:30 a.m. to 12:30 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the Unites States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 9:30 a.m. to 10:15 a.m. The meeting will be open to the public and press from 10:15 a.m. to 12:30 p.m. when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

Phyllis Shearer Jones,

Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 96–28510 Filed 11–5–96; 8:45 am]

BILLING CODE 3190–01–M

Notice of Meeting of the Industry Sector Advisory Committee on Nonferrous Ores and Metals (ISAC 11)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee on Nonferrous Ores and Metals (ISAC 11) will hold a meeting on November 20, 1996 from 9:00 a.m. to 2:00 p.m. The meeting will be open to the public from 1:00 p.m. to 2:00 p.m. and closed to the public from 9:00 a.m. to 1:00 p.m.

DATES: The meeting is scheduled for November 20, 1996, unless otherwise notified.

ADDRESSES: The meeting will be held at the White House Conference Center in the Eisenhower Room, located at 726 Jackson Place, N.W., Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Graylin Presbury, Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, (202) 482–5158 or Suzanna Kang, Office of the United States Trade Representative, 600 17th St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC 11 will hold a meeting on November 20, 1996 from 9:00 a.m. to 2:00 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 9:00 a.m. to 1:00 p.m. The meeting will be open to the public and press from 1:00 p.m. to 2:00 p.m. when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

Phyllis Shearer Jones,

Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 96–28507 Filed 11–5–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by DeKalb County for DeKalb-Peachtree Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for DeKalb-Peachtree Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before April 27, 1997.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is October 29, 1996. The public comment period ends December 28, 1996.

FOR FURTHER INFORMATION CONTACT: Atlanta Airport District Office, Campus Building, Attn: Ms. Lee Kyker, 1701 Columbia Ave., Suite 2–260, College Park, GA 30337–2747, Phone: (404) 305–7149.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Peachtree-DeKalb Airport are in compliance with applicable requirements of Part 150, effective October 29, 1996. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved

on or before April 27, 1997. This notice also announces the availability of this program for public review and comment. Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measure the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

DeKalb County submitted to the FAA on July 22, 1996 noise exposure maps, descriptions and other documentation which were produced during Noise Compatibility Program, March 1993 and update of the Noise Compatibility Study, September 1996. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by DeKalb County. The specific maps under consideration are 1996 Noise Contours and Forecast 2001 Noise Contours in the submission. The FAA has determined that these maps for Peachtree-DeKalb Airport are in compliance with applicable requirements. This determination is effective on October 29, 1996. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Peachtree-DeKalb Airport, also effective on October 29, 1996. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before April 27, 1997.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, D.C. 20591

Federal Aviation Administration, Atlanta Airports District Office, Campus Building, 1701 Columbia Ave., Suite 2–260, College Park, GA 30337–2747

Mr. Jim Duguay, DeKalb-Peachtree Airport, Administration Building, Room 212, 2000 Airport Road, Atlanta, GA 30341

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in College Park, Georgia, October 29, 1996.

Dell Jernigan,

Manager, Atlanta Airports District Office.

[FR Doc. 96–28561 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–13–M

[Docket No. 28671; Notice No. 96–13]

RIN 2120–AF95

Explosives Detection Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed amendment to criteria for certification of explosives detection systems; reopen comment period.

SUMMARY: This document announces that the comment period for the Notice No. 96–13, Explosive Detection Systems (61 FR 46011, August 30, 1996) has been reopened. The FAA has determined that in order to allow all affected parties adequate time for comment development, the comment period should be extended. The initial comment period closed on October 29, 1996.

DATES: The comment period is being reopened from November 6, 1996 through January 6, 1997. Comments must be received on or before January 6, 1997.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 28671, 800 Independence Avenue, SW., Washington, D.C., 20591. Comments that include or reference national security information or sensitive security information should not be submitted to the public docket. These comments should be sent to the

following address in a manner consistent with applicable requirements and procedures for safeguarding sensitive security information: Federal Aviation Administration, Office of Civil Aviation Security Operations, Attention: FAA Security Control Point, Docket No. 28671, 800 Independence Avenue, SW., Washington, D.C., 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Lon Siro, Aviation Security Specialist (ACP–100), Office of Civil Aviation Security Policy and Planning, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C., 20591, telephone (202) 267–9661.

SUPPLEMENTARY INFORMATION:

Background

The proposed amended Criteria are responsive to the statutory mandate for testing and certifying EDS. The FAA has had a long-standing research and development (R&D) effort to counter the threat of explosive materials to civil aviation. Along with other technologies, the FAA invested in detonator detection R&D beginning in 1985. However, based upon early research, the FAA focused its R&D resources primarily on the detection of main/bulk explosive charges, because it appeared to be the most technologically feasible approach. The effort resulted in the September 10, 1993, Criteria [58 FR 47804], which established minimum performance standards for main/bulk explosive charges detection equipment. Recent technological advances suggest that equipment capable of detecting the different types of detonators used to initiate or detonate an explosive may also be an effective means of screening checked baggage. FAA now considers it appropriate to propose minimum performance standards for the detection of detonators.

In October 1995, the FAA completed its compilation and analyses of technical design information obtained during visits to 38 detonator manufacturers located in the United States and 20 other countries. These analyses were the most extensive examinations yet on the types, materials, and configurations of detonators. As a result, the FAA developed a comprehensive database on detonators manufactured worldwide, as well as global detonator production and consumption profiles. The types of detonators specified in this proposed amended Criteria were based, in part, upon reports which identified the types of detonators used in terrorist acts, as well as those likely to be used in future attempts to destroy or sabotage civil aviation, other modes of transportation, and physical structures. This analysis was conducted by the FAA with advice and consultation from U.S. and international explosive materials experts, and Agencies of the United States and other governments.

Reopen Comment Period

The comment period for Notice No. 96–13 closed on October 29, 1996. Subsequently, the FAA finds that it is in the public interest to reopen the comment period in order to allow industry additional time for a more thorough review of applicable issues and drafting of comments. Accordingly, the comment period is being reopened from November 6, 1996 through January 6, 1997.

Issued in Washington, DC on October 28, 1996.

Cathal L. Flynn,

Associate Administrator for Civil Aviation Security.

[FR Doc. 96–28552 Filed 11–1–96; 2:07 pm]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application (#96–02–C–00–OTH) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at North Bend Municipal Airport, Submitted by the City of North Bend, North Bend, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at North Bend Municipal Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before December 6, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ron Stillmaker, Public Works Director/Airport Manager, at the following address: North Bend Municipal Airport, P.O. Box B, North Bend, OR 87459.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to North Bend Municipal Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Vargas, (206) 227–2660; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250; Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#96–02–C–00–OTH) to impose and use PFC revenue at North Bend Municipal Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 30, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of North Bend, North Bend, Oregon, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 28, 1997.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: April 1, 1997

Proposed charge expiration date: April 30, 2000

Total requested for use approval: $168,731.00

Brief description of proposed project: Replace existing lighted wind cone and segmented circle and install supplemental wind cones; Terminal parking lot improvements; ALP update and pavement maintenance management program; Environmental assessment; and East side Terminal area site preparation.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Non-scheduled air taxi/commercial operators utilizing aircraft having a seating capacity of less than twenty passengers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the North Bend Municipal Airport.

Issued in Renton, Washington on October 30, 1996.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 96–28560 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Federal Railroad Administration

Federal Transit Administration

Participation in the State Infrastructure Bank Pilot Program

AGENCY: Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), and Federal Transit Administration (FTA), DOT.

ACTION: Notice of request for participation.

SUMMARY: This notice invites States to submit applications for participation in the State Infrastructure Bank (SIB) Pilot Program originally established by the National Highway System Designation Act of 1995 (the NHS Act). Pursuant to Section 350 of the NHS Act, USDOT is authorized to enter into agreements with States to establish State Infrastructure Banks or multistate infrastructure banks. Under the Department of Transportation and Related Agencies Appropriations Act of 1997 (Appropriations Act), USDOT is currently authorized to enter into Cooperative Agreements with more than ten States qualified to establish State Infrastructure Banks or multistate infrastructure banks. Another purpose of this notice is to outline the procedures that will be established for designation of additional States to be included in the Pilot Program. Further, $150 million will be available for distribution among the ten States previously designated by the Secretary and any additional States designated as a result of this notice. Distribution of these funds will not take place prior to 180 days after the enactment of the Appropriations Act on September 30, 1996.

DATES: Applications for participation will be considered as soon as they are received and must be received by the close of business on December 20, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Max Inman, FHWA Office of Fiscal Services, (202) 366–6813; Mr. John Paolella, FRA Office of Policy and Program Development, (202) 632–3154; or Mr. Richard Steinmann, FTA Office of Budget and Policy, (202) 366–4060. Application requests and specific questions regarding the SIB Pilot Program may also be directed to the Division or Regional Offices of FHWA or FTA in your State.

SUPPLEMENTARY INFORMATION:

I. Background

Congress established a Pilot Program for State Infrastructure Banks (SIBs) through Section 350 of the NHS Act (Pub. L. 104–59). That section originally authorized USDOT to enter into cooperative agreements with up to ten States for the establishment of SIBs or multistate infrastructure banks for making loans and providing other assistance to public and private entities carrying out or proposing to carry out projects eligible for assistance under the section. Subsequently, Congress enacted the Department of Transportation and Related Agencies Appropriations Act of 1997 (Pub. L. 104–205), which authorizes the Secretary of Transportation to enter into agreements with more than ten States qualified to establish SIBs. Under the terms and conditions of the NHS Act, States may use up to 10 percent of specified FY 1996 and FY 1997 apportionments and allocations in addition to non-Federal matching funds to capitalize the SIBs.

In addition, as a result of the Appropriations Act, $150 million will be available for distribution among the ten States previously designated by the Secretary and any additional States designated as a result of this notice. Distribution of these funds will not take place prior to 180 days after the enactment of the Appropriations Act. These funds shall be used to advance projects or programs under the terms and conditions of section 350. Any portion of these funds may be deposited into a highway or transit SIB account. Section 350 also requires that disbursement of these funds be at a rate consistent with historic rates for the Federal-aid highway program. Therefore, disbursements will be limited to 15 percent of $150 million for FY 1997 ($22.5 million), and remaining amounts will be disbursed in subsequent years.

The Pilot Program and subsequent implementation by designated SIBs will help USDOT determine how to proceed with the SIB concept while simultaneously advancing additional projects. It will help USDOT understand how SIBs can leverage Federal dollars to increase transportation infrastructure investment as ISTEA reauthorization legislation moves forward.

II. Definitions

State Infrastructure Bank (SIB): An infrastructure investment fund established to facilitate and encourage investment in eligible transportation infrastructure projects sponsored by public and/or private entities. Through a SIB, a State can use its initial capital, provided by its Federal-aid highway apportionments, any allocation received under the fiscal year 1997 DOT Appropriations Act, Federal transit allocations, and non-Federal monies, to make loans, provide credit enhancement, serve as a capital reserve for bond or debt financing, subsidize interest rates, issue letters of credit, finance purchase and lease agreements, provide debt financing security, or provide other forms of financial assistance for construction of projects qualified under the Federal-aid highway program and transit capital projects. As the funds are repaid or compensation is provided, the SIB can make new financial assistance available to other projects, continually recycling the initial monies, thus leveraging the initial funds available.

Multistate Infrastructure Bank: Interstate compact among two or more States to enter into a cooperative agreement with USDOT to establish a SIB.

III. Notice of Request for Participation

States must successfully address in detail all the application criteria listed in the following section entitled ''Criteria for Applications to Participate in the SIB Pilot Program.'' These responses, submitted as an application by the State, will provide the basis for determining a State's ability and qualifications to implement a SIB and the initial projects it expects to facilitate through financial support for the SIB. Based on the responses to the application criteria, the Secretary will designate qualified States to participate in the Pilot Program. After designation, the Secretary will enter into cooperative agreements with States to participate in the Pilot Program. Applications for participation must be received by the close of business on December 20, 1996.

USDOT recognizes that this is a Pilot Program and is receptive to innovative and non-traditional approaches to establishing a SIB and defining the types of assistance that may be offered. Subject to section 350 of the NHS Act, USDOT seeks to work in cooperation with the States to define the implementation of the program. USDOT will not require that all Pilot SIBs be configured in the same way or that they provide the same forms of assistance.

This Pilot Program, therefore, gives States an opportunity to determine how they might best structure SIBs. USDOT is interested in information detailing how States propose to establish and implement SIBs and is looking for serious evidence of thoughtful proposals.

IV. Criteria for Applications To Participate in the SIB Pilot Program

Applications must provide detailed information on the following areas:

1. The types of assistance to be provided by the SIB (e.g., loans, credit enhancements, capital reserves for debt financing, interest rate subsidies, letters of credit);

2. Identification and description of projects to be advanced as a result of Pilot designation (According to the NHS Act, first use of SIB capitalization funds must be for a Title 23 highway construction or Title 49 capital transit project that follows Federal procedures. However, with repayment revenues, a SIB can assist Title 23 or Title 49 projects that follow State procedures.);

3. The status of any enabling legislation, if required by a State prior to establishing a SIB, or existing administrative authority to implement a SIB;

4. The relationship between the SIB and other innovative financing efforts underway or planned by the State and how its experience under the innovative financing programs to date can reflect this;

5. The relationship of the projects proposed for the SIB to the Transportation Improvement Program (TIP), the approved Statewide Transportation Improvement Program (STIP) and any other federally required plans;

6. The ways the SIB will more effectively use and leverage Federal monies;

7. The sources and amounts of Federal funds that will be used to capitalize the SIB (CMAQ and ISTEA demonstration funds cannot be used) in addition to any funds that may be distributed by the Secretary as a result of the Appropriations Act; and the sources and amounts of non-Federal matching funds required by Section 350(e)(1);

8. The proposed institutional framework for the SIB, including State agencies that may be involved on a formal basis or an informal advisory basis;

9. The proposed mechanisms and internal procedures to monitor and/or track the flow of Federal funds to accounts in the SIB and the State's preferred reporting procedures to USDOT, given that Section 350 requires maintenance of separate accounts for highway and transit; and

10. The use of a SIB to facilitate development of intermodal or multistate projects.

States should indicate in their applications the type and extent of any technical assistance they might need to expedite implementation if designated as a pilot.

Copies of the original enabling legislation (Section 350 of the NHS Act), the Appropriations Act, and sample project summaries are available upon request from the USDOT contact persons referenced in this notice, or any Division or Regional Office of FHWA or FTA. Completed applications should be submitted to the FHWA Division Office or FTA Regional Office. USDOT may seek further clarification of SIB applications in writing or through an informal interview process with States.

Authority: Pub. L. 104–59, § 350, 109 Stat. 568, 618–622 (1995); Pub. L. 104–205, title I (1996).

Issued on: November 1, 1996.

Jolene M. Molitoris,

Federal Railroad Administrator.

Gordon J. Linton,

Federal Transit Administrator.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–28578 Filed 11–05–96; 8:45 am]

BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

Denial of Petition for a Defect or Noncompliance Investigation

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under 49 U.S.C. § 30162(a)(2) (formerly section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended).

By letter dated May 9, 1996, Frank J. Ciano, Esq., petitioned NHTSA's Administrator to investigate the alleged tendency of model year (MY) 1984–1996 Chevrolet Corvettes suddenly to pull to the left or right, on an intermittent basis, when the brakes are applied and to issue an Order concerning the notification and remedy of an alleged safety-related defect or noncompliance in those vehicles. Mr. Ciano stated that his firm represents the owner of a MY 1990 Chevrolet Corvette that exhibited an alleged intermittent brake pull problem. The petition was based in part upon a synopsis of 166 ''similar'' complaints that the petitioner obtained from NHTSA's Technical Reference Division in response to a Freedom of Information Act request.

Mr. Ciano originally reported the same brake pull complaint, alleging an initial failure date of August 1990, to NHTSA's Auto Safety Hotline on March 21, 1995. Neither the original complaint nor the petition alleged that an accident had occurred, and neither identified a specific vehicle subsystem or component that might have been involved in or caused the reported problem.

NHTSA's Office of Defects Investigation (ODI) reviewed the synopses of 166 ''similar'' complaints that the petitioner submitted, and concluded that only six of those complaints may be related to the alleged defect that the petitioner described. ODI also searched its computerized data system on MY 1984–1996 Chevrolet Corvettes for braking system complaints that might pertain to the alleged defect, and also for relevant steering and suspension system complaints. The search revealed the identical six other complaints that may be related to the alleged problem, all of which were received before July 1987. None of these six complaints involved a MY 1990 Corvette. Four involved 1984 models (including one which allegedly was involved in an accident); the other two were 1986 models. None of these six complaints identified a specific defect which could have caused the brake problem.

This number of complaints is extremely small, considering the fact that over 280,000 Corvettes were registered over the 13 model years covered by the petition. Accounting for exposure time, these vehicles have a complaint rate of about four complaints per million registered vehicle years, which is very low.

ODI's review also revealed that in June 1983, General Motors Corporation (GM) recalled 9,197 MY 1984 Corvettes for partially detached front brake calipers which could cause brake pull. Although this could not be confirmed because of the age of the complaints, this defect could have been the cause of the four complaints in ODI's database that involved MY 1984 Corvettes. There were no other relevant GM service bulletins in ODI's files.

The petition also requested that NHTSA issue an order requiring a recall for noncompliance with the applicable Federal motor vehicle safety standard (FMVSS). That standard is FMVSS No. 105, ''Hydraulic brake systems,'' which includes stopping distance performance requirements. NHTSA's Office of

Vehicle Safety Compliance tested a MY 1984 Corvette some years ago, and it met all of the requirements of FMVSS No. 105. From the facts presented, there is no reason to conclude that later Corvette models did not meet the standard.

Given the number of vehicles, the large number of exposure years, the absence of any complaints (other than the petitioner's) pertaining to the alleged problem in the last 9 years, and the absence of an identifiable defective component which could cause the alleged problem (other than the partially detached front brake caliper for which GM conducted its recall of MY 1984 Corvettes), the failure reported in the petition appears to be an isolated problem.

Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, and because there is no reasonable possibility that the requested order to notify and remedy an alleged defect or noncompliance in the braking systems of all MY 1984–1996 Corvettes would be issued at the conclusion of an investigation, the petition was denied.

Authority: 49 U.S.C. 30162(a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 31, 1996.

Michael B. Brownlee,

Associate Administrator For Safety Assurance.

[FR Doc. 96–28575 Filed 11–5–96; 8:45 am]

BILLING CODE 4910–59–P

federal register

Wednesday
November 6, 1996

Part II

Environmental Protection Agency

40 CFR Part 455

Pesticide Chemicals Category, Formulating, Packaging and Repackaging Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 455

[FRL–5630–9]

RIN 2040–AC21

Pesticide Chemicals Category, Formulating, Packaging and Repackaging Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final regulation limits the discharge of pollutants into navigable waters of the United States and into publicly owned treatment works (POTWs) by existing and new facilities that formulate, package and repackage pesticide products. This regulation covers two subcategories of the Pesticide Chemicals Point Source Category—Subcategory C: Pesticide Formulating, Packaging and Repackaging (PFPR) which includes PFPR facilities that also manufacture pesticide active ingredients (PFPR/Manufacturers) and Subcategory E: Agricultural Refilling Establishments. EPA estimates that there are approximately 2,600 facilities in the industry. This regulation establishes effluent limitations guidelines and standards under the Clean Water Act including ''best conventional pollutant control technology (BCT), and ''best available technology economically achievable (BAT)'' for existing direct dischargers, ''new source performance standards (NSPS)'' for new direct dischargers and ''pretreatment standards for existing and new indirect dischargers (PSES and PSNS)''. This regulation also amends and clarifies the limitations based on ''best practicable control technology (BPT)'' for direct discharging facilities.

Under the final rule refilling establishments (Subcategory E) will be required to achieve zero discharge of wastewater pollutants. The final regulation provides Subcategory C facilities (herein referred to as ''PFPR facilities'') a choice between zero discharge and the ''Pollution Prevention Alternative.'' This compliance alternative was developed in response to comments on the proposed rule from the industry and has received a large amount of industry support in comments on the supplemental notice. This structure provides a compliance option to facilities who agree to implement certain pollution prevention, recycle and reuse practices. Facilities choosing and implementing the pollution prevention alternative will receive a discharge allowance.

The final rule will benefit the environment by removing toxic pollutants (pesticide active ingredients and priority pollutants) from water discharges that have adverse effects on human health and aquatic life. EPA has estimated the compliance costs and economic impacts expected to result from the Zero Discharge/Pollution Prevention Alternative (i.e., Zero/P2 Alternative). The Agency has determined that the Zero/P2 Alternative will result in a similar removal of toxic pound equivalents per year (approximately 7.6 million toxic pound equivalents) as the zero discharge option alone. At the same time, the Zero/P2 Alternative is expected to result in a reduced annualized cost ($29.9 million in 1995), no facility closures and 150 moderate impacts. EPA has determined that both Zero Discharge and the Zero/P2 Alternative are economically achievable. However, EPA's addition of the pollution prevention alternative to achieving zero discharge provides benefits to the environment by minimizing the potential cross-media impacts that would otherwise occur from hauling and incinerating the non-reusable portion of PFPR wastewaters. The provision of an alternative compliance method also provides flexibility to industry in meeting the effluent limitations guidelines and standards.

DATES: This regulation shall become effective January 6, 1997. The information collection requirements contained in this rule are included in two separate Information Collection Request (ICR) documents. The NPDES/Compliance Assessment/Certification ICR (No. 1427.05) and the National Pretreatment Program (40 CFR part 403) ICR (No. 0002.08). OMB has not yet approved these ICRs; therefore, the information collection requirements contained in this rule are not effective until OMB has approved them. Once OMB has approved the ICRs, EPA will publish another notice in the Federal Register to announce OMB's approval and to amend 40 CFR Part 9 to indicate the OMB approval number. The compliance date for §§ 455.46 and 455.66 (PSES) is as soon as possible, but no later than November 6, 1999. The compliance dates for §§ 455.45 and 455.65 (NSPS) and §§ 455.47 and 455.67 (PSNS) are the dates the new sources commence discharging. Deadlines or compliance with §§ 455.42 and 455.62 (BPT), §§ 455.43 and 455.63 (BCT), and §§ 455.44 and 455.64 (BAT) are established in the National Pollutant Discharge Elimination System (NPDES) permits.

ADDRESSES: For additional technical information write to Ms. Shari H. Zuskin, Engineering & Analysis Division (4303), U.S. EPA, 401 M Street SW, Washington, D.C. 20460 or send e-mail to: zuskin.shari@epamail.epa.gov or call at (202) 260–7130. For additional economic information contact Dr. Lynne Tudor at the address above or by calling (202) 260–5834.

The complete record (excluding confidential business information) for this rulemaking is available for review at EPA's Water Docket; 401 M Street, SW, Washington, DC 20460. For access to Docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. for an appointment. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying.

The Technical Development Document [EPA–821–R–96–019], Economic Analysis [EPA–821–R–96–017] and Cost-Effectiveness Analysis [EPA–821–R–96–018] supporting today's final rule may be obtained by writing to the EPA Office of Water Resource Center (RC–4100), 401 M Street SW., Washington, DC 20460, or calling (202) 260–7786.

FOR FURTHER INFORMATION CONTACT: For additional technical information write or call Ms. Zuskin at (202) 260–7130. For additional information on the economic impact analyses contact Dr. Lynne G. Tudor at the above address or by calling (202) 260–5834.

EPA is preparing a PFPR Pollution Prevention Alternative Guidance Manual and a series of regional workshops to aid industry, permit writers and control authorities in implementing the final rule. A public announcement will be published in Federal Register regarding availability of the guidance manual and the dates and locations of the regional workshops.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are: (1) Those which generate process wastewater from the formulation, packaging and/or repackaging of pesticide products (excluding those pesticide active ingredients not covered by the rule); or (2) those which are agricultural refilling establishments. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	• Pesticide formulating, packaging and repackaging (PFPR) facilities; • PFPR facilities that also manufacture pesticide active ingredients; • Agricultural refilling establishments.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 455.40 and § 455.60 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Preamble Outline

I. Legal Authority
II. Background
A. Clean Water Act
B. Pollution Prevention Act
C. Updated Industry Overview
D. Final Rule
E. The Proposed Rule
F. The Supplemental Notice
III. Summary of Most Significant Changes from Proposal
A. Scope
1. Pesticide Active Ingredients (PAIs)
a. Sanitizer Active Ingredients and Pool Chemicals
b. Other Pesticide Active Ingredients
c. Liquid Chemical Sterilants
2. Wastewater Sources
B. Zero Discharge/Pollution Prevention Alternative Option
1. Cross Media Impacts and Incineration Issues
2. Cross-Contamination Policy
3. Request for De Minimis Discharge
4. Pollution Prevention Alternative
C. Applicability to On-Site and Stand-alone Research & Development (R&D) Laboratories
D. Clarification of Issues Concerning PFPR/Manufacturers
1. Stabilizing versus Formulating
2. On-site Incineration as Zero Discharge
3. Amending and Clarifying of BPT
E. Clarification of Refilling Establishments
F. RCRA Issues
IV. The Final Regulation
A. Pretreatment Standards for Existing Sources (PSES)
1. Pesticide Formulating, Packaging and Repackaging (Subcategory C)
2. Refilling Establishments (Subcategory E)
B. Best Practicable Control Technology Currently Available (BPT)
1. Pesticide Formulating, Packaging and Repackaging (Subcategory C)
2. Refilling Establishments (Subcategory E)
C. Best Available Technology Economically Achievable (BAT)
1. Pesticide Formulating, Packaging and Repackaging (Subcategory C)
2. Refilling Establishments (Subcategory E)
D. New Source Performance Standards (NSPS)
1. Pesticide Formulating, Packaging and Repackaging (Subcategory C)
2. Refilling Establishments (Subcategory E)
E. Pretreatment Standards for New Sources (PSNS)
1. Pesticide Formulating, Packaging and Repackaging (Subcategory C)
2. Refilling Establishments (Subcategory E)
F. Best Conventional Pollutant Control Technology (BCT)
1. Pesticide Formulating, Packaging and Repackaging (Subcategory C)
2. Refilling Establishments (Subcategory E)
V. Economic Considerations
A. Introduction
B. Review of the Proposed Regulation
1. Subcategory C: PFPR and PFPR/Manufacturers
2. Subcategory E: Refilling Establishments
C. Changes to the EIA Since Proposal: Issuance of the June 1995 Supplemental Notice
D. Assessment of Costs and Impacts for the Final PFPR Regulations
1. Summary of Economic Impact Analysis Methodology and Data
2. Estimated Facility Economic Impacts
a. Subcategory C: PFPR and PFPR/Manufacturers
b. Subcategory E: Refilling Establishments
4. Regulatory Effects Not Re-Estimated
5. Impacts of Pretreatment Standards for New Sources (PSNS) and New Source Performance Standards (NSPS)
a. Subcategory C: PFPR and PFPR/Manufacturers
(1) PSNS
(2) NSPS
b. Subcategory E: Refilling Establishments
6. Cost-Effectiveness Analysis
a. Subcategory C: PFPR and PFPR/Manufacturers
b. Subcategory E: Refilling Establishments
E. Regulatory Flexibility Act
1. Analysis of Impacts on Small Business Entities
2. Analysis of Impacts on Other Small Entities
VI. Unfunded Mandates Reform Act
VII. Executive Order 12866
VIII. Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)
IX. Paperwork Reduction Act
X. Water Quality Analysis
XI. Non-Water Quality Environmental Impacts
A. Air Pollution
B. Solid Waste
C. Energy Requirements
XII. Regulatory Implementation
A. Implementation of the Limitations and Standards
1. Pesticide Formulating, Packaging and Repackaging (Subcategory C)
2. Refilling Establishments (Subcategory E)
B. Upset and Bypass Provisions
C. Variances and Modifications
1. Fundamentally Different Factors Variances
2. Removal Credits
D. Analytical Methods
Appendix A—List of Abbreviations, Acronyms and Other Terms Used In This Document

I. Legal Authority

This final regulation establishes effluent guidelines and standards of performance for the Pesticide Formulating, Packaging and Repackaging Subcategories of the Pesticide Chemicals Point Source Category under the authorities of sections 301, 304, 306, 307, and 501 of the Clean Water Act (''the Act''), 33 U.S.C. 1311, 1314, 1316, 1317, and 1361.

In accordance with 40 CFR part 23, this regulation shall be considered promulgated for purposes of judicial review at 1 p.m. Eastern time on November 20, 1996. Under section 509(b)(1) of the Act, judicial review of this regulation can be had only by filing a petition for review in the United States Court of Appeals within 120 days after the regulation is considered promulgated for purposes of judicial review. Under section 509 (b)(2) of the Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

II. Background

A. Clean Water Act

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters,'' (section 101(a)). To implement the Act, EPA is to issue effluent limitations guidelines, pretreatment standards and new source performance standards for industrial dischargers. These guidelines and standards are summarized in the proposed regulation at 59 FR 17850, 17851–52 (April 14, 1994).

Section 304(m) of the Clean Water Act (33 U.S.C. 1314(m)), added by the Water Quality Act of 1987, requires EPA to establish schedules for (1) reviewing and revising existing effluent limitations guidelines and standards (''effluent guidelines''), and (2) promulgating new effluent guidelines. On January 2, 1990, EPA published an Effluent Guidelines Plan (55 FR 80), in which schedules were established for developing new and revised effluent guidelines for several industry categories. One of the industries for which the Agency established a schedule was the Pesticide Chemicals Point Source Category.

Natural Resources Defense Council, Inc. (NRDC) and Public Citizen, Inc.,

challenged the Effluent Guidelines Plan in a suit filed in U.S. District Court for the District of Columbia (*NRDC et al* v. *Reilly,* Civ. No. 89–2980). The plaintiffs charged that EPA's plan did not meet the requirements of sec. 304(m). A Consent Decree in this litigation was entered by the Court on January 31, 1992. The terms of the Consent Decree are reflected in the Effluent Guidelines Plan published on September 8, 1992 (57 FR 41000). This plan states, among other things, that EPA will propose and take final action on effluent guidelines for the formulating, packaging and repackaging subcategories of the pesticide chemicals category by dates certain.

B. The Pollution Prevention Act

The Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101 et seq., Pub. L. 101–508, November 5, 1990) ''declares it to be the national policy of the United States that pollution should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or release into the environment should be employed only as a last resort* * *'' (Sec. 6602; 42 U.S.C. 13101(b). In short, preventing pollution before it is created is preferable to trying to manage, treat or dispose of it after it is created. This effluent guideline was reviewed for its incorporation of pollution prevention as part of this Agency effort.

According to the PPA, source reduction reduces the generation and release of hazardous substances, pollutants, wastes, contaminants or residuals at the source, usually within a process. The term source reduction ''include[s] equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.'' The term ''source reduction'' does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to or necessary for the production of a product or the providing of a service.'' 42 U.S.C. 13102(5). In effect, source reduction means reducing the amount of a pollutant that enters a waste stream or that is otherwise released into the environment prior to out-of-process recycling, treatment, or disposal.

The PPA directs the Agency to, among other things, ''review regulations of the Agency prior and subsequent to their proposal to determine their effect on source reduction'' (Sec. 6604; 42 U.S.C. 13103(b)(2). This directive led the Agency to implement a pilot project called the Source Reduction Review Project that would facilitate the integration of source reduction in the Agency's regulations, including the technology-based effluent guidelines and standards.

C. Updated Industry Overview

The pesticide formulating, packaging and repackaging industry is made up of two distinct types of activities. These activities result in subcategorization for purposes of this rulemaking. The two subcategories are referred to as:

- Subcategory C: Pesticides formulating, packaging and repackaging (PFPR) including pesticides formulating, packaging and repackaging occurring at pesticides manufacturing facilities (PFPR/Manufacturer) and at stand-alone PFPR facilities; and
- Subcategory E: Repackaging of agricultural chemicals at refilling establishments (Refilling Establishments).

The pesticide formulating, packaging and repackaging industry covered by this rulemaking is made up of an estimated 2,631 in-scope facilities. These facilities are located throughout the country, with greater concentrations of refilling establishments located in the Midwestern and southeastern states to serve the agricultural market.

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires that any substance intended to prevent, destroy, repel or mitigate any pest must be registered with EPA and bear a label directing the safe use of the product. 7 U.S.C. 136a. In addition, production of all pesticide products must be reported annually to EPA. 7 U.S.C. 136e. Thus, EPA has extensive data on the contents of pesticide products, their annual production, who formulates, packages or repackages these products and the uses for which these products are registered. EPA's Office of Water made extensive use of this data in its analysis of the pesticide formulating, packaging and repackaging industry.

Based on 1988 FIFRA establishment registration data, EPA identified the pesticide formulating, packaging, and repackaging facilities in the United States that were using one or more of the active ingredients that were the focus of the Pesticide Manufacturing rulemaking. These pesticide active ingredients are referred to as the ''272 PAIs'' and were the focus of the survey questionnaire for the PFPR rule 1988 data collection.[1] EPA sent out approximately 700 questionnaires using a stratified random sample of these facilities. Based on these survey results, EPA estimates that for all of the PAIs covered by the final rule (in-scope 272 and non-272 PAIs), that in 1988 there were approximately 1,497 facilities involved in formulating, packaging and repackaging pesticide products (of which 413 facilities processed non-272 PAIs only) and approximately 1,134 refilling establishments.[2]

Included in the 1,497 PFPR facilities, there were 48 pesticide manufacturing facilities in the pesticide chemicals manufacturing rulemaking survey database (58 FR 50637, September 28, 1993) that also formulated and packaged pesticide products containing any of the 272 PAIs which were the focus of that rulemaking. A detailed description of the development of this profile is contained in Section 3 of the Technical Development Document [EPA–821–R–96–019] for this final rule.

Pesticide formulating is the mixing/diluting of one or more PAIs with active or inert ingredients, without a chemical reaction, to obtain a manufacturing use or end use product (see § 455.10 of the final regulation for the definitions of formulating, packaging, repackaging and refilling establishment). Pesticide formulations take all forms: Water-based liquid; organic solvent-based liquid; dry products in granular, powder, solid forms; pressurized gases; and aerosols. The formulations can be in a concentrated form requiring dilution before application or can be ready to apply. The packaging of the formulated pesticide product is dependent on the type of formulation. Liquids generally are packaged into jugs, cans, or drums; dry formulations generally are packaged into bags, boxes, drums, or jugs. Pressurized gases are packaged into cylinders. Some formulations are packaged into aerosol cans.

As described above, the formulating, packaging and repackaging industry produces products in different forms. EPA has observed formulating, packaging or repackaging performed a number of different ways ranging from very sophisticated and automated

[1] All remaining pesticide active ingredients are referred to in today's notice as the ''non-272 PAIs.'' In addition, not all non-272 PAIs are in the scope of this rulemaking.

[2] EPA has not re-estimated the number of refilling establishments based on both 272 PAIs and non-272 PAIs because EPA believes that there would not be any refilling establishments that use only non-272 PAIs.

formulation and packaging lines to completely manual lines. In general, for liquid products the process involves mixing the active ingredient with liquid inert ingredients in a tank and then transferring the product to containers. For dry products, the active ingredient may be sprayed in liquid form onto a dry substrate or it may be mixed in dry form. Dry products may undergo processes for mixing, grinding, sifting and finally packaging. The formulating process for aerosol products is the same as for liquid products, but the packaging is more complex and involves filling the container, capping it, drawing a vacuum on the container, adding propellant under pressure, and sealing the container.

Some other types of pesticide products include collars to repel and kill fleas and ticks; pesticides that are micro-encapsulated; and pesticides that are formed into solid shapes.

The pesticide industry is changing and efforts are being made to improve products to meet demands of consumers for less toxic and safer pesticides. For example, water-based solutions are gradually replacing organic solvents in liquid pesticide formulations. Developments in packaging also are underway. For example, the growing use of water soluble packages can reduce worker exposure to pesticides and minimize problems with disposal of packaging.

The refilling establishments represent a newer population of facilities that was identified in the Agency's Survey of Pesticide Producing Establishments. EPA discovered a significant population of facilities that reported repackaging only. These facilities are retail and wholesale dealers of agricultural chemicals and farm supplies. These facilities repackage pesticides, usually herbicides, into refillable containers which are used to transport the pesticide to the site where it is applied.

The use of refillable containers began to grow during the 1980's (and became widespread in the 1990's) to reduce the number of empty pesticide containers needing to be disposed of by farmers. In general, registrants distribute large undivided quantities of pesticides to dealerships (refilling establishments) where the products are stored in large bulk tanks. The dealer then repackages the pesticide from the bulk storage tanks to portable minibulk containers that generally have capacities of about 110 gallons. The increased use of refillable containers led to an increased amount of herbicide stored in bulk quantities and the need to have a secondary containment system built around the bulk storage tanks. Separate from this rulemaking, EPA has proposed a regulation under FIFRA that sets standards for such secondary containment structures (59 FR 6712; February 11, 1994). In addition, many states (22 have/are developing secondary containment regulations) now require secondary containment for bulk pesticide storage and dispensing operations.

D. Final Rule

Today's final rule sets forth an innovative and flexible, yet environmentally protective, approach for the establishment of effluent limitations and pretreatment standards under the Act. For Subcategory C—facilities that formulate, package, or repackage pesticides—EPA is establishing effluent limitations and pretreatment standards which allow each facility to choose to meet a zero discharge limitation or comply with a pollution prevention alternative that authorizes discharge of PAI and priority pollutants after various pollution prevention practices are followed and treatment is conducted as needed (now characterized as the Zero/P2 Alternative option). This rule also establishes a zero discharge limitation and pretreatment standard for agricultural pesticide refilling establishments (Subcategory E).

EPA had originally proposed a zero discharge limitation and pretreatment standard for PFPR facilities. 59 FR 17850 (April 14, 1994). EPA received comment which argued that the proposed zero discharge limitation and pretreatment standard would result in adverse non-water quality environmental impacts and that the scope of the proposed rule should be refined in a variety of ways. Various members of the PFPR community commented that the Agency should adopt a final rule which would require facilities to engage in pollution prevention practices and thereafter discharge de minimis levels of PAI and priority pollutants in the process wastewaters. Upon receiving these comments, EPA published a Supplemental Notice which described the Zero/P2 alternative option in addition to some potential changes in the scope of the rule. 60 FR 30217 (June 8, 1995).

Today's rule adopts the Zero/P2 alternative option for PFPR facilities and changes the scope by reducing the number of PAIs and wastewater sources which are addressed. Under the Zero/P2 option each owner or operator of a PFPR facility in Subcategory C will make an initial choice of whether the facility will meet zero discharge or comply with the P2 Alternative. This choice can be made on a product family/process line/process unit basis rather than a facility wide basis. If the zero discharge option is chosen, the facility owner/operator will need to do whatever is necessary, *e.g.*, wastewater reuse or recycle, either with or without treatment, incineration on-site or haul the wastewater for incineration off-site or underground injection, so that zero discharge of PAIs and priority pollutants in the wastewater is achieved.

If the P2 Alternative portion of the option is chosen for a particular PAI product family/process line/process unit, then the owner/operator of the facility must agree to comply with the P2 practices identified in Table 8 to Part 455 of today's rule for that PFPR family/line/unit. This agreement to comply with the P2 practices and any necessary treatment would be contained in the NPDES permit for direct discharging PFPR facilities or in an individual control mechanism with the control authority, *i.e.*, the POTW, for indirect discharging PFPR facilities (see 403.12(a) for the definition of control authority). In general, PFPR facilities choosing the P2 Alternative need only to submit a small portion of the paperwork to a permitting or control authority (e.g., initial and periodic certification statements). The on-site compliance paperwork is described in Part XII.A.1 of today's notice.

Today's rule changes the scope of the proposed rule in the following ways. First, the rule does not cover PAIs which are sanitizers, including pool chemicals. Also certain liquid chemical sterilants that are used on critical or semi-critical medical devices are not covered. Second, the rule does not apply to PAIs that are microorganisms, such as *Bacillus thuringiensis* (B.t.). Third, the rule does not apply to two groups of PAIs that are mixtures—Group 1 Mixtures include substances which pose no risks and Group 2 Mixtures include substances whose treatment technology has not been identified. Fourth, the pretreatment standards portion of the rule does not apply to one PAI and three priority pollutants which EPA has determined will not pass through or interfere with POTWs. Today's rule also does not cover inorganic wastewater treatment chemicals. With regard to wastewater sources, EPA has decided not to cover storm water at PFPR facilities or at refilling establishments through this rule. In addition, there are a few other wastewater sources such employee showers, on-site laundries, fire equipment test water, eye washes and safety showers, certain Department of Transportation (DOT) aerosol leak test

bath water and laboratory water that are not considered process wastewater under the final rule.

EPA believes that this rule is an important example of how the Agency is re-inventing environmental regulation. The Zero/P2 alternative option being promulgated today is cheaper for the regulated community to comply with than the proposed zero discharge standard. The Zero/P2 alternative option is smarter than the proposed zero discharge standard because it incorporates flexibility in choosing which option is best for a particular product line. The Zero/P2 alternative option is cleaner than the proposed zero discharge standard because the P2 Alternative reduces cross-media impacts to the environment while still achieving, virtually, the same level of pollutant removal from discharges of PFPR process wastewaters (see Section XI for a discussion on the non-water quality impacts associated with the final rule).

E. The Proposed Rule

On April 14, 1994 (59 FR 17850), EPA proposed effluent limitations guidelines and standards for the control of wastewater pollutants from the Pesticide Formulating, Packaging and Repackaging (PFPR) Industry. The proposed rulemaking covered two subcategories. Subcategory C included stand-alone PFPR facilities as well as formulating, packaging and repackaging at pesticide manufacturing facilities (PFPR/Manufacturers). Subcategory E, as proposed, included repackagers of agricultural pesticides at refilling establishments (''refilling establishments''). These proposed guidelines were not intended to apply to the production of pesticide products through an intended chemical reaction (i.e., pesticide manufacturing). (For definitions used in the final rule, see § 455.10 of the final regulation of this notice.) Furthermore, as discussed in Section 1 of the proposal Technical Development Document [EPA–821–R–94–002], Subcategory E (refilling establishments) of these guidelines was not intended to apply to wastewaters generated by custom blending or custom application operations when performed independently or at refilling establishments. The proposed rulemaking would have established a zero discharge limitation for wastewater pollutants from the formulating, packaging and repackaging of almost all pesticide active ingredients for both subcategories covered by this regulation. Only a small number of PAIs were not completely covered by the proposed zero discharge, as a result of disproportionate economic impacts to small facilities.

Due to these impacts, EPA proposed a partial exemption from these guidelines for the exterior wastewaters [3] from small sanitizer facilities. Small sanitizer facilities were defined as those facilities which formulate, package or repackage 265,000 lbs/yr or less of all registered products containing one or more sanitizer active ingredients (listed in Table 8 of the proposed regulation) on sanitizer-only production lines. The production cutoff of 265,000 lbs/yr represents the production level (of these sanitizer products) at the largest facility that would experience economic impacts if there was no exemption for non-interior wastewater sources. (See Section III.A.1 of this notice for a description of revisions made to this exemption).

In addition to the partial exemption given to ''small sanitizers,'' EPA proposed to exempt sodium hypochlorite from coverage under the pretreatment standards for new and existing sources (PSES and PSNS). (See Section III.A.1 of this notice for a description of revisions made to this exemption). EPA also proposed to exempt wastewater generated by on-site employee showers and laundries and from the testing of fire protection equipment from the applicability of these effluent guidelines and standards. In general, these wastewater sources were excluded from the proposed regulation because of worker health and safety concerns. (See Section IX.A of the proposed rule or Section 5 of the Final Technical Development Document (TDD) [EPA–821–R–96–019] for a more detailed discussion of wastewater sources excluded from regulation).

EPA based the proposed zero discharge limitation for Subcategory C on pollution prevention, recycle/reuse and, when necessary, treatment through the Universal Treatment System (UTS) for reuse. EPA visualized the UTS as a flexible system consisting of a variety of treatment technologies that have been determined to be effective for treating PFPR wastewaters. In calculating compliance costs, EPA included costs for various combinations of treatment technologies consisting of emulsion breaking, hydrolysis, chemical oxidation, metals precipitation and carbon adsorption. EPA also included costs for contract hauling treatment residuals (sludges) from the UTS for incineration. Because of the estimates of reduced wastewater volumes based on the increase in reuse/recycle practices, the overall volume of wastewaters being contract hauled off-site for incineration was not expected to increase. Thus, EPA did not include additional costs for contract hauling of PFPR wastewaters in the original proposal. Based on comments, revised costs for the proposed zero discharge option were estimated for the Supplemental Notice (60 FR 30217; June 8, 1995). (See the Final Cost and Loadings Report (September 1996) in the public record for a discussion on the changes to the costing methodology).

EPA based the zero discharge limitation for Subcategory E on reuse of wastewater as makeup water for application to fields, in accordance with the product label.

The subject of the comments on the proposed rule spanned a variety of topics, including changes to the scope of the regulation, EPA's pesticide cross-contamination policy and its effect on the industry's ability to meet zero discharge, increased cross-media impacts due to contract hauling of wastewater for incineration to meet zero discharge, perceived conflicts with the Resource Conservation and Recovery Act (RCRA) requirements, and requests for a discharge allowance when following specific pollution prevention practices. See Section III of today's notice for a summary of the changes that were made to the proposal in response to comment.

F. The Supplemental Notice

In response to many of the comments on the proposed rule, EPA published a supplemental notice (60 FR 30217) in the Federal Register on June 8, 1995. EPA published the Supplemental Notice to obtain public comment on two major topics and several smaller issues. The first major topic for which EPA requested comments was related to the scope and applicability of the rulemaking. Commenters on the proposed rule had requested that EPA exempt certain pesticide active ingredients (PAIs) and certain wastewater sources from the scope of the final rule.

EPA requested comment on expansion of the ''sanitizer exemption'' to exempt additional sanitizer active ingredients, remove the exemption's production limit, and to include both interior and exterior wastewater sources in the revised exemption. EPA also requested comment on the exclusion of some other chemicals including pool chemicals, microorganisms, mixtures

[3] At the time of proposal, exterior wastewaters included: Exterior equipment cleaning water, floor wash, leak and spill cleanup water, safety equipment cleaning water, DOT (Department of Transportation) aerosol test bath water, air pollution control scrubber water, laboratory rinsate and contaminated precipitation runoff.

and pollutants that have been determined to not pass through a POTW. (See Section III.A.1 of today's notice for a discussion of these exemptions; also see Comment Response Document in the public record).

In addition to the exclusion of certain pesticide active ingredients, EPA solicited comment on the partial or full exclusion of certain wastewater sources. These wastewater sources included aerosol leak test bath water, safety equipment cleaning water, laboratory equipment rinse water, and storm water.

The second major topic for which EPA solicited comments was a regulatory option comprised of two alternatives between which industry could choose: (1) Achieving zero discharge or (2) incorporating specific pollution prevention practices and treatment technologies at the facility and allowing a discharge of very small quantities of pollutants. This combined regulatory approach is referred to as the Zero Discharge/Pollution Prevention Alternative (Zero/P2 Alternative).

In particular, the supplemental notice requested comments on the structure of the Zero/P2 Alternative, the extent of best professional judgement (BPJ) allowed, the specific practices included, the modifications allowed and the details of regulatory implementation. Overall, the comments received on the Supplemental Notice were overwhelmingly supportive of the Zero/P2 Alternative. Furthermore, EPA has incorporated many of the suggestions offered in the comments into the Zero/P2 Alternative found in today's notice (see Section XII of today's notice for a discussion of regulatory implementation).

The other issues for which EPA solicited comments in the supplemental notice included: the applicability of the rule to PFPR research and development facilities and stand alone direct discharging facilities, the concentrations found in second and third rinses of a triple rinse, and the expected burden to the permitting authorities.

III. Summary of Most Significant Changes from Proposal

This section describes the most significant changes to the rule since proposal. Many of these changes have resulted from the comments that are discussed in more detail in the Comment Response Document which is contained in the record for this rulemaking. This section will summarize the changes in the rule concerning: The scope of the rule, the addition of the Zero/P2 Alternative, applicability of the rule to research and development facilities, clarification of issues for PFPR/Manufacturers, modification of the existing BPT for direct dischargers, clarification of the definition and applicability for refilling establishments, and RCRA issues.

The major comments received on the supplemental notice are described in detail in the Comment Response Document in the public record. Those comments included: Support for the pollution prevention alternative, requests for self-certification as the method of implementation for the final rule, comments on the specific practices listed in the P2 Alternative, and support for the use of Best Professional or Engineering Judgement (BPJ or BEJ) by the permitting or control authority, respectively.

A. Scope

At the time of proposal, the scope of the rule would have included the formulating, packaging and repackaging of all pesticide active ingredients (with the exception of sodium hypochlorite and the partial exemption of small sanitizers) and a wide variety of associated wastewater sources. Since the proposal, EPA has refined the scope concerning pesticide active ingredients (PAIs) and wastewater sources in response to comments on both the proposed rule and the supplemental notice. The following discussion summarizes these revisions. See the Comment Response Document in the rulemaking record for a more detailed discussion on the changes.

1. Pesticide Active Ingredients (PAIs)

a. Sanitizer Active Ingredients and Pool Chemicals

Several changes have been made to the original ''sanitizer exemption,'' as proposed. In the proposed rule EPA placed small sanitizer facilities in their own subgroup within Subcategory C. However, for the final rule, most sanitizer products have been excluded from Subcategory C (see § 455.10 of the final regulation of today's rule for the definition of sanitizer products). This exclusion is based on a number of factors. The partial exemption for small sanitizer facilities that was included in the proposal was largely based on disproportionate economic impacts. However, based on comments EPA has expanded the sanitizer exemption to include additional chemicals for the following reasons: (1) Sanitizer products are formulated for the purposes of their labeled end use to ''go down the drain;'' (2) sanitizer active ingredients are more likely to be sent to POTWs in greater concentrations and volumes from their labeled end use than from rinsing formulating equipment at the PFPR facility; (3) biodegradation data received with comments on some of these sanitizer active ingredients supports the hypothesis that they do not pass through POTWs; (4) these sanitizer active ingredients represent a large portion of the low toxicity PAIs considered for regulation at the time of proposal; and (5) many sanitizer solutions containing these active ingredients are cleared by the Food & Drug Administration (FDA) as indirect food additives under 21 CFR 178.1010.

The exemption now covers both interior and exterior wastewater sources. In addition, the proposed list of 28 sanitizer active ingredients has been expanded to incorporate the pool chemicals exemption as well as to include home use, institutional and most commercial antimicrobial active ingredients, with the exception of liquid chemical sterilants (including sporicidals), industrial preservatives and water treatment micro biocides other than pool chemicals (as defined in § 455.10 of today's regulation). Certain liquid chemical sterilant products are exempt from today's rule, as discussed in Section III.A.1.c. Furthermore, based on comments, EPA has eliminated the use of a list to define the exempted sanitizer active ingredients and is employing a written definition (see § 455.10 of the final regulation for the definition used in today's final rule).

As mentioned above, EPA has combined the pool chemicals exemption into the sanitizer exemption. This was based on comments on the Supplemental Notice and information gathered in post-proposal site visits (60 FR 30219). EPA believes that a large portion of the pool chemicals that were being reviewed for exemption can and should also be classified as sanitizer active ingredients. In order to avoid possible confusion, EPA has decided to combine these two groups and has incorporated pool chemicals into the definition for sanitizer active ingredients. In addition to this change, the pool chemicals exemption has undergone another refinement. Under the proposed rule, the only pool chemical that was exempt was sodium hypochlorite. Under the final rule, EPA has added several other chemicals to the exemption. These chemicals include calcium hypochlorite, lithium hypochlorite, potassium hypochlorite, chlorinated isocyanurate compounds and halogenated hydantoins. As with the sanitizer chemicals, these chemicals are not exempted via a list, but are instead exempted by definition. See § 455.10 of the final regulation.

b. Other Pesticide Active Ingredients

EPA has excluded several other groups of active ingredients from the final regulation. As discussed in the Supplemental Notice and in the Comment Response Document, microorganisms that are considered PAIs under FIFRA will not be covered by this regulation and will be excluded by definition. Based on the available information on the formulation, packaging and repackaging of such microorganisms and the generation and characteristics of wastewaters from such operations, EPA believes these pesticides are not formulated in a similar fashion as other PAIs covered by this rule. Microorganisms which have registered pesticidal uses are generally created through a fermentation process, similar to those found in some food processing or pharmaceutical plants. Fermentation is a biological process, whereas other pesticides are manufactured and formulated through chemical and physical processes.

In addition, almost all the microorganisms registered as pesticide products are exempt from the requirement of obtaining a (residue) tolerance for pesticides in or on raw agricultural commodities (40 CFR 180.1001). Under Part 180 Subpart D—Exemptions From Tolerance—it states that ''an exemption from a tolerance shall be granted when it appears that the total quantity of the pesticide chemical in or on all raw agricultural commodities for which it is useful under conditions of use currently prevailing or proposed will involve no hazard to the public health.''

EPA has also excluded a group of chemicals, referred to in today's notice as ''Group 1 mixtures.'' This group includes many herbs and spices (e.g., rosemary, thyme, peppermint, cloves...), foods/food constituents, plants/plant extracts (excluding pyrethrins) and many chemicals that are considered to be GRAS (generally recognized as safe) by the Food and Drug Administration as well as those products exempt from FIFRA under 40 CFR 152.25 (61 FR 8876; March 6, 1996)(see § 455.10 of the final regulation of today's notice for the definition of Group 1 mixtures).

There is a second group of mixtures, ''Group 2 mixtures,'' that are being excluded from the regulation. EPA has not been able to transfer treatability data for many of these mixtures because the characteristics that EPA uses for technology transfer are not easily identified (e.g., molecular weights, solubilities and aromaticity). For example, within a given structural group, PAIs that are aromatic, have high molecular weights or low solubility in water have been found to be amenable to activated carbon adsorption. However, when such characteristics cannot be identified, EPA cannot transfer treatability data for carbon adsorption.

EPA previously considered reserving this group of chemicals for regulation at a later time; however, after further research EPA has decided to exclude these chemicals from the scope of the final rule. One reason, as mentioned above, is that the treatability data is insufficient and to obtain treatment performance data on these mixtures would be very difficult due to the inability to transfer data. Also, most of these chemicals in pesticide products are used as inert ingredients rather than active ingredients and the total volume of these mixtures in use in pesticide products is very small (i.e., Group 2 Mixture PAIs only represent approximately eight percent of all of pesticide products). EPA was not able to develop a definition to cover all the chemicals in this group due to the lack of homogeneity between the chemicals. Therefore, Group 2 mixtures will be excluded from the scope of the final rule by list as opposed to definition (see Table 9 to Part 455 of the final regulation).

There are two other groups of chemicals that are being excluded from the final rule: Inorganic wastewater treatment chemicals and chemicals that do not pass through POTWS. Based on comments and data collected for the Treatability Database Report and its Addendum (see the public record for the rulemaking), EPA has decided to exclude, from the scope of the final regulation, inorganic chemicals that are commonly used as wastewater treatment chemicals (e.g., ferric sulfate, potassium permanganate, sulfuric acid, carbon, chlorine, etc...). See Comment Response Document for a discussion on the rationale behind this exclusion. Many of these chemicals are also excluded under the sanitizer/pool chemicals exemption. Again, the use of a definition will be employed to exclude these chemicals. (See § 455.10 of today's final rule for the definition). The four chemicals which are excluded from the pretreatment standards because EPA determined that they do not pass through POTWs are phenol, 2-chlorophenol, 2,4-dichlorophenol and 2,4-dimethylphenol. Phenol, as a constituent in sanitizer products, is excluded from the rule as it was excluded under the proposed sanitizer exemption due to disproportionate economic impacts. See the Comment Response Document in the rulemaking record for a further discussion on the decision to exclude these wastewater treatment chemicals and the chemicals that do not pass through.

c. Liquid Chemical Sterilants

Section 221 of the Food Quality Protection Act of 1996 (Pub. L. 104–170) amended the definition of ''pesticide'' in FIFRA to exclude liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) which are used on a critical or semi-critical device (as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (''FFDCA'') (21 U.S.C. 321). *See* 7 U.S.C. 136(u), as amended. Because Congress has chosen to exclude such sterilant products from the definition of ''pesticide'', EPA has modified the applicability provisions of this rule so that the effluent limitations and pretreatment standards do not cover the wastewater discharges from the formulation, packaging, and/or repackaging of liquid chemical sterilants for use on critical devices or semi-critical devices as these terms are now defined in FFDCA section 201 and FIFRA section 2(u). See *40* CFR 455.40(f). However, facilities which formulate, package, or repackage products containing liquid chemical sterilants into other types of products, *e.g.*, pesticide products which are *not* used on critical or semi-critical devices introduced directly into the human body, should be aware that the wastewaters resulting from the formulating, packaging, and repackaging activities are covered by this rule.

2. Wastewater Sources

In the proposal, EPA excluded water from on-site employee showers, laundries and testing of fire protection equipment (59 FR 17903). EPA has added several other wastewater sources to the exclusion. These include: Storm water,[4] water used for testing and emergency operation of safety showers and eye washes; DOT leak test bath water from non-continuous overflow baths (i.e., batch baths) where no cans have burst from the time of the last water change out; and water used for cleaning analytical equipment and glassware and for rinsing the retain sample container in on-site laboratories. However, the initial rinse of the retain sample container is considered a process wastewater source for the final regulation. (See the Comment Response

[4] Storm water at PFPR facilities and Refilling Establishments is covered by the Storm water Regulations Phase I and II, respectively.

Document for a discussion on the exclusion of these wastewaters).

B. The Zero Discharge/Pollution Prevention Alternative Option

Commenters submitted a variety of comments which prompted the Agency to consider the Zero/P2 Alternative option. The most significant are summarized below. (See the Comment Response Document in the public record for additional summary of comment responses and responses to individual comments.)

1. Cross Media Impacts and Incineration Issues

Commenters on the proposed rule believe that the zero discharge standard, as proposed, would lead to a large increase in cross-media impacts because the majority of facilities would be forced to contract haul dilute non-reusable wastewaters off-site for incineration (or other off-site disposal). Commenters questioned the goal of achieving zero discharge when it leads to an increase in cross-media impacts.

At the time of the proposed rule, EPA believed that the proposed approach to achieving ''zero discharge'' of wastewater pollutants from PFPR facilities would result in increasing the recycling, reuse and recovery of wastewater pollutants. In addition, EPA based the requirements on the best practices observed at PFPR facilities studied as part of the development of the rule. However, based on the concerns raised by commenters about the potential cross-media impacts EPA decided to seek comment on the pollution prevention (P2) alternative to zero discharge in order to reduce these impacts (60 FR 30217). The P2 Alternative to the zero discharge standard will allow a discharge of wastewater after waste discharge reductions are achieved using certain flow conservation, recycle or reuse and, under certain circumstances, wastewater treatment practices. Should a facility choose to comply with the regulation through the P2 Alternative the need for off-site disposal is reduced; thus, the cross-media effects are reduced.

For those facilities that choose to comply with the final rule by achieving zero discharge, EPA has revised the cost model. The revisions add costs to account for increased volumes of non-reusable wastewaters being contract hauled for off-site incineration (see the Final Cost and Loadings Report (September 1996) for a discussion on changes to the costing methodology). The revised cost estimates for the industry to achieve zero discharge of wastewater pollutants, including the additional contract hauling costs, are still found to be economically achievable for the industry. (See Section V of today's notice for a discussion on the economic achievability of the final regulation.)

Commenters also commented that a significant decrease in incineration capacity and an increased cost would result from EPA's combustion policy which may limit the permitting of new incinerators or the expansion of capacity of existing incinerators. EPA has addressed this concern in two ways. First, through the use of the P2 Alternative to zero discharge, this final rule will allow for the discharge of much of the non-reusable PFPR wastewaters that might otherwise be contract hauled for incineration. Second, as mentioned above, EPA has revised its costing methodology for the zero discharge option to include off-site incineration of these additional non-reusable wastewaters and has still found the rule to be economically achievable by the industry. In addition, EPA does not believe an additional burden will be placed on incineration capacity. This is supported by a survey, ''Hazardous Waste Incineration 1994,'' published in the *EI Digest*, June 1994 which showed that while there is increasing demand for incineration there is still great untapped capacity. The surveyed commercial incinerators believe that market saturation, competition with cement kilns and successful waste minimization efforts by industry account for the unused capacity and the decline in the average price for incineration. [See the memo in the record entitled *Incineration Costs for PFP Facilities*, September 30, 1994.]

2. Cross-Contamination Policy

Commenters also stated that complete reuse, as proposed, is not achievable because of EPA's existing policy on cross-contamination of pesticide products. At the time of proposal EPA was using a standard of zero for cross-contamination. This meant that an active ingredient may not be present at *any* concentration in a FIFRA registered product where it is not listed on the confidential statement of formula (CSF) of that product or reported to EPA as an impurity. During the study phase for the development of the proposal, the industry practice was to triple rinse containers and equipment. Because of recent EPA enforcement actions, industry commented that additional rinsing is being used to comply with the cross-contamination policy.

Commenters believe that more aggressive enforcement of a zero-standard cross-contamination policy would increase wastewater volumes to the point that it would not be feasible to reuse these volumes. The commenters also believe that these factors were not taken into account when the proposed zero discharge regulation was developed. According to commenters, a facility that performs a triple rinse of the equipment interiors when changing from formulating one product to another, may have to perform additional rinses (e.g., a five times rinse) to ensure a level of zero cross-contamination. Commenters stated that even in cases where the rinsate from the ''triple rinse'' could be stored for use in a future formulation, the additional rinses create more rinsewater than could be reused and that these very dilute wastewaters would have to be contract hauled for off-site disposal to achieve zero discharge. Commenters believe this additional contract hauling of wastewater not only makes the proposed regulation economically unachievable, but increases the opportunity for cross-media impacts.

At the time of the supplemental notice EPA was reviewing the pesticide cross-contamination policy. EPA has since published a Notice of Availability on a more risk-based draft policy in the Federal Register for public comment (61 FR 1928; January 24, 1996) and expects publication of the final policy by the end of 1996. In addition, EPA has created the P2 Alternative to zero discharge in this rulemaking which would allow formulators, packagers and repackagers to discharge these dilute non-reusable rinses following the use of specified pollution prevention practices.

3. Request for De Minimis Discharge

Due to the concerns described above, many commenters requested a discharge allowance for these excess or non-reusable wastewaters. Commenters suggested that they would be willing to agree to use specified pollution prevention practices and pointed to the pollution prevention, recycle and reuse practices described in the preamble to the proposal (59 FR 17866) and the technical development document for the proposal [EPA #821–R–94–002]. In some cases commenters provided examples of possible additional practices they would be willing to agree to use. EPA believes that a discharge allowance (''pollution prevention allowable discharge'') may provide an added incentive to increase the use of pollution prevention and recycle practices, while ensuring that facilities are maximizing pollutant reductions in the wastewater while minimizing cross-media effects. Therefore, in response to the request for

a ''de minimis'' discharge alternative, EPA has incorporated the P2 Alternative into the zero discharge standard for the final regulation.

4. Pollution Prevention Alternative

Several changes have been made to the P2 Alternative since it was first presented in the Supplemental Notice. The most significant revision is that a facility will be able to choose between achieving zero discharge or an allowable discharge (using the P2 Alternative) on a product family/process line/process unit basis.

In the supplemental notice, this choice was to be made on a facility wide basis. However, based on comments, EPA believes that the zero/P2 alternative option will be most practical if facilities can choose zero discharge for those processes/process units at their facility that are most amenable to zero discharge, while choosing the P2 Alternative for other portions of the facility for which the pollution prevention practices are most suited. EPA believes that this change will also reduce burden.

In addition, EPA has made some changes to the listed pollution prevention practices. First, the two tables of listed practices, as found in Appendix B of the Supplemental Notice, have been combined into one table. In addition, based on comments, revisions have been made to the language used on the table of listed practices. Under the final rule, any practice may be modified with an adequate justification. When no justification is listed for the specific practice it can be modified via best professional or engineering judgement (BPJ or BEJ, respectively). EPA believes this is appropriate due to the unique and individual situations that may arise at a particular facility (see the Comment Response Document in the rulemaking record or the P2 Guidance Manual for the PFPR Industry for examples of such situations). However, for listed practices where no justification is listed on the table, a facility will initially have to submit a request for a modification to the permitting/control authority for review and approval. The permitting/control authority is expected to use BPJ or BEJ to decide if the justification provided is adequate. In addition, the permitting/control authority will be able to add or replace practices specified by the rule with new or innovative practices that are more effective at reducing the pollutant loadings from a specific facility to the environment.

EPA has also added some additional justifications to the table of listed practices based on comments. For example, EPA will allow facilities to modify the practice of reusing and/or storing and reusing rinsates generated by rinsing of drums containing only inerts when a facility can demonstrate that the large concentration of the inert in the formulation creates more volume, after using water conservation practices, than could feasibly be reused or when the concentration of the inert is so small (i.e., perfumes) that the reuse would cause a formulation to exceed the ranges allowed in the Confidential Statement of Formula (CSF).

Based on comment, EPA has also combined, added and removed other practices. For example, EPA has added a practice concerning dry formulation interior equipment cleaning that specifies that facilities must cleanout such interiors with dry carrier prior to any water rinse and that this carrier material should preferably be stored and reused in future formulation of the same or compatible product (or, as a last resort, properly disposed of as solid waste). EPA has combined many of the water conservation practices, such as use of flow reduction on hoses, use of low volume/high pressure rinsing equipment and floor scrubbing machines, into one listed practice. Finally, EPA has removed the provision for dedicated equipment that was contingent on the inability to reuse interior rinsates. Instead, this practice will be discussed in the P2 Guidance Manual for the PFPR Industry. (See Table 8 to Part 455 of the final regulation, for the listed practices and listed justifications).

Furthermore, EPA has refined the definition of P2 allowable discharge. In response to comment, this definition states that ''appropriate pollution control technologies'' include not only those technologies listed on Table 10 of the regulation, but also include a pesticide manufacturer's treatment system or an equivalent system, used individually or in any combination to achieve the level of pollutant reduction determined by the permitting authority or control authority. An equivalent system is a wastewater treatment system that is demonstrated in literature, treatability tests or self-monitoring data to remove a similar level of pesticide active ingredient (PAI) or priority pollutants as the applicable treatment technology listed in Table 10 to part 455 of the final regulation.

Finally, EPA has decided to allow the control authority to use best engineering judgement to waive pretreatment at the PFPR facility prior to discharge to the POTW under certain circumstances. Under the final P2 Alternative to zero discharge, an indirect discharger must pretreat the portion of their allowable P2 discharge that includes interior equipment rinsates (including drum rinsates), leak and spill cleanup water and floor wash prior to discharge to the POTW. However, EPA will allow the control authority to waive the pretreatment requirements for floor wash and the final interior rinse of a triple rinse that has been demonstrated to be non-reusable when the facility demonstrates that the level of PAIs and priority pollutants in such wastewaters are at a level that is too low to be effectively pretreated at the facility and have been shown to neither pass through or interfere with the operations of the POTW. The control authority should also take into account whether or not the facility has employed water conservation when generating such a non-reusable wastewater.

C. Applicability to On-Site and Stand-alone Research & Development (R&D) Laboratories

EPA has clarified the applicability of the final PFPR regulations to on-site and stand-alone R&D laboratories (i.e., no PFPR on-site). The final PFPR effluent guidelines and standards do not apply to wastewater generated from the development of new formulations of pesticide products and the associated efficacy and field testing (where resulting product is not manufactured for sale). This includes such wastewaters generated at stand-alone R&D laboratories as well as at R&D laboratories located on-site at PFPR facilities. EPA received many comments describing the operations at both on-site and stand-alone R&D facilities. Commenters believe that wastewaters generated at these R&D laboratories have extremely limited reuse potential due to their experimental nature, as such formulations may only be produced once or, at most, for one set of trials. Therefore, commenters believe that the pollution prevention practices listed in the Supplemental Notice (for example, reuse of interior rinsates in future formulation) are not amenable to these one-time wastewaters. In addition, experiments require the use of experimental controls. According to commenters, the addition of rinsates into the ''experimental design could alter the results of the experiment and render the data obtained useless.'' EPA has taken the above information into account, in addition to the typically low quantities discharged from these operations and believes that the wastewaters generated by experimental formulation, efficacy and field testing can be adequately addressed in permits

and pretreatment agreements through BPJ and BEJ, respectively.

D. Clarification of Issues Concerning PFPR/Manufacturers

Pesticide Manufacturing is covered by 40 CFR part 455 subparts A and B. However, close to 50 pesticide manufacturers also perform pesticide formulating, packaging and repackaging at their facility (called ''PFPR/Manufacturers''). EPA has included a discussion, below, to aid in clarifying how the final rule applies to the PFPR/Manufacturers in regard to three specific issues. First, EPA will clarify the difference between adding a solvent to stabilize an active ingredient and adding a solvent (or other inert ingredients) to formulate a pesticide product, and which practice constitutes manufacturing and which constitutes formulation. Second, EPA will discuss whether on-site incineration can be considered as achieving zero discharge under the PFPR final rule. Finally, EPA will amend and clarify the interpretation of the 1978 zero discharge BPT rule for direct discharging PFPR/Manufacturers and PFPR stand-alone facilities.

1. Stabilizing versus Formulating

Pesticide manufacturers may sometimes add a solvent (organic or aqueous) to a manufactured PAI or intermediate for the purpose of stabilizing the product (e.g., for transport or storage). The Pesticide Manufacturing Final Technical Development Document [EPA–821–R–93–016; page 1–9] states that dilution of the manufactured active ingredient is only covered by the Pesticide Manufacturing rule when it is ''a necessary step following a chemical reaction to stabilize the product.'' Thus, EPA would like to clarify that manufacturers can perform such operations without being subject to the PFPR effluent guidelines as long as it is a necessary step to stabilize the product following a chemical reaction. Typically, such operations are performed without placing the pesticide in a marketable container (i.e., they are shipped in bulk via tank truck, rail car or tote tank). However, PFPR facilities should not conclude that they can receive PAIs (that they do not manufacture), even in bulk quantities, and dilute it with solvent or other carrier without being subject to the PFPR effluent guidelines, as this would be considered formulating under § 455.10.

2. On-site Incineration as Zero Discharge

Although EPA proposed zero discharge limitations based on pollution prevention, recycle/reuse and treatment for reuse, facilities may meet this zero discharge requirement through a number of other practices. These practices include hauling wastewater to off-site destinations, such as sites which have incineration, deep well injection disposal and centralized (commercial) wastewater treatment and subsequent discharge. In some cases, wastewaters are returned to the registrant or manufacturer. In a few instances, on-site incineration of PFPR wastewaters is being conducted.

EPA received comment requesting clarification of whether on-site incineration is an acceptable means of achieving zero discharge. For purposes of this rule, EPA considers on-site incineration a valid option for achieving zero discharge of PFPR process wastewaters. Wet scrubbing devices used for air pollution control on existing on-site incinerators at PFPR facilities are not subject to the PFPR effluent guidelines. The only existing on-site incinerators at facilities covered by the PFPR regulation are at facilities which also manufacture pesticide active ingredients (PFPR/Manufacturers). Scrubber wastewater discharges from these incineration activities are currently regulated under the pesticide manufacturing effluent guidelines (40 CFR part 455, subparts A and B; see 58 FR 50638, September 28, 1993) for the PAIs manufactured at these facilities.

On-site incineration at new sources (i.e., NSPS and PSNS), would also qualify as meeting zero discharge under the PFPR regulation and scrubber water discharges from these on-site incinerators would be covered by the pesticide manufacturing new source standards. However, scrubber wastewater discharges from the on-site incineration of PAIs not regulated by the pesticide manufacturing rule would have to be controlled using a BPJ or BEJ basis.

3. Amending and Clarifying of BPT

The 1978 BPT regulation (43 FR 44846; September 29, 1978) established a zero discharge limitation for direct discharges from pesticide formulating and packaging[5] facilities. This included pesticide formulating, packaging and repackaging that occurred at direct discharge pesticide manufacturing facilities as well as stand-alone PFPR facilities.[6] The basis for the 1978 zero discharge BPT limitation was water conservation, reuse and recycle practices, with any residual water being evaporated or hauled off-site to a landfill. However, many facilities that were direct dischargers in 1978 switched to indirect discharge of wastewaters through POTWs instead of achieving zero discharge via recycle and land filling or evaporation. Due to the 1978 BPT regulation, presently, there should be no direct discharging PFPR facilities. However, the zero discharge limitation was not interpreted or implemented in the same way for PFPR/Manufacturers as it was for stand-alone PFPR facilities.

It is EPA's understanding that permitting authorities incorporated the BPT zero discharge standard for PFPR wastewaters into the pesticide manufacturers' NPDES permits as a ''zero allowance.'' A zero allowance would let a PFPR/Manufacturer discharge PFPR wastewaters along with their pesticide manufacturing wastewaters as long as they did not exceed the pesticide limitations in the Pesticide Manufacturing rule. The 1978 pesticide manufacturing BPT limitations were presented as a total pesticides limit for 49 specific PAIs. However, the more recent BAT and NSPS limitations (58 FR 50638; September 28, 1993) do not set a total pesticides limit but, instead set individual production-based limitations. Since the pesticide manufacturing limits are based solely on the manufacturing production and do not include the PFPR production, permits could still use a zero allowance approach to allow discharges of PFPR wastewater from these combined facilities.

At the time of proposal, EPA did not believe it was necessary to amend the 1978 BPT because the zero discharge limitation was comparable to the proposed standard of zero discharge.[7] EPA recognized that the bases for the 1978 BPT and proposed rule were not identical and that land filling and evaporation were no longer the best options for achieving zero discharge (59 FR 17870). However, EPA believed that

[5] In 1978 repackaging was not included in the title of Subcategory C, but was covered by the BPT regulation and, therefore, will be included in the title for the final rule.

[6] A stand-alone PFPR facility is a PFPR facility where either: (1) No pesticide manufacturing occurs; or (2) where pesticide manufacturing process wastewaters are not commingled with PFPR process wastewaters. Such facilities may formulate, package or repackage or manufacture other non-pesticide chemical products and be considered a ''stand-alone'' PFPR facility.

[7] EPA proposed a zero discharge standard for PSES based on pollution prevention, recycle/reuse and, when necessary, treatment and reuse and expected it to be implemented via ''no flow'' of process wastewater.

since both the 1978 BPT and the proposed rule were largely based on water conservation, recycle and reuse practices, facilities could meet BPT in a manner similar to the proposed rule.

Following proposal, EPA received many comments on and requests for revision of the BPT regulation from the PFPR/Manufacturing facilities and trade associations. Commenters raised issues related to the technical feasibility of zero discharge for both the proposed rule and the 1978 BPT rule.

Commenters believed that, because not all wastewaters were reusable as EPA had assumed, the potential increase in cross-media impacts associated with a zero discharge regulation in addition to the large costs associated with contract hauling for incineration made any zero discharge regulation infeasible. The commenters requested numeric discharge limitations and/or a ''de minimis'' discharge allowance (associated with pollution prevention practices) for their PFPR wastewaters and that BPT be revised accordingly. Based on these and other comments on the proposed rule, EPA developed the Zero/P2 Alternative for PSES and BAT (for Subcategory C facilities) which was discussed in the Supplemental Notice and revised based on additional comment for today's final rule.

Commenters also specifically commented on the need for revision of the 1978 BPT due to: (1) Certain practices on which the 1978 BPT was based (for example, land filling and evaporation) are no longer desirable because they may cause cross-media impacts or may no longer be available; and (2) the changes in PAIs and pesticide formulation chemistries since 1978. For example, many pesticide products have been reformulated from an organic solvent-based product to a water-based product to avoid the generation of volatile organic compounds (VOCs). This has, in many cases, caused an increase in the volume of wastewater generated by this industry. In addition, many facilities are switching to safer, more ''environmentally friendly'' pesticide active ingredients which would change the characteristics of the wastewaters from those determined in 1978. Commenters believe that EPA must revise BPT or account for the additional costs associated with the current practices that would be utilized to meet the zero discharge limitation (i.e., off-site incineration).

Based on the comments discussed above, EPA has decided to amend BPT for both the existing direct discharging PFPR/Manufacturers and stand-alone PFPR facilities to allow them to choose between zero discharge and the P2 Alternative. EPA believes that although the stand-alone PFPR facilities are already achieving zero discharge, in compliance with the 1978 BPT, the methods they are employing may potentially result in cross-media impacts that the use of the P2 Alternative would potentially reduce.

Also, these changes will make BPT consistent with BAT (and PSES) while essentially achieving the same pollutant removals and potentially decreasing cross-media impacts associated with various off-site disposal methods. In addition, the change to the BPT limitation that is being promulgated today for PFPR/Manufacturers will clarify that the method by which the zero discharge limitation has been implemented (i.e., use of a zero allowance) is appropriate.

The final PFPR rule will allow discharge of PFPR wastewaters from PFPR/Manufacturing facilities in two specific ways. For those facilities choosing to comply with zero discharge (as opposed to the P2 Alternative), their permits should incorporate the ''zero allowance'' approach for the PFPR portion of their operations for the PAIs that they manufacture. For those PAIs formulated and not manufactured at the facility, the permit should apply a strict zero discharge. In part, this is because their pesticide manufacturing wastewater treatment system may not consist of the appropriate treatment technologies for such PAIs or the treatment system may not be designed to treat the additional volumes and/or concentrations of the ''non-manufactured'' PAIs.

However, PFPR/Manufacturers can choose the P2 Alternative to zero discharge. Such facilities would not have to achieve zero discharge or zero allowance of their PFPR wastewaters. Instead, these facilities would comply with the practices specified in the P2 Alternative and would receive a ''P2 discharge allowance'' following treatment (see § 455.41 of the final regulation for the definition of P2 allowable discharge). The P2 discharge allowance can be applied to both pesticides that are formulated/packaged/repackaged and manufactured as well as those that are not manufactured on-site. [Note: Facilities can choose between zero discharge and the P2 Alternative on a product family/process line/process unit basis.]

The treatment system used to treat the combined PFPR and pesticide manufacturing wastewaters must incorporate treatment that is appropriate for those PAIs which are not also manufactured on-site (i.e., those PAIs for which individual pesticide manufacturing production-based limitations are not contained in the NPDES permit). Treatment is deemed appropriate through the use of: treatability studies found in literature or performed by the facility; long-term monitoring data; or Table 10 of the final rule.

As discussed above, EPA is also amending BPT for stand-alone PFPR facilities. Stand-alone facilities that do not send their wastewaters to POTWs can choose to comply with the P2 Alternative or can remain as zero discharge. Facilities choosing the P2 Alternative may have to apply for an NPDES permit if they do not already have a permit.

E. Clarification of Refilling Establishments

EPA has decided to use the same general definition for ''refilling establishment'' as in the proposed effluent guideline and the proposed FIFRA Standards for Pesticide Containers and Containment rule (i.e., an establishment where the activity of repackaging pesticide product into refillable containers occurs). However, EPA will use different applicability statements in each of the regulations to further define the term as appropriate for the particular regulation. (See the Comment Response Document for additional discussion). The limitations and standards of Subpart E of the PFPR final rule apply to the repackaging of pesticide products performed by refilling establishments: (a) That repackage agricultural pesticides; (b) whose primary business is wholesale or retail sales; and (c) where no pesticide manufacturing, formulating or packaging occurs. Subpart E (Refilling Establishments) is not applicable to wastewater generated from custom application or custom blending.

F. RCRA Issues

A number of commenters requested clarification concerning the potential for conflict between the proposed zero discharge effluent guidelines limitations and standards and certain requirements under the Resource Conservation and Recovery Act (RCRA). Specifically, commenters requested that EPA explain, in the final rule, its interpretation of the wastewater treatment unit exemption under RCRA (40 CFR 264.1(g)(6), 265.1(c)(10)) with respect to facilities regulated by a national effluent guideline requirement of zero discharge and how such an exemption would apply to the Universal Treatment System (UTS). They also requested

clarification on the 90-day RCRA hazardous waste storage limitation.

In general, owners and operators of hazardous waste treatment, storage, and disposal (TSD) facilities must meet the standards outlined in 40 CFR part 264 (and part 265 for interim status). However, the wastewater treatment unit exemption (40 CFR 264.1(g)(6), 40 CFR 265.1(c)(10)) is intended to exempt, from certain RCRA requirements, wastewater treatment units at facilities that are subject to the NPDES or pretreatment requirements under the Clean Water Act[8] (for example, PFPR facilities). The specific definition of wastewater treatment units that are exempt from certain RCRA requirements is found in 40 CFR 260.10. The RCRA wastewater treatment unit exemption does not exempt hazardous wastewaters at these facilities from RCRA requirements, but does exempt the facilities from obtaining a TSD permit for wastewater treatment systems treating, storing, or generating listed (40 CFR 261.30–33) or characteristic (40 CFR 261.20–24) hazardous wastes. EPA points out that many pesticide active ingredients are not RCRA listed hazardous wastes and most PFPR wastewaters do not exhibit hazardous waste characteristics; therefore, such non-hazardous wastewaters would not be covered by the RCRA Subtitle C requirements.

As mentioned above, many commenters requested that EPA clarify whether or not the wastewater treatment unit exemption can be applied to facilities that are not discharging their treated wastewater effluent due to a zero discharge limitation in a national effluent guideline. Facilities subject to an effluent guideline which sets a zero discharge or other limitations or standards (such as the P2 Alternative) can, in fact, be eligible for the RCRA wastewater treatment unit exemption, assuming that they also satisfy the exemption's other criteria.

Commenters also requested clarification on how the RCRA 90-day limit on the storage of hazardous wastes (40 CFR 262.34) applies to rinsates being stored for subsequent reuse in accordance with the PFPR effluent guidelines. Generally, RCRA TSD permits (or interim status) are required for facilities that store hazardous waste on site. However, the RCRA regulations allow facilities that generate hazardous waste to store the waste without a permit or interim status provided that certain criteria, including a 90-day limit on storage for large quantity generators, are satisfied (these criteria are outlined in 40 CFR 262.34). As mentioned earlier in this section, most PFPR wastewaters would not be defined as RCRA hazardous waste, either because the wastewater does not meet a RCRA listing, or does not exhibit any hazardous characteristic; of course, generators are still required to make this determination with respect to their own wastes (40 CFR 262.11). If a material is not a hazardous waste, the RCRA regulations, including storage requirements, do not apply.

For any rinsewaters that potentially meet a RCRA listing or exhibit a RCRA characteristic, such rinsewaters being stored for direct reuse as outlined under today's final PFPR effluent guidelines and standards would not be considered wastes by the Agency (see 40 CFR 261.2(e)(1)). As described elsewhere in today's rulemaking, these rinsewaters do not require treatment prior to reuse and, due to stringent product specifications, do not contain constituents that are not needed in the product being formulated. In these situations where the rinsewaters are not classified as a waste, the RCRA regulations (including the generator requirements and storage requirements) do not apply. However, the RCRA regulations do require that materials being stored for reuse not be accumulated speculatively (speculatively accumulated materials are classified as wastes). A material is not accumulated speculatively if the person accumulating it shows that the material is recyclable, has a feasible means of being recycled, and that during the calendar year, the amount of material recycled equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. See 40 CFR 261.1(c)(8) and 261.2(e)(2)(iii).

IV. The Final Regulation

A. Pretreatment Standards for Existing Sources (PSES)

1. Pesticide Formulating, Packaging and Repackaging (Subcategory C)

Under the final rule, EPA is establishing a zero discharge pretreatment standard with a P2 Alternative which allows a discharge to POTWs. The zero discharge standard is based on pollution prevention, recycle and reuse practices and, when necessary, treatment (through the Universal Treatment System) for reuse. The basis also includes some amount of contract hauling for off-site incineration which may be necessary to achieve zero discharge. Compliance with the alternative (P2 Alternative) is based on performing specific pollution prevention, recycle, reuse and water conservation practices (as listed in Table 8 to part 455 of the final rule) followed by a P2 allowable discharge which requires treatment of interior wastewater sources (including drum rinsates), leak/spill cleanup water and floor wash prior to discharge to a POTW.[9]

EPA visualized the Universal Treatment System (UTS) as a flexible system consisting of a variety of treatment technologies that have been determined to be effective for treating PFPR wastewaters. The UTS can include various combinations of treatment technologies consisting of emulsion breaking, hydrolysis, chemical oxidation, metals precipitation and carbon adsorption. See Section 7 of the Final Technical Development Document [EPA–821–R–96–019] for the PFPR effluent guideline and the proposal (59 FR 17873) for a detail description of the UTS.

EPA determines which pollutants to regulate in PSES on the basis of whether or not they pass through, interfere with, or are incompatible with the operation of POTWs (including interference with sludge practices). A pollutant is deemed to pass through when the average percentage removed nationwide by well-operated POTWs (those meeting secondary treatment requirements) is less than the percentage removed by directly discharging facilities applying BAT for that pollutant. In the pesticide chemical manufacturing final rule, phenol, 2-chlorophenol, 2,4-dichlorophenol and 2,4-dimethylphenol were found to not pass through POTWs (58 FR 50649; September 28 1993). Phenol is a PAI that is exempted from this final rule under the sanitizer exemption while the remaining three chemicals are priority pollutants.

As discussed in Section III.A.1, based on comments and the addition of the pollution prevention alternative to the zero discharge standard for the final rule, EPA believes it is appropriate to exempt phenol from the final PFPR effluent guidelines and standards, and to exclude 2-chlorophenol, 2,4-dichlorophenol and 2,4-dimethylphenol from regulation in the final categorical pretreatment standards (PSES and

[8] Section 402 of the Clean Water Act addresses the NPDES requirements, while Section 307(b) addresses the pretreatment standards.

[9] In individual cases the requirement of wastewater pretreatment prior to discharge to the POTW may be removed for floor wash or the final rinse of a non-reusable triple rinse by the control authority when the facility has demonstrated that the levels of PAIs and priority pollutants in such wastewaters are at a level that is too low to be effectively pretreated at the facility and have been shown to neither pass through or interfere with the operations of the POTW.

PSNS) because these three pollutants have been determined not to pass through POTWs.

EPA has estimated the compliance cost for the industry to achieve the pretreatment standards (PSES) contained in the final rule at $29.9 million annually ($1995). The current PAI pollutant loading to POTWs is estimated at 192,789 pounds with PAI removals achieved by the final regulation estimated at 189,908 pounds (assuming zero removals by POTWs currently—see Cost-Effectiveness Analysis in Section V.D.6). This means that compliance with the final rule would remove almost 99% of the current pollutant loading. Due to the toxic nature of the majority of PAIs, the equivalent toxic weighted pollutant removals are 7.6 million pound equivalents [10].

2. Refilling Establishments (Subcategory E)

EPA is establishing pretreatment standards for existing refilling establishments at zero discharge of pollutants in process wastewaters to POTWs. This standard is based on collection and storage of process wastewaters followed by reuse of the wastewaters as make-up water for application to fields in accordance with the product label. Based on the PFPR 1988 questionnaire survey, 98 percent of the existing refilling establishments achieve zero discharge.

Only a small number of refilling establishments are indirect dischargers and EPA has estimated that they can comply with the final pretreatment standards at nearly zero cost. EPA has estimated that only 19 facilities (of the 1134) do not achieve zero discharge and they currently discharge to POTWs. EPA estimates a capital cost of only $500 (i.e., the approximate cost of a minibulk tank to store water for reuse) for each the 19 facilities to meet the zero discharge PSES standard.

[10] The toxic weighted pollutant removals (in pound-equivalents) for the final rule are not directly comparable to the toxic weighted pollutant removals presented in the proposal or supplemental notice. This is because: (1) The method used to convert acute toxicity values to chronic value was revised from a 1:100 ratio to a 1:10 ratio and reduces the toxic weighting factor for many PAIs; (2) the toxic weighting factor for the pyrethrins was revised; and (3) EPA is using an average non-272 PAI toxic weighting factor based on values for 91 non-272 PAIs instead of using the current loading-weighted average of the toxic weighting factors for the 272 PAIs.

B. Best Practicable Control Technology Currently Available (BPT)

1. Pesticide Formulating, Packaging and Repackaging (Subcategory C)

As discussed in Section III.D.3. of today's notice, EPA has amended and clarified the BPT limitations for the PFPR/Manufacturers and established BPT limitations for the stand-alone PFPR facilities (ie., PFPR facilities where no pesticide manufacturing occurs or where pesticide manufacturing process wastewaters are not commingled with PFPR process wastewaters). In addition to clarifying the use of ''zero allowance'' for zero discharge for PFPR/Manufacturers, EPA is providing both the PFPR/Manufacturers and the stand-alone PFPRs with the opportunity to use the P2 Alternative.

Under the final rule, EPA is amending the 1978 BPT standard by establishing a zero discharge limitation with a compliance alternative which provides for P2 allowable discharge to surface waters. EPA is also establishing a zero discharge limitation (without the use of a ''zero allowance'' permitting mechanism) with a compliance alternative for a P2 allowable discharge for the stand-alone PFPR facilities. (See Section III.D.3. for additional discussion.)

The zero discharge limitation is based on pollution prevention, recycle and reuse practices and, when necessary, treatment and reuse for those PAIs that are formulated, packaged and/or repackaged but are not also manufactured at the facility. The basis also includes some amount of contract hauling for off-site incineration.

Zero allowance is established for PFPR/Manufacturers for those pesticides that are formulated, packaged and/or repackaged *and* manufactured at the facility. Zero allowance is based on pollution prevention, recycle and reuse practices and treatment and discharge through the manufacturer's wastewater treatment system within the pesticide manufacturing production-based numeric limitations (i.e., giving no allowance for the PFPR wastewater or its production). This is consistent with how the existing 1978 BPT zero discharge requirements have been implemented by permit writers.

The compliance alternative (P2 Alternative) is based on performing specific pollution prevention, recycle, reuse and water conservation practices (as listed in Table 8 to part 455 of the final rule) followed by a P2 allowable discharge which requires treatment of all process wastewaters prior to direct discharge to surface waters.

EPA has estimated that there are no additional costs or pollutant removals associated with the BPT limitation for the PFPR/Manufacturers, as these costs have already been absorbed by the industry over the past 18 years as a result of the 1978 BPT regulation. (See Section IV.C.1. for a discussion on BAT and the associated costs of compliance).

EPA has not assigned any additional costs to the stand-alone PFPR facilities as they are also currently achieving zero discharge. However, facilities may choose to take advantage of the P2 Alternative in order to achieve a decrease in cross-media impacts. Depending on the current means of achieving zero discharge, a facility's costs may increase or decrease when switching to the P2 Alternative. The costs may increase initially due to the cost of installing a wastewater treatment system due to the associated capitol costs; however, EPA believes that over the long term, the annual costs for those facilities which select the P2 Alternative would be lower. EPA assumes that facilities will make the choice, to continue to comply with zero discharge or to move to the P2 Alternative based, in significant part, on economic considerations. Therefore, EPA believes that if the costs associated with the P2 Alternative were significantly higher, the facility would not alter their current means of compliance. Accordingly, EPA has assumed no incremental costs as a result of the addition of the P2 Alternative to BPT for stand-alone PFPR facilities.

2. Refilling Establishments (Subcategory E)

The existing BPT regulations did not cover refilling establishments. As discussed in the proposal (59 FR 17870), the practice of refilling minibulks did not begin until the late 1980's, i.e., after the original BPT regulation was promulgated in 1978. Based on the PFPR survey, 98 percent of the existing refilling establishments achieve zero discharge. EPA proposed zero discharge of process wastewater pollutants as the BPT limitations for refilling establishments.

In the final regulation EPA is establishing a BPT limitation for existing refilling establishments at zero discharge of pollutants in process wastewaters to waters of the U.S. This limitation is based on collection and storage of process wastewaters, including rinsates from cleaning minibulk containers and their ancillary equipment; and wastewaters from secondary containment and loading pads. The collected process wastewater would be reused as make-up water for

application to fields in accordance with the product label. Since greater the 98% of these facilities already achieve zero discharge and the remaining facilities discharge to POTWs, the costs associated for BPT have been estimated to be nearly zero.

C. Best Available Technology Economically Achievable (BAT)

1. Pesticide Formulating, Packaging and Repackaging (Subcategory C)

EPA has established BAT limitations that are equivalent to the limitations established for BPT for PFPR/Manufacturers and stand-alone PFPR facilities (see Section IV.B.1 for discussion of BPT limitations).

Under the proposal, existing direct discharge PFPR/Manufacturers were expected to treat (for reuse) their PFPR wastewaters in a separate treatment system from their pesticide manufacturing wastewater treatment systems. EPA estimated the compliance costs for these facilities by costing them for separate PFPR universal treatment systems.

Under the final rule, existing direct discharging Subcategory C facilities will have a choice of either complying with a zero discharge limitation or the P2 Alternative (see Section III.D.3. for a discussion on amending and clarifying BPT). However, the rule clarifies that in meeting the zero discharge limitation, permitting authorities may authorize the commingling of pesticide manufacturing and PFPR process wastewaters to meet the pertinent BAT limitations for pesticide manufacturers with a zero allowance for PAIs in PFPR wastewaters. EPA has revised the cost model to account for changes in the final rule due to updated analytical data, changes in scope and the addition of the P2 Alternative. However, EPA believes that an overestimate of the costs would result if EPA included costs for separate UTS systems when the facilities' current controls, used for treating PFPR wastewaters (i.e., prior to commingling with pesticide manufacturing wastewater) and/or treating commingled wastewater (i.e., their pesticide manufacturing treatment systems), already achieve the BAT limitation of zero discharge or ''zero allowance.''

Thus, EPA is not including these costs and removals in the total industry estimate. However, EPA has made a determination of economic achievability even if these costs would be incurred, and is presenting the costs and pollutant removals associated with the (17) direct discharging PFPR/Manufacturers for informational purposes. When current treatment in place is not accounted for, the estimated compliance cost for the PFPR/Manufacturers to comply with BAT is $2.8 million ($1995) and is estimated to remove greater than 99% of the pollutants. This equals 50,248 lbs (or 71.6 million lb-eq.[11]) of PAIs. Again, EPA believes this cost is economically achievable.

2. Refilling Establishments (Subcategory E)

EPA is establishing BAT limitations for this subcategory that are equivalent to the limitations established for BPT. Since BPT requires zero discharge of process wastewater pollutants and 98 percent of the existing refilling establishments already achieve zero discharge, EPA believes the same technology basis and discharge prohibition is appropriate and economically achievable for BAT.

D. New Source Performance Standards (NSPS)

1. Pesticide Formulating, Packaging and Repackaging (Subcategory C)

EPA has set the new source performance standards for PFPR/Manufacturers and stand-alone PFPRs the same as BPT and BAT. The new source standards are established as follows:

EPA has established NSPS limitations equivalent to the limitations that are established for BPT and BAT. Since EPA found the Zero/P2 alternative to be economically achievable for existing facilities under BPT and BAT on a facility basis and since new facilities will be able to choose between zero discharge and the P2 Alternative on a product family/process line/process unit basis, EPA believes that this NSPS standard does not create a barrier to entry.

2. Refilling Establishments (Subcategory E)

EPA is establishing NSPS standards for this subcategory that are equivalent to the limitation established for BPT and BAT. Since BPT requires zero discharge of process wastewater pollutants and 98 percent of the existing refilling establishments already achieve zero discharge, EPA believes an equivalent technology basis is appropriate for NSPS and will not create a barrier to entry.

[11] The large number of toxic weighted pound equivalents is driven by a large PFPR production value reported from a single PFPR/Manufacturer using coumaphos with a toxic weighting factor = 5.6×10^3.

E. Pretreatment Standards for New Sources (PSNS)

1. Pesticide Formulating, Packaging and Repackaging (Subcategory C)

EPA is establishing PSNS standards for this subcategory that are equivalent to the standards established for PSES (i.e., zero discharge with a compliance alternative for a P2 allowable discharge). EPA believes that the standards established for PSNS will not create a barrier to entry as they are equivalent to PSES which were found to be economically achievable.

EPA did not propose to set PSNS (or NSPS) equal to PSES (or BAT). Although the PSNS Zero/P2 Alternative standard discussed above is a change from the proposed PSNS, it is consistent with the Supplemental Notice and comments submitted. At proposal, PSES included a partial exemption for exterior wastewater sources from small sanitizer facilities (see Section II.E of today's notice for a discussion of the proposed partial sanitizer exemption); however, the proposed PSNS did not include such an exemption and was found not to create a barrier to entry for new facilities. The partial sanitizer exemption no longer effects the economic achievability of the standards because in response to comments, sanitizer products are no longer included in the scope of the PFPR effluent guidelines. Based on the addition of the P2 Alternative option to these effluent guidelines and standards and the associated estimated reductions in cross-media impacts, EPA believes that it is appropriate to give new facilities the opportunity to use the P2 Alternative to meet PSNS.

2. Refilling Establishments (Subcategory E)

EPA is establishing PSNS standards for this subcategory that are equivalent to the limitations established for PSES (i.e., zero discharge). In addition, BPT, BAT and NSPS also require zero discharge of process wastewater pollutants, and 98 percent of the existing refilling establishments already achieve zero discharge; thus, EPA believes an equivalent technology basis is appropriate for PSNS and will not create a barrier to entry.

F. Best Conventional Pollutant Control Technology (BCT)

1. Pesticide Formulating, Packaging and Repackaging (Subcategory C)

EPA has established BCT limitations that are equivalent to the limitations established for BPT. This is because BPT and BAT establish zero discharge

with a compliance alternative for a P2 allowable discharge and BCT can be no less stringent than BPT and no more stringent that BAT. EPA believes there are no additional costs associated with these limitations.

2. Refilling Establishments (Subcategory E)

EPA is establishing BCT limitations for this subcategory that are equivalent to the limitations established for BPT. Since BPT requires zero discharge of process wastewater pollutants and 98 percent of the existing refilling establishments already achieve zero discharge, EPA believes an equivalent technology basis is appropriate for BCT.

V. Economic Considerations

A. Introduction

Promulgation of the final PFPR rule requires that the discharge limitations be both technically and economically achievable. This section of today's notice reviews EPA's analysis of the economic impacts of the regulation and presents EPA's finding that the limitations are economically achievable.

EPA's detailed economic impact assessment can be found in the report titled ''Economic Analysis of Final Effluent Limitations Guidelines and Standards for the Pesticide Formulating, Packaging, and Repackaging Industry'' (hereafter ''final EA'') [EPA–821–R–96–017]. The report estimates the economic effect on the industry of compliance with the regulation in terms of facility closures (severe impacts), and conversions of production lines to alternate activities and/or compliance costs exceeding five percent of facility revenues (moderate impacts). The report also includes: Analysis of the effects of the regulation on new pesticide formulating, packaging, and repackaging facilities and a Regulatory Flexibility Analysis detailing impacts on small businesses and small entities. A separate report, ''Cost-Effectiveness Analysis of Final Effluent Limitations Guidelines and Standards for the Pesticide Formulating, Packaging, and Repackaging Industry,'' presents an analysis of the cost-effectiveness of the final regulation. All of these analyses support the conclusion that the effluent limitations guidelines and standards contained in the final PFPR regulation are economically achievable by the PFPR industry.

The discussion of economic achievability is organized in three sections, as follows. Section V.B. summarizes the economic findings for the regulation as proposed in April 1994. Section V.C. reviews certain changes in the regulation since proposal that were the basis of a supplemental notice issued in June 1995; and Section V.D. presents the economic analysis of the final regulation, as delineated in the preceding sections of this preamble.

B. Review of the Proposed Regulation

The April 14, 1994 notice of proposed rulemaking (59 FR 17850) included a description of the anticipated economic impacts of proposed effluent limitations guidelines and standards for the PFPR industry. These economic impacts are briefly reviewed below. (See Section II.E. for a review of the proposed regulation.)

At proposal, BCT and BAT requirements were proposed to be equivalent to the 1978 BPT requirements; therefore, no additional costs were expected for compliance with the BCT and BAT limitations. Accordingly, the EIA focused on analyzing alternative PSES options for the two industry subcategories.

1. Subcategory C: PFPR and PFPR/Manufacturers

Since completion of the proposal EIA, EPA has continued to review its information regarding the structure of the PFPR industry and has increased its estimates of the numbers of facilities using only non-272 PAIs that would potentially be subject to the Subcategory C regulation. As a result, EPA's estimates of the number of affected facilities and the impacts and costs of the proposed regulation are higher than those presented at proposal. For example, at proposal, EPA estimated that Subcategory C included 1,479 water-using facilities that were potentially subject to regulation. Using the newer population estimates, EPA now estimates that under the proposal a total of 2,018 water-using facilities would have been potentially subject to regulation. The increase in this estimate comes entirely from the increased estimate of the number of facilities using only non-272 PAIs.[12] The following discussion of the proposed Subcategory C regulation reflects these updated estimates of the numbers of facilities, costs, and impacts.

For the re-estimated proposed rule, EPA estimates that 2,018 Subcategory C, water-using facilities were potentially subject to regulation. Of these 2,018 facilities, 943 used the 272 PAIs that EPA originally considered for regulation[13] and 1,075 used only the additional non-272 PAIs. EPA estimates that 1,142 of these facilities would incur total annualized compliance costs of $71.9 million in 1995 dollars[14] under the proposed rule of zero discharge.

The EIA for the proposed regulation used three primary impact measures:

- Severe impacts, which were defined as facility closures;
- Moderate impacts or facility impacts short of closure, which were defined as line conversions or incurrence of annualized compliance costs exceeding five percent of facility revenue; and
- Employment losses, which, for the impact analysis, were assumed to accompany facility closures and line conversions (but not incurrence of annualized compliance costs exceeding 5 percent of facility revenue).

Under the proposed PSES requirements and using the updated estimate for the number of non-272 PAI-using facilities, EPA estimates that three facilities would close as a result of proposed regulation, while 327 facilities would incur moderate impacts. In addition, under the proposed zero discharge rule, EPA conservatively estimates total job losses at facilities incurring impacts at 890 full-time employment positions. EPA judges the proposed regulation as economically achievable using these updated impact values that are based on the higher number of non-272 PAI-using facilities.

In addition to the facility impact analysis, EPA analyzed the cost-effectiveness of the proposed regulation for Subcategory C facilities. Cost-effectiveness is calculated as the ratio of the incremental annual costs in 1981 dollars to the incremental pounds-equivalent of pollutants removed for each option. Using the updated estimates of costs and removals for the proposed regulation, EPA estimates total pollutant removals of 505,235 pounds, or 38.9 million pounds-equivalent on a toxic weighted basis, and an average cost-effectiveness value of $1.65 per pound-equivalent.[15] [16] EPA considers the proposed option to be cost-effective.

[12] Due to changes in scope for the final regulation, 1,411 water using facilities will be potentially subject to the final regulation.

[13] Many of these facilities also used non-272 PAIs in addition to the 272 PAIs.

[14] The costs of regulatory compliance are all reported in 1995 dollars. In the EIA and the Federal Register Notice for the regulation at proposal and in the Supplemental Notice, regulatory compliance were reported in 1988 dollars, the base year of the PFPR industry survey. All cost estimates, including the proposal and the supplemental notice have been brought forward to 1995.

[15] The toxicity of the non-272 PAIs used in generating this cost-effectiveness value was estimated as the average pre-compliance loading-weighted average toxicity of the 272 PAIs.

[16] At proposal, EPA reported an *average* cost-effectiveness, or the cost-effectiveness value calculated relative to the baseline of no regulation, and an *incremental* cost-effectiveness, or the cost-effectiveness relative to the next less stringent

For analysis of the final regulation, EPA revised the toxic weighting factors to reflect additional information on the toxicity of the PAIs. In general, the revisions reduced the estimated toxicity of the PAIs subject to regulation (see Section V.D.6, below, which contains the discussion of the cost-effectiveness analysis for the final regulation). Using these revised toxic weighting factors and also taking into account the updated estimates of costs and pollutant removals for non-272 PAI-using facilities, EPA estimates that the proposed regulation would remove an estimated 23.2 million pounds-equivalent, yielding a cost-effectiveness value of $2.77 per pound-equivalent ($1981).

2. Subcategory E: Refilling Establishments

At proposal, an estimated 1,134 refilling establishments (Subcategory E PFPR facilities) were potentially subject to regulation. EPA estimates that 98 percent of these facilities, were already in compliance with the proposed Subcategory E limitations and pretreatment standards. All but 19 of the 1,134 existing facilities were expected to incur no costs to comply with the proposed option. The remaining 19 facilities were expected to achieve compliance with no significant additional cost[17] (See Section VI.B.2). No economic impacts were estimated to occur due to compliance with the proposed rule.

C. Changes to the EIA Since Proposal: Issuance of the June 1995 Supplemental Notice

In response to public comments on the regulation, EPA issued a Supplemental Notice (60 FR 30217) on June 8, 1995 that solicited comment on proposed changes in the scope of the PFPR regulation for Subcategory C facilities and on the Zero/P2 Alternative. In addition, EPA revised the cost estimating methodology and economic impact estimates.

As discussed in Section III.B.4. of today's notice, EPA estimated compliance costs for each facility to comply with the Zero/P2 Alternative option. Each facility was assumed to choose either zero discharge or the P2 Alternative for compliance, depending on which alternative would impose the lower annualized costs on the facility. For the Supplemental Notice, EPA estimated total annualized compliance costs for facilities covered under PSES at $43.4 million, in 1995 dollars, or 40 percent less than the costs for the proposed regulation. Under the Zero/P2 Alternative option, no facilities were assessed as closures as the result of the compliance requirements, while 208 facilities were assessed as incurring moderate impacts.[18] The comparable values for the regulation for the proposal (re-estimated using the revised cost previously discussed) are 3 facility closures and 327 facilities with moderate impacts.

D. Assessment of Costs and Impacts for the Final PFPR Regulations

This section describes the impact measures used in the Economic Analysis, the estimated impacts associated with the final rule, impacts on new sources, and the cost-effectiveness analysis. As discussed below, EPA is promulgating the regulation for Subcategory E facilities as presented at proposal with storm water now exempted, but the analysis of costs and impacts for the Subcategory E regulation remain the same as presented at proposal. Accordingly, the following discussion focuses on the Pretreatment Standards for Existing Sources (PSES) regulation for Subcategory C facilities.

1. Summary of Economic Analysis Methodology and Data

The data sources and methodology for analyzing economic impacts remain the same as used at proposal and for the Supplemental Notice. For a more detailed discussion of the methodology used in the economic impact analysis, see the preamble for the PFPR regulation at proposal (59 FR 17850), the proposal EIA report and final EA report.

The economic impact analysis measures three types of primary impacts: severe impacts (facility closures), moderate impacts (facility impacts short of closure), and job losses. Each impact analysis measure is reviewed briefly below.

- *Severe Impacts.* Severe impacts, defined as facility closures, were assessed on the finding that the regulation would be expected to cause a facility to incur, on average, negative after-tax cash flow over the three-year period of analysis. This analysis was performed for PFPR/Manufacturers and for facilities that do not manufacture PAIs, but receive at least 25 percent of their revenue from PFPR activities. Facilities with relatively low reliance on PFPR activities as a source of revenue (i.e., less than 25 percent of revenue) were excluded from this analysis because EPA does not anticipate that such facilities would close in entirety because of costs of regulatory compliance associated with PFPR activities. EPA also did not include PFPR facilities from Subcategory E (refilling establishments) in this analysis largely because of their relatively low reliance on PFPR activities as a source of revenue (an average of 15 percent).
- *Moderate Impacts.* Moderate impacts were defined as a financial impact short of entire facility closure and were analyzed in two ways. First, PFPR facilities subject to the Subcategory C regulation and with less than 25 percent of revenue from PFPR activities were assessed for line conversions by comparing the after-tax return on assets (ROA) from PFPR activities after regulation with the ROA estimated to be achievable in an alternative line of business. Facilities for which the post-compliance ROA for PFPR activities was found to be less than the return achievable in an alternative line of business were assumed to switch out of PFPR operations. Second, all Subcategory C and E facilities, regardless of PFPR revenue reliance, were assessed for the incurrence of total annualized compliance costs exceeding five percent of facility revenue.
- *Employment losses.* Possible employment losses were assessed for facilities estimated to close as a result of regulation and for facilities estimated to convert PFPR lines to an alternative business activity. EPA believes that the estimates of employment loss resulting from this analysis are highly conservative because of the assumption that line conversions would result in loss of employment for a facility's PFPR-related employment. More realistically, EPA expects that line conversions will not generally lead to full loss of PFPR-related employment.

As in the economic impact analysis for the proposed PFPR regulation, these analyses for the final regulation assume that PFPR facilities would not be able to pass the costs of compliance on to their customers through price increases. Analysis of pesticide product markets and the likely response of pesticide product customers to price increases (as discussed in the proposal EIA), indicates that a substantial number of facilities should recover some part of their compliance costs through price

regulatory option considered. However, the incremental calculation and the comparison are no longer relevant as the alternative options at proposal are no longer under consideration. For this reason, in the current discussion, EPA is reporting only the cost-effectiveness value calculated relative to the baseline of no regulation.

[17] A capital investment of approximately $500 was estimated for each of these facilities.

[18] The cost and impact values for the Supplemental Notice regulation reflect updating of the estimates of non-272 PAI-using facilities.

increases. Thus, the analyses of compliance cost and impacts overstate the severity of the regulation's financial burden on the PFPR industry.

EPA extrapolated information on compliance costs, pollutant loadings, and the frequency of facility-level compliance impacts from data on facilities in the original PFPR industry survey to analyze the technical and economic impacts of regulating the additional non-272 PAIs.[19] In the following discussion, EPA has not separated the estimated costs or impacts according to which set of PAIs facilities are estimated to use. Additional details of the analysis of costs and impacts for the facilities using the different sets of PAIs may be found in the final EA.

Although the impact analysis methodology for the final regulation is unchanged from proposal (see the Proposal EIA), its application has been changed for analyzing the Zero/P2 Alternative. This regulatory option was analyzed for each sample facility as part of two separate compliance approaches: (1) Zero discharge and (2) pollution prevention in combination with treatment followed by discharge (see Section IV.A.1). Facilities were assumed to adopt the compliance approach with the lower total annualized compliance cost including both annual operating and maintenance costs and an annual allowance for capital outlays. Although most facilities were estimated to achieve compliance by pollution prevention and treatment, some were estimated to comply by zero discharge. Thus, the combination of the analyses for the two separate compliance approaches yields the aggregate analysis for the final regulation for Subcategory C facilities.

[19] Although the PFPR industry survey focused on facilities using the original 272 PAIs, some of these facilities were also found to use one or more of the additional non-272 PAIs in their PFPR activities. During site visits, EPA also observed PFPR operations at several facilities that process both original 272 and non-272 PAIs. Thus, the set of facilities used for extrapolating financial and technical information to facilities using the non-272 PAI chemicals and the impacts of bringing these additional PAIs under regulation also includes information on facilities that use these non-272 PAIs.

EPA believes this methodology provides a realistic appraisal of the costs and impacts of the final regulation as it embodies the compliance decision that facility management is expected to face in deciding whether to comply by zero discharge or by pollution prevention in combination with treatment followed by discharge. In addition, because EPA's analysis considers both capital and operating costs, EPA believes that the findings from the compliance decision analysis will reasonably approximate facility managements' findings regarding choice of the less financially burdensome compliance approach. In addition, under the final rule, facilities will be able to make the choice between zero discharge and the P2 Alternative on a product family/process line/process unit basis, which will give them even more flexibility in their compliance choice.

2. Estimated Facility Economic Impacts

a. Subcategory C: PFPR and PFPR/Manufacturers

The costs and impacts for the final regulation applicable to PSES Subcategory C facilities are discussed in this section and are compared with the values estimated for the proposed and supplemental notice regulations. In addition, the cost and impacts for the final regulation are compared with those that EPA estimates would occur if facilities were not provided the flexibility to choose the preferred compliance approach from the zero discharge and pollution prevention allowable discharge alternatives. These comparisons show that the final regulation provides a more economical and less financially burdensome approach to achieving desired discharge reductions than the proposed, and otherwise previously noticed, requirements considered.

The following comparisons with the proposed regulation are relative to the cost and impact values based on the new estimates of the number of facilities using only non-272 PAIs. As noted previously, these revisions increased the costs and impacts estimated for the proposed regulation. The following discussion will show that the costs and impacts for the final regulation are substantially less than the updated estimates for the proposed regulation. Although this discussion will not include comparisons with the values for the proposed regulation as originally published, EPA points out that the costs and impacts for the final regulation are also markedly less than the original estimates of costs and impacts for the proposed regulation.

Of the 2,018 water-using Subcategory C facilities re-estimated to be subject to the regulation at proposal, EPA estimates that 506 facilities, or 25 percent, including baseline failures, will incur costs in complying with the final Subcategory C PSES regulation. Total annualized compliance costs for these facilities are estimated at $29.9 million, in 1995 dollars (see Table 1, below). Excluding baseline closures from the cost analysis reduces the number of facilities expected to incur costs to 421 facilities and total annual costs to $24.2 million, in 1995 dollars. In estimating the costs of the final regulation, facilities were assigned to the compliance option—zero discharge or the pollution prevention alternative—with the lower total annualized compliance cost. From this analysis, 69 percent of the cost-incurring facilities (including baseline failures) were expected to select the P2 Alternative with the remaining 31 percent selecting zero discharge.

No facilities are projected to close under the final regulation. A total of 150 possible line conversions (a moderate impact) are estimated. EPA does not generally expect that line conversions will result in employment losses. However, to be conservative in its analysis, EPA estimated the maximum potential employment loss associated with the regulation by assuming that all PFPR employment would be lost in facilities with line conversions. From this assumption, the upper bound employment loss for the final regulation is estimated at 458 full-time employment positions (FTEs).

TABLE 1.—ESTIMATED COSTS AND IMPACTS OF THE FINAL, PROPOSED AND SUPPLEMENTAL NOTICE PSES REGULATION FOR SUBCATEGORY C FACILITIES

	Number of facilities incurring costs	Total annualized compliance cost ($1995, millions)	Severe impacts †	Moderate impacts *	Maximum potential employment loss ††
Proposed Regulation	1,142	$71.9	3	327	890
Supplemental Notice	709	43.4	0	208	634
Final Regulation—Costs Including Baseline Closures	506	29.9	0	150	458
Final Regulation—Costs Excluding Baseline Closures	421	24.2			

† Severe impacts are defined as facility closures. All facility employment is assumed to be lost as the result of a facility closure.

* Moderate impacts are defined as line conversions and/or total annual compliance costs exceeding 5 percent of total facility revenue. EPA does not expect that employment losses would generally accompany line conversions; however, for this analysis, EPA assessed the maximum potential loss based on the assumption that all employment associated with PFPR activities would be lost as a result of a line conversion.

†† Employment loss for the proposed regulation includes the estimated employment loss in facility closures and the worst case estimate of employment loss in facilities with line conversions. The reported employment loss for the Supplemental Notice and Final Regulation reflects no facility closures and includes only the worst case employment loss in facilities with line conversions.

In addition to presenting the estimated costs and impacts for the final regulation, Table 1 also presents the comparable values for the proposal (re-estimated) and the supplemental notice. As shown in the table, the expected burden of the regulation has fallen considerably from proposal through supplemental notice to the final regulation. From proposal (re-estimated) to final, the number of Subcategory C facilities expected to incur costs has fallen from 1,142 to 506 facilities, or 56 percent [20]. This can be attributed to the reduction in scope of certain PAIs and wastewater sources as well as to the addition of the P2 Alternative as a compliance option to zero discharge. The estimated drop in total annual compliance cost, from $71.9 million to $29.9 million ($1995), represents an even greater reduction from proposal, at 58 percent. As noted above, no severe impacts are assessed for the final regulation while 3 facility closures were estimated for the proposed regulation. Finally, the number of moderate impacts and potential employment losses are also substantially reduced from proposal, falling by 54 percent and 49 percent, respectively. In summary, under the final regulation, the number of facilities estimated to incur costs, the expected cost, and the facility impacts are considerably less than estimated for the proposed regulation.

EPA also believes that the final regulation is superior to the other options considered because of the flexibility it provides to facilities in deciding how to achieve compliance. In particular, by allowing facilities to choose the less expensive compliance approach—the pollution prevention alternative or zero discharge—the regulation achieves substantial pollution reductions but at substantially lower costs and economic impacts than would occur if the regulation allowed compliance by only one of the possible approaches.[21] Moreover, EPA notes that, by encouraging consideration and use of pollution prevention as a compliance approach, the final regulation will reduce the potential for cross-media impacts that would occur under a strict zero discharge requirement. The regulation achieves these benefits with only a very modest reduction in the expected pollutant removals that would be achieved under a zero discharge regulation. Specifically, EPA estimates that the final regulation will remove 189,908 pounds or 98.5 percent, of the estimated 192,789 pounds of pollutant discharges subject to control by the final regulation (assuming zero removals by POTWs currently—see Cost-Effectiveness Analysis in Section V.D.6). EPA estimates that only 2,881 pounds, or about 1.5 percent of the pollutant loadings subject to the final regulation will continue to be discharged to POTWs.

Finding of Economic Achievability

The final regulation achieves substantial reductions in harmful pollutant discharges at very modest economic burden to the PFPR industry. Under a conservative assumption that facilities will recover none of their compliance costs through price increases, the regulation is estimated to impose no severe impacts (i.e., facility closures), 150 moderate impacts (i.e., line conversion or annualized compliance cost exceeding 5 percent of facility revenue), and a worst-case employment loss of 458 FTEs. In addition, the final regulation provides industry with considerable latitude in deciding how to comply with the regulation—that is, by zero discharge or pollution prevention and treatment. In this regard, EPA's analyses of the selected compliance approach may overstate compliance costs because the analyses assume application of one approach throughout the facility instead of a more customized choice of compliance approach by PFPR line. Also, EPA estimates that a relatively small fraction—25 percent—of the facilities potentially subject to the proposed regulation are likely to incur costs in complying with the final regulation. That such a small fraction of the industry is expected to incur costs reflects in large part EPA's decision to exclude additional PAIs and wastestreams from coverage under the final regulation. Finally, EPA notes that the aggregate costs and impacts estimated for the final regulation are substantially less than those estimated for the proposed regulation, both as analyzed for the original proposal and as analyzed on the basis of the higher estimate of non-272 PAI-using facilities. In light of these very modest impacts estimated for the final regulation, EPA finds that the final PSES regulation for Subcategory C facilities is economically achievable.

b. Subcategory E: Refilling Establishments

The regulatory approach and costing methodology for Subcategory E facilities is unchanged from that presented at proposal with the exception that storm water is no longer considered a process wastewater subject to this regulation. The analysis of costs, loadings, and economic methodology at proposal stands as previously presented.

[20] All comparisons with the proposed regulation and supplemental notice are based on the analyses including baseline closures.

[21] EPA has worded the final regulation to allow facilities to make the choice between zero discharge and the pollution prevention alternative on a product family/process unit/process line basis (as opposed to a full facility basis). However, EPA could not estimate costs on this basis.

EPA is establishing BPT and BAT regulations for Subcategory E facilities set to zero discharge (equivalent to PSES). EPA's survey of the PFPR industry indicated that no Subcategory E facilities are direct dischargers. Accordingly, EPA estimates that the Subcategory E portion of the PFPR industry will incur no costs for complying with the BPT or BAT requirements.

4. Regulatory Effects Not Re-Estimated

Because the aggregate compliance costs and facility impacts estimated under the final regulation are substantially less than those estimated for the regulation as presented at proposal, EPA did not re-evaluate the following economic measures for the final regulation: community impacts, foreign trade effects, impacts on firms owning PFPR facilities, the direct economic benefits to facilities of pollution prevention practices, and the labor requirements. The analysis of these additional impact categories depends on the estimated aggregate costs for the regulation and on the results of the facility impact analysis. With the final regulation estimated to impose aggregate compliance costs that are 56 percent less than originally estimated for the proposed regulation and to cause no facility closures (compared to the 2 closures originally estimated at proposal), EPA concluded that the analysis for these additional impact categories under the final regulation would find less consequential effects than had been originally estimated at proposal. Because EPA had judged the slight impacts estimated at proposal for the additional impact categories to be consistent with an economically achievable regulation, EPA, therefore, concluded that the impacts under the final regulation for these additional impact categories would also be found consistent with an economically achievable regulation. As a result, EPA decided not to expend the resources that would be necessary to re-estimate and re-document the lower impact levels for these additional impact categories.

5. Impacts of Pretreatment Standards for New Sources (PSNS) and New Source Performance Standards (NSPS)

a. Subcategory C: PFPR and PFPR/Manufacturers

(1) PSNS

EPA is setting PSNS (Pretreatment Standards for New Sources) for Subcategory C facilities equal to PSES limitations for existing sources. In general, EPA believes that new sources will be able to comply at costs that are similar to or less than the costs for existing sources, because new sources can apply control technologies and P2 practices (including dedicated lines and pressurized hoses for equipment cleaning) more efficiently than sources that need to retrofit for those technologies and P2 practices. As a result, given EPA's finding of economic achievability for the final PSES regulation for Subcategory C facilities, EPA also finds that the PSNS regulation will be economically achievable and will not constitute a barrier to entry for new sources.

(2) NSPS

EPA has established NSPS limitations equivalent to the limitations that are established for BPT and BAT. BPT and BAT limitations allow facilities to use the Zero/P2 Alternative and were found to be economically achievable; therefore, NSPS limitations will not present a barrier to entry for new facilities.

b. Subcategory E: Refilling Establishments

EPA is setting NSPS/PSNS for Subcategory E facilities equal to BAT/PSES limitations for existing sources. EPA estimates that compliance with BAT/PSES will impose no costs on existing facilities. Likewise, new facilities are not expected to incur additional annual costs due to the regulation. Because EPA found compliance with the final regulation to be economically achievable for existing facilities, EPA determined that compliance with NSPS/PSNS will also be economically achievable and not a barrier to entry for new sources.

6. Cost-Effectiveness Analysis

EPA also performed a cost-effectiveness analysis of the final PSES regulation for Subcategory C facilities. (A more detailed discussion can be found in the final Cost-Effectiveness Analysis (September 1996) [EPA–821–R–96–018]. The cost-effectiveness analysis compares the total annualized cost incurred for a regulatory option to the corresponding effectiveness of that option in reducing the discharge of pollutants.

Cost-effectiveness calculations are used during the development of effluent limitations guidelines and standards to compare the efficiency of one regulatory option in removing pollutants to another regulatory option. Cost-effectiveness is defined as the incremental annual cost of a pollution control option in an industry subcategory per incremental pollutant removal. The increments are considered relative to another option or to a benchmark, such as existing treatment. In cost-effectiveness analysis, pollutant removals are measured in toxicity normalized units called ''pounds-equivalent.'' The cost-effectiveness value, therefore, represents the unit cost of removing an additional pound-equivalent (lb eq.) of pollutants. In general, the lower the cost-effectiveness value, the more cost-efficient the regulation will be in removing pollutants, taking into account their toxicity. While not required by the Clean Water Act, cost-effectiveness analysis is a useful tool for evaluating regulatory options for the removal of toxic pollutants. Cost-effectiveness analysis does not analyze the removal of conventional pollutants (e.g., oil and grease, bio-chemical oxygen demand, and total suspended solids).

For the cost-effectiveness analysis, the estimated pounds-equivalent of pollutants removed were calculated by multiplying the number of pounds of each pollutant removed by the toxic weighting factor for each pollutant. The more toxic the pollutant, the higher will be the pollutant's toxic weighting factor; accordingly, the use of pounds-equivalent gives correspondingly more weight to pollutants with higher toxicity. Thus, for a given expenditure and pounds of pollutants removed, the cost per pound-equivalent removed would be lower when more highly toxic pollutants are removed than if pollutants of lesser toxicity are removed. Annual costs for all cost-effectiveness analyses are reported in 1981 dollars so that comparisons of cost-effectiveness may be made with regulations for other industries that were issued at different times.

a. Subcategory C: PFPR and PFPR/Manufacturers

Table 2 provides estimates of the total annualized compliance costs, in 1981 dollars, the total pollutant removals in pounds and pounds-equivalent, and the cost-effectiveness of the final PSES regulation for Subcategory C facilities with estimates of various POTW removals. EPA has estimated the pollutant removals and the cost-effectiveness value for the final rule using the same methodology as used in the proposed rule and supplemental notice (and the Pesticide Manufacturing effluent guideline). This methodology assumes that all PAIs pass through the POTW (i.e., no removal by the POTW), as there is little field data on the effectiveness of POTWs removing PAIs.

However, EPA has developed laboratory estimates for the percent

removals of a large number of pollutants (including some PAIs) which were published in the Domestic Sewage Study (DSS), February 1986 [EPA/530–SW–86–004]. For each pollutant studied, two estimates were developed, an ''acclimated'' removal percentage, which might be achieved by a well-run treatment facility with a constant flow rate of the pollutant in question, and an ''unacclimated'' removal percentage, adjusted to account for the slug loadings and batch discharges which POTWs experience in everyday operation. While the unacclimated removals were intended to more accurately reflect real world operating conditions, a limited amount of test data on non-PAI pollutants indicates that POTWs may achieve or even exceed the acclimated removal estimates in practice. Thus it is not clear whether the acclimated or unacclimated estimates more accurately represent the removal percentages achieved in practice for PAIs. EPA has thus developed a range of cost-effectiveness and total removals using three different assumptions about the removal efficiency of POTWs: zero removals (this most conservative estimate is included because of the lack of actual data), unacclimated removals (which range from 30% to 90% and average 48%), and acclimated removals (which range from 80% to 95%).

Using this range of POTW removals, EPA has estimated the range of removal to be between 18,991 and 189,908 pounds of pollutants, or 760,000 to 7.6 million toxic pounds-equivalent with cost-effectiveness ranging from $2.74 to $27.35 per pound-equivalent when compliance costs are held constant at $20.9 million [22] in 1981 dollars. EPA considers even the high end of this range to be cost effective. In order to be consistent with the proposed rule and supplemental notice (and because of the lack of actual POTW removal data for PAIs), EPA is presenting the cost-effectiveness and total removals for the final rule as $2.74 per pound-equivalent and 189,908 pounds or 7.6 million pounds-equivalent, respectively.

TABLE 2.—NATIONAL ESTIMATES OF TOTAL ANNUALIZED COSTS, REMOVALS AND COST-EFFECTIVENESS VALUES FOR SUBCATEGORY C PSES FACILITIES UNDER THE FINAL REGULATION

POTW removal assumption used	Total annualized compliance costs (millions of $, 1981)	Pollutant removals, pounds	Pollutant removals, (pounds-equivalent)	Cost-effectiveness ($/lb.-eq.)
No POTW Removals	$20.9	189,908	7.6 million	$2.74
POTW Removals per DSS	20.9	165,460	5.8 million	3.60
90 Percent Removal Efficiency	20.9	18,991	760,000	27.35

Notes:
1. Includes estimated baseline failures.
2. Toxic weighting factors used in the analyses reflect more recent toxicological information and are generally lower than the factors used at proposal and supplemental.

EPA has also estimated the removals, annual compliance cost, and cost-effectiveness excluding baseline closures (when zero removal at POTWs is assumed). Excluding estimated baseline failures lowers the costs and removals to $17.1 million ($1981) and 156,592 pounds (5.8 million pounds-equivalent). The cost-effectiveness value excluding baseline failures is $2.93 per pound-equivalent, which EPA considers to be cost-effective.

The cost-effectiveness value (assuming no POTW removal) for the final regulation is not directly comparable to the values presented in the previous Federal Register notices for the proposed regulation and the supplemental notice for two reasons. First, the scope of the regulation has changed with fewer PAIs and waste streams covered under the final regulation. As a result, the baseline pollutant discharges and pollutant removals estimated for the final regulation are lower than the values estimated for the proposed regulation. Second, the toxic weighting factors (TWFs) used by EPA for calculating the cost-effectiveness of the final regulation reflect more recent toxicological data and, in general, are lower than the values used for the proposal and supplemental notice analyses. To provide a consistent comparison of the proposed, supplemental, and final regulations, EPA re-calculated the toxic-weighted baseline discharges, pollutant removals, and cost-effectiveness values for the proposed and supplemental notice regulations using the more recent toxic weighting factors (see Table 3).[23] The calculations for the final regulation also embody the changes in regulatory scope.

TABLE 3.—ESTIMATED COST-EFFECTIVENESS OF THE FINAL PSES REGULATION FOR SUBCATEGORY C FACILITIES COMPARED WITH THE PROPOSED AND SUPPLEMENTAL NOTICE REGULATIONS

[All toxic-weighted values based on toxic weighting factors developed for the Final Regulation]

	Proposed regulation: Zero discharge with sanitizer exemption (Option 3/S.1)	Supplemental notice: Zero discharge/pollution prevention alternative	Final regulation: Zero discharge/pollution prevention alternative
Total Annualized Cost, $1981	$64.1 million	$32.7 million	$20.9 million.
Pollutant Discharges Subject to Regulation, pounds	505,235	337,995	192,789.
Pollutant Loadings Subject to Regulation, pounds-equivalent	23.2 million	15.4 million	7.7 million.
Pollutant Removals, pounds	503,114	333,731	189,908.

[22] EPA believes that if POTWs are removing PAIs, the cost of compliance of the industry would be lower than $20.9 million ($1981) due to the reduction in operating and maintenance costs associated with the treatment system used to pretreat PFPR wastewaters prior to discharge to the POTW.

[23] The re-calculated cost-effectiveness values for the proposed regulation also reflect the updated estimates of the number of facilities using non-272 PAIs.

TABLE 3.—ESTIMATED COST-EFFECTIVENESS OF THE FINAL PSES REGULATION FOR SUBCATEGORY C FACILITIES COMPARED WITH THE PROPOSED AND SUPPLEMENTAL NOTICE REGULATIONS—Continued

[All toxic-weighted values based on toxic weighting factors developed for the Final Regulation]

	Proposed regulation: Zero discharge with sanitizer exemption (Option 3/S.1)	Supplemental notice: Zero discharge/pollution prevention alternative	Final regulation: Zero discharge/pollution prevention alternative
Pollutant Removals, pounds-equivalent	23.2 million	15.3 million	7.6 million.
Cost-Effectiveness‡	$2.77/lb-eq	$2.14/lb-eq	$2.74/lb-eq.

AAA‡Cost-effectiveness analysis is conventionally calculated on an incremental basis: that is, the costs and removals of a given option are calculated as the differences from the values for the next less stringent option. At proposal, the cost-effectiveness of Option 3/S.1 was calculated on an incremental basis relative to the next less stringent option, Option 3/S. However, the cost-effectiveness values for the supplemental notice and final regulations are relative to a next less stringent option of no regulation. To permit consistent comparison of the three regulations, the cost-effectiveness of the proposed regulation has been restated relative to a no-regulation baseline.

The effect of the regulation's reduced scope is seen by the reductions in pollutant loadings subject to regulation in pounds and pounds-equivalent (see Table 3, lines 2 and 3). These results show the pollutant loadings subject to the rule at proposal to be 505,235 pounds, and on a toxic-weighted basis, 23.2 million pounds-equivalent; under the final regulation, the pollutant loadings within the scope of the regulation fall to 192,789 pounds and 7.7 million pounds-equivalent on a toxic-weighted basis. The cost-effectiveness values of the regulations using the current set of weighting factors are: $2.77 per pound-equivalent for the proposed regulation, $2.14 per pound-equivalent for the supplemental notice, and $2.74 per pound-equivalent for the final regulation. The cost-effectiveness value for the final regulation is low in relation to the values calculated for other effluent limitations guidelines and standards recently promulgated by EPA.

b. Subcategory E: Refilling Establishments

Estimates of compliance costs and pollutant removals associated with Subcategory E facilities have not changed since the proposed regulation. EPA believes that the final regulation can be implemented at a minimal cost (i.e., a capital investment of approximately $500 for a mini-bulk tank to store water for reuse) at the 19 facilities not currently in compliance. Therefore, EPA determines the final regulation to be cost-effective for Subcategory E facilities.

E. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. EPA analyzed the potential impact of the rule on both small businesses and small local governments.

Under the Regulatory Flexibility Act, an agency is not required to prepare a regulatory flexibility analysis for a rule that the agency head certifies will not have a significant economic impact on a substantial number of small entities. While the Administrator has so certified today's rule, the Agency nonetheless prepared a regulatory flexibility assessment equivalent to that required by the Regulatory Flexibility Act as modified by the Small Business Regulatory Enforcement Fairness Act of 1996. The assessment for this rule is detailed in the ''Economic Analysis of Final Effluent Limitations Guidelines and Standards for the Pesticide Formulating, Packaging, and Repackaging Industry'' [EPA–821–R–96–017].

EPA received many comments regarding the rule (see Section 15.6 of the technical record and Section IV in the economic record for the rulemaking). A number of commenters raised issues concerning small business impacts and the need to reduce the regulation's burden on small businesses. Specifically, as a way of reducing possible adverse impacts on smaller businesses, some commenters requested that EPA broaden its exemption from the regulation to include all small businesses. In addition, some commenters argued that EPA did not need to regulate the discharges of small PFPR businesses because the pollutant discharges of such facilities were not likely to have a consequential environmental impact.

EPA disagrees with this claim and believes it is inappropriate to set small-business and/or small-production exemptions for all small businesses and/or production volumes because of the substantial toxicity of many of the PAIs. The size of the business and/or the volume of PAIs processed annually are not a sufficient basis for determining that a facility should be exempted from regulation. Because of the high toxicity of many of the PAIs, the processing of even very small quantities of such PAIs can result in pollutant discharges of substantial toxicity. In addition, small business size does not necessarily equate with small pesticide production volume, particularly in terms of toxicity. Some small-business PFPR facilities process a substantial volume of PAIs and have the potential to discharge substantial volumes of toxic pollutants unless discharges are limited by the PFPR regulation. (see the Comment Response Documents in the rulemaking record for more information on these comments and EPA's response to them.)

Taking into account commenters'' concerns regarding possible impacts on small entities, EPA introduced the Zero/P2 Alternative Option and made numerous changes to the rule designed to reduce the burden upon all PFPR facilities, particularly small business entities. As previously discussed, the final rule expands the sanitizer exemption to exempt additional lower toxicity PAIs from regulatory coverage and gives facilities a Zero/P2 compliance choice on a line by line or process by process basis.

The factual analysis and basis for the ''no significant impact'' certification is contained in Chapter 4 of the final EA report referenced previously and is summarized below.

1. Analysis of Impacts on Small Business Entities

To gauge the impact of the final regulation on small business, EPA analyzed the impact of the final regulation on Subcategory C facilities according to the business size of the owning firms and compared the findings for the final regulation with those for the proposed regulation. Given the large presence of small business-owned entities in the PFPR industry, EPA exercised substantial care at proposal and throughout development of the final regulation, to ensure that the

final regulation would not impose a significant impact on a substantial number of small business-owned facilities. This effort results in the modest incurrence of both costs and impacts by small business entities under the final regulation.

EPA estimates that 1,513 (75.0 percent) of the 2,018 PFPR facilities potentially subject to a Subcategory C PSES regulation are owned by small entities. Of the 506 facilities estimated to potentially incur compliance costs under the final rule (including baseline failures), 357 (70.6 percent) are estimated to be owned by small entities. Excluding projected baseline failures, 421 facilities are expected to incur costs, of which 274, or 65.1 percent are small business-owned facilities.

No small business-owned facilities are estimated to close as a result of regulation. Less than 10 percent of small business-owned facilities (137 facilities) are estimated to incur a moderate impact ‘‘ that is, a line conversion or annualized compliance cost exceeding 5 percent of facility revenue. The average compliance cost burden among small business-owned facilities is also small in relation to facility revenue: on average, annualized compliance costs amount to 2.7 percent of facility revenue for small business-owned facilities.

Finally, the number of small business-facilities incurring costs, and the numbers of small business-facilities incurring severe or moderate impacts are substantially less than estimated for the proposed regulation. For the proposed regulation (re-estimated), 859 small business-facilities were estimated to incur costs, 3 facilities were assessed as potential closures (severe impacts), and 275 facilities were assessed as moderate impacts; the comparable values for the final regulation are 357 small-business facilities incurring costs, zero severe impacts, and 137 moderate impacts. The substantial reduction in impacts among small business-owned facilities from proposed to final regulation reflects EPA’s efforts to moderate the burden of the regulation by introducing a new option which gives facilities the two compliance alternatives, by reducing the PAIs and wastestreams subject to the regulation, and by providing facilities with greater flexibility in deciding how to achieve regulatory compliance. In light of these findings, EPA certifies that the final regulation does not impose significant impacts on a substantial number of small business-owned facilities.

2. Analysis of Impacts on Other Small Entities

In addition to considering the impact of the final regulation on small business-owned facilities, EPA also considered the regulation’s likely effects on two other categories of small entities that will be affected by the regulation: (1) Publicly Owned Treatment Works operated by small governments, which may be responsible for implementing the regulation at the local level; and (2) small communities, which may contain businesses that are adversely affected by the regulation. EPA concluded that the final regulation would not impose significant impacts on either of these additional small entity categories.

In the course of developing the final regulation, EPA solicited comments on regulatory implementation issues from over 76 POTWs that had been identified as receiving PFPR facility discharges. Fifteen of these are POTWs are considered small—that is, POTWs that are located in smaller jurisdictions (less than 50,000 population) or that are small POTWs on the basis of daily treatment volume (less than or equal to 1 million gallons per day). Comments were requested on such matters as the burden of implementing the pollution prevention/treatment alternative element of the regulation. Although small entity POTWs were afforded the opportunity to comment on the implementation requirements of the proposed regulation, none chose to do so. However, in response to the request for comment on the supplemental notice, EPA received responses from eight POTWs. Several of these comments indicated that POTWs might face modestly higher burdens from administering a regulation with the compliance flexibility offered by the P2 Alternative than from administering a regulation strictly based on zero discharge. However, none indicated that such a regulation would be expected to impose a significant additional burden beyond the requirements that POTWs already face in administering permits and compliance programs for industrial facilities. In addition, POTWs also indicated that the modest additional burden seemed reasonable given the regulation’s expected discharge reductions and its innovative structure, which gives facilities greater flexibility in designing a compliance approach and which encourages use of pollution prevention as a compliance method. In view of these responses and given the fact that no small entity POTWs responded to the request for comments, EPA certifies that the regulation will not impose a significant impact on a substantial number of small entity POTWs.

In addition to the analysis required by the Regulatory Flexibility Act, EPA also considered the regulation’s effect on small communities in which PFPR facilities might be located. Specifically, in the community impact analysis performed for the proposed PFPR regulation, EPA examined the impact of possible employment losses, including multiplier effects, in communities in which PFPR facilities with moderate or severe impacts were located. Using the criterion that an estimated aggregate employment loss exceeding one percent of community employment is significant, EPA found no significant community employment impacts for the proposed regulation as originally analyzed. At the same time, the final regulation is estimated to have substantially fewer facility and employment impacts than those estimated for the original proposed regulation. Given that no significant community impacts were found among any communities for the original proposed regulation—regardless of community size—5and that the final regulation’s impacts are expected to be substantially less than those of the proposed regulation, the final regulation will not impose a significant burden on small communities.

VI. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 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 the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes

any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Although not subject to the UMRA because the cost of the rule to all parties that would be effected is well below $100 million, EPA has complied with numerous provisions of the UMRA. Today's rule is the least costly, least burdensome alternative that was considered.

Consistent with the intergovernmental consultation provisions, EPA has already initiated consultations with the Publicly Owned Treatment Works (POTWs) that will be affected by the rule and sought their input as part of the regulation development process. Specifically, after publication of the Supplemental Notice (60 FR 30217), EPA solicited comments from over 70 POTWs that had been identified as receiving discharges from PFPR facilities. This request sought input on several aspects of the PSES regulation, including allowance of self-certification of compliance by PFPR facilities, use of Best Professional Judgment to revise or modify the pollution prevention practices listed in the Supplemental Notice, and the burden on POTWs from administering the pollution prevention compliance alternative as part of the regulation proposed in the Supplemental Notice.

In response to this request, EPA received comments from eight POTWs. Four of these included comment on the expected burden to POTWs from administering the pollution prevention and treatment compliance alternative. The general thrust of these comments is that administering the pollution prevention/treatment alternative will impose somewhat higher burdens on POTWs than administering a regulation requiring compliance strictly by zero discharge. POTWs stated that inspection requirements for verification of compliance will be more difficult and time-consuming because inspectors will have to review technical plans, equipment, and processes to verify that the specified pollution prevention and treatment measures have been properly implemented, maintained, and operated by PFPR facilities. In contrast, verification of compliance with a zero discharge regulation would be more straightforward. POTWs also stated that the option of relying on Best Engineering Judgment to alter requirements on facilities would increase, rather than reduce, implementation burdens. However, at the same time, POTWs also noted that the burden of administering the PFPR regulation did not seem unreasonable in comparison to requirements for other regulations and that the regulation's implementation requirements are necessary if the regulation is to be effective.

In keeping with the provisions to inform, educate, and advise small governments, EPA will publish a Guidance Manual prior to the compliance deadline of the rule to inform, educate, and advise interested facilities, permit writers, and POTWs on pollution prevention processes and procedures applicable to the PFPR industry. It will also serve as guidance for the implementation of and compliance with the P2 Alternative requirements.

VII. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a regulation 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.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action.'' As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record for this rulemaking.

VIII. Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

IX. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44, U.S.C. 3501 et seq. Two separate Information Collection Request (ICR) documents have been prepared by EPA. Burden estimates for PFPR direct dischargers to comply with their NPDES permits and the P2 Alternative are contained in the ''National Pollutant Discharge Elimination System (NPDES)/ Compliance Assessment/Certification Information'' ICR (No.1427.05). Burden estimates for indirect discharging PFPR facilities to comply with 40 CFR part 403 and the P2 Alternative are included in the ''National Pretreatment Program (40 CFR part 403)'' ICR (No. 0002.08). The approval of these ICRs is still pending; therefore, the information requirements contained in this rule are not effective until OMB approves them. A copy of these ICRs may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136), 401 M St., NW., Washington, DC 20460, by calling (202) 260–2740, or electronically by sending an e-mail message to ''farmer.sandy@epamail.epa.gov''.

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.

EPA estimates that each water using facility is expected to spend an average of 20 to 60 hours preparing the initial certification statement (including brief descriptions) for submittal to the permitting/control authority as well as preparing the paperwork to be kept on-site (i.e., treatment information, supporting documentation for modifications, etc. . .). EPA has estimated less hours for direct dischargers than for the indirect dischargers (i.e., 20 hours versus 60 hours) because the direct dischargers are typically also pesticide manufacturers with treatment systems in place that are well documented while most indirect dischargers do not have treatment in place and have less technical expertise in the area of wastewater treatment. However, some indirect dischargers will use less than the 60 hours because they are also pesticide manufacturers or they may be able to reuse all of their wastewater that would otherwise have to be pretreated prior to discharge to the POTW (i.e., interior wastewater sources, floor wash and/or leak and spill cleanup water).

Note: Although most indirect dischargers will not implement the P2 Alternative prior to the compliance deadline (3 years following promulgation) and; therefore would not be covered by the Pretreatment ICR (No. 0002.08) which expires in three years, EPA has estimated that approximately ten percent of the 1500 water-using PFPR facilities/new facilities (i.e., 150 facilities) would implement the P2 Alternative prior to the compliance deadline. Therefore, the burden presented in the Pretreatment ICR concerning the P2 Alternative is estimated for 150 facilities over the 3 years of the ICR. EPA will include burden for the remainder of the water using PFPR facilities in the subsequent Pretreatment ICR in 1999.

Beyond the initial submittal, a PFPR facility is expected to spend 15 minutes to prepare and sign the periodic certification statement to be submitted to the permitting authority once per year and to the control authority twice per year. If a facility has made changes in the P2 practices they are using or in the choice of zero discharge or P2 Alternative for a process line/product family that was initially specified in the initial certification (or previous period), they must provide a brief description with their periodic certification statement. EPA assumes that ten percent of facilities will have to prepare such a description each year and that the associated burden/facility is four hours for direct dischargers and 10 hours for indirect dischargers. EPA has also included four hours per facility for direct dischargers and 10 hours for indirect dischargers for the burden associated with a request for approval of modifications where the justification is not listed on Table 8 to part 455 of the final regulation. Again, EPA has used the assumption that ten percent of facilities per year will have to prepare such a request for modification.

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.

Send comments on the burden estimates and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to EPA at the address provided above, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Please remember to include the ICR number in any correspondence.

X. Water Quality Analysis

Most of the PAIs being regulated have at least one toxic effect (e.g., human health carcinogen and/or systemic toxicant or aquatic toxicant). Many of these pollutants have the potential to bioaccumulate and persist in the environment. Various studies have demonstrated the bioaccumulation of pesticides in aquatic life and accumulation of pesticides in sediments. Documented human health impacts at pesticide formulating, packaging, and repackaging (PFPR) facilities include respiratory disease and impaired liver function, primarily through worker exposure.

For example, 137 of the original 272 PAIs are known to be highly or moderately toxic to aquatic life, 25 have carcinogenic effects, 149 are known to have systemic or other health effects, 24 have an established concentration limit under the Safe Drinking Water Act and 134 have a high or moderate potential to bioaccumulate in the environment. (See the ''Potential Fate and Toxicity Categorization of Pollutants Associated with PFPR Wastewater'' Report; September 1996 in the rulemaking record).

Numerous incidents of groundwater and soil contamination at refilling establishments, largely due to spills, are identified in the Office of Pesticide Programs proposed ''Standards for Pesticide Containers and Containment'' (59 FR 6712, February 11, 1994). Several examples cited in the Standards for Pesticide Containers and Containment proposed rule are summarized below.

Based on the 1991 study, ''Report on Wisconsin Pesticide Mixing and Loading Site Study,'' an estimated 45 to 75 percent of the commercial agrichemical facilities in Wisconsin will require soil remediation and 29 to 63 percent of these sites potentially exceed the State's groundwater standards for pesticides. In the ''Environmental Cleanup of Fertilizer and Agricultural Chemical Dealer Sites'' report, the Iowa Fertilizer and Chemical Association estimates that 40 to 50 percent of refilling establishments in Iowa may require groundwater remediation. A 1992 letter from the National Agricultural Retailers Association (formerly NARA, now ARA) stated that 70 to 80 percent of the detections of pesticides in groundwater in Kansas could be traced back to refilling establishments. Groundwater contamination by pesticides is also documented at numerous refilling establishments in Michigan, Minnesota, Illinois, and Utah.

The water quality benefits of controlling the indirect discharges from PFPR facilities are evaluated by modeling the impact of those discharges on receiving streams. This model assumes that no additional removal occurs at the POTW. EPA believes this to be a valid assumption because the PAIs that are still covered by the scope of the final pretreatment standards (PSES) are expected to pass-through POTWs. The effects of POTW wastewater discharges of 139 PAIs are evaluated at current and post-compliance (e.g., zero/P2 Alternative) levels for 85 indirect discharging PFPR facilities which discharge to 79 POTWs on 77 receiving streams. Water quality models are used to project pollutant instream concentrations based on estimated releases at current and zero/P2 Alternative levels; the instream concentrations are then compared to EPA published water quality criteria or to documented toxic effect levels.

The instream pollutant concentration for one PAI is projected to exceed human health criteria in two receiving streams at current discharge levels. Both excursions are projected to be eliminated under the zero/P2 Alternative. The number of pollutants with receiving streams projected to

exceed aquatic life criteria or aquatic toxic effect levels would be reduced from 21 PAIs in 23 streams at current discharge levels to four PAIs in six streams at zero/P2 Alternative levels.

The potential impacts of these indirect discharging PFPR facilities are also evaluated in terms of inhibition of POTW operation and contamination of sludge. Potential biological inhibition problems are projected to occur for current discharges at four POTWs for three PAIs; sludge criteria are unavailable for PAIs. No potential biological inhibition problems are projected to occur for the Zero/P2 Alternative option. The POTW inhibition values used in this analysis are not, in general, regulatory values. They are based upon engineering and health estimates contained in guidance or guidelines published by EPA and other sources. Thus, EPA is not basing its regulatory approach for pretreatment discharge levels upon the finding that some pollutants interfere with POTWs by impairing their treatment effectiveness. However, the values used in the analysis do help indicate the potential benefits for POTW operation that may result from the compliance with the final regulation.

In addition, the water quality benefits of controlling the direct discharges from PFPR facilities were evaluated by modeling the impact of direct wastewater discharges on receiving stream water quality. However, as described in Section IV.C.1 of today's notice, EPA's estimates of costs and current pollutant loadings for direct discharges did not include pollutant removals for treatment already in place (i.e., pesticide manufacturing treatment systems). Therefore, an estimate of the water quality impacts resulting from current direct discharges would result in an overestimation of the current water quality impacts because these facilities do have treatment in place and are already meeting zero discharge or zero allowance (i.e., no additional discharge allowance in the pesticide manufacturers' limitations for PFPR wastewaters). Thus, EPA is presenting only those water quality impacts associated with the final rule.

Seventeen (17) direct discharging PFPR facilities, which discharge 61 PAIs to 16 receiving streams, were evaluated. Water quality models are used to project pollutant instream concentrations based on estimated releases at post-compliance (e.g., zero/P2 Alternative) levels; the instream concentrations are then compared to EPA published water quality criteria or to documented toxic effect levels where EPA water quality criteria are not available for certain PAIs. The zero/P2 Alternative option is projected to result in aquatic life exceedances of three PAIs in two receiving streams. No exceedances of human health criteria are projected to occur for the zero/P2 Alternative option.

XI. Non-Water Quality Environmental Impacts

The elimination or reduction of one form of pollution may create or aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act call for EPA to consider the non-water quality environmental impacts of effluent limitations guidelines and standards. Accordingly, EPA has considered the effect of these regulations on air pollution, solid waste generation, and energy consumption. As discussed throughout today's notice, EPA selected to promulgate the Zero/P2 Alternative option due to the cross-media impacts that could occur under a zero discharge regulation due to contract hauling to off-site incineration of potentially large volumes of non-reusable wastewaters.

EPA has estimated the non-water quality impacts associated with the selected option, i.e., the Zero/P2 Alternative, as well as a zero discharge option. As discussed previously in this notice, under the Zero/P2 Alternative, facilities will be able to choose between complying with zero discharge or the P2 Alternative on a line-by-line basis. However, for the purposes of estimating compliance costs and non-water quality impacts, EPA has assumed that a facility will choose between these compliance options on a whole-facility basis. Therefore, the non-water quality estimates for the Zero/P2 Alternative represent those cross-media impacts associated with a percentage of the facilities choosing to comply with the P2 Alternative and others choosing to comply with zero discharge.

EPA has used the assumption that, under the zero discharge option, facilities would recycle and reuse some wastewaters while hauling the remaining wastewaters off-site for incineration. Under the P2 Alternative portion of the Zero/P2 Alternative, some facilities may be able to avoid the need for wastewater treatment by comprehensively applying source reduction practices to all their wastewater sources; however, it is more likely that, following the use of recycle and reuse practices, facilities will need to employ some pollution control treatment technologies prior to discharging their wastewaters.

There are some cross-media impacts that are associated with the Zero/P2 Alternative and its use of a wastewater treatment system that are not associated with a zero discharge option since treatment is not utilized under the zero discharge option. These cross-media impacts include sludge generation and energy consumption and air emissions of criteria air pollutants [24] from the trucks that transport spent activated carbon for regeneration. However, the zero discharge option relies heavily on the contract hauling of wastewater for incineration which significantly increases the cross-media impacts due to air emissions of criteria air pollutants from the trucks that transport the wastewater to incineration and from the incineration of the wastewater itself.

EPA believes that selecting the Zero/P2 Alternative option will minimize these cross-media impacts, overall, as compared to the zero discharge option. In particular, the Zero/P2 Alternative has a significantly lower cross-media impact on air emissions of criteria air pollutants than the zero discharge option while still preventing the discharge of 98.5 percent of the pesticide active ingredients (PAIs) from being discharged to the water. The following sections present the estimates for air emissions, solid waste generation and energy consumption for the final rule.

A. Air Pollution

For the purpose of preparing a cross-media impact analysis, the air pollution effects are divided into two separate types of air emissions generated as a result of the final rule. First, there are air emissions estimated for the Zero/P2 Alternative based on the treatment of wastewater through a treatment system, such as the Universal Treatment System, discussed in Section II.E. of today's preamble. These emissions consist mainly of volatile priority pollutants. EPA does not anticipate that there will be any significant losses of PAIs into the atmosphere under the Zero/P2 alternative, because most PAIs have low volatility. The second type of air emissions are those generated from the transport (i.e., air emissions from the trucks' exhaust and gasoline) of both wastewater and spent activated carbon as well as emissions from the incineration of wastewater that is hauled off-site for disposal. Estimates of both types of air emissions are presented on Table 4 of today's preamble for the Zero/P2 Alternative and for zero discharge. As seen on Table

[24] Criteria air pollutants include: Volatile organic compounds (VOCs), nitrogen oxides (NOx), sulfur dioxide (SO2), particulate matter (PM) and carbon monoxide (CO). Criteria air pollutants can injure health, harm the environment and cause property damage.

4, the emissions for criteria air pollutants from the transport of wastewaters and spent activated carbon and from the incineration of the non-reusable wastewaters under the zero discharge option would create a significant cross-media impact as compared to the Zero/P2 Alternative.

TABLE 4: CRITERIA AIR POLLUTANT EMISSIONS (LB/YR)

Emission source	VOCs	NO_x	PM	CO	SO_2
Wastewater Transportation:					
Zero/P2 Alternative	14,720	121,200	6,800	175,400	.....
Zero Discharge	87,600	720,000	40,400	1,044,000	.....
Wastewater Incineration:					
Zero/P2 Alternative	5	1,838	10	133	2
Zero Discharge	264	94,600	530	6,880	106
Spent Activated Carbon Transportation:					
Zero/P2 Alternative	1,692	13,920	780	20,200	.....
Zero Discharge†	NA	NA	NA	NA	.....
Wastewater Treatment:‡					
Zero/P2 Alternative	84,700	NA	NA	NA	NA
Zero Discharge	52,500	NA	NA	NA	NA

NA=not applicable

a: EPA estimates that under the Zero/P2 Alternative 69% of facilities incurring costs will choose the P2 Alternative and 31% will choose to comply with zero discharge.

† There is no wastewater treatment system used under the zero discharge option and, therefore, no spent activated carbon to transport for regeneration.

‡ Air emissions estimates from wastewater treatment include only volatile priority pollutants.

EPA also estimates the reduction of volatile priority pollutants emissions that would occur under the Zero/P2 Alternative and under zero discharge. EPA estimates that in addition to the 192,789 lbs of PAIs that are currently (i.e., prior to today's regulation) being discharged to water, 381,000 pounds of volatile priority pollutant are currently emitted when wastewater is discharged to POTWs or are emitted to the air from the wastewater treatment process at the POTWs. EPA estimates that under the Zero/P2 Alternative, the air emissions from wastewater reuse, treatment and discharge to POTWs will be reduced to 84,700 pounds of volatile priority pollutants. This means that implementing the Zero/P2 Alternative will reduce air emissions of volatile priority pollutants from wastewater reuse, treatment and discharge by 296,300 pounds annually. In addition, the remaining emissions are localized and in many cases may be more likely to be captured and treated by the UTS. The loss of priority pollutants to the atmosphere is likely to occur during reuse of wastewater and particularly from the emulsion breaking, hydrolysis, and/or chemical oxidation treatment steps where the addition of heat is likely to promote their release [25]. It is also possible that some emissions of priority pollutants could occur during the cleaning of equipment or containers, particularly if high-pressure cleaning or steam cleaning is used. Under the zero discharge option, 52,500 pounds of volatile priority pollutants are expected to be emitted during the recycle and reuse of wastewaters.

B. Solid Waste

EPA estimates that under the Zero/P2 Alternative there will be 856,000 pounds of sludge generated from emulsion breaking and sulfide precipitation treatment annually. EPA has assumed that the sludge generated via emulsion breaking and sulfide precipitation will be hauled to hazardous waste incinerators. In addition to the sludge generated, treatment of wastewater through the Universal Treatment System will generate 3,830,000 pounds annually of spent activated carbon. It is assumed that the activated carbon will be sent off-site for regeneration, which means that it is reused and would *not* become a waste. See Section XI.A. for the estimate of air emissions from transporting the spent activated carbon for regeneration and from the hauling of wastewater/sludge to incineration as well as the air emissions associated with incineration.

EPA believes the Zero/P2 Alternative is consistent with the goals established for EPA's Hazardous Waste Minimization and Combustion Strategy (November, 1994). This draft combustion strategy establishes the goal of a strong preference for source reduction over waste management, thereby reducing the long-term demand for combustion and other waste management facilities. In addition, the strategy states that combustion does have an appropriate role and that EPA wants to ensure that combustion facilities (such as incinerators and boilers and industrial furnaces (BIFs)) are designed in a manner to protect public health.

C. Energy Requirements

EPA estimates that compliance with the final regulation will increase energy consumption by a small increment over present industry use. The main energy requirement is the generation of steam that is used in the wastewater treatment system to accomplish emulsion breaking and hydrolysis. Steam provides the heat energy to assist with the separation of emulsified phases and increases the rate at which active ingredients hydrolyze. It is estimated that about 6.28×10^7 pounds per year of steam would be required by the Universal Treatment System. This would require approximately 13,581 barrels of oil annually. This is, relatively, very small compared to the 18 million barrels per day that the United States currently consumes.

Additionally, EPA estimates that the operation of the Universal Treatment System will consume 811,000 kilowatt hours per year. This is expended by the pumps and agitators used in treatment and associated with the storage of water until it can be reused.

[25] EPA believes that use of closed vessels in the treatment system will additionally control the release of volatile priority pollutants to the air and, therefore; has used the costs associated with closed vessels when estimating costs for the regulation. However, for the analysis of the air pollution emissions estimates for this rule, estimates on volatile priority pollutant emissions from closed vessels were not available. Therefore, the volatile priority pollutant emissions estimate assumes the use of open vessels during treatment which may overestimate the emissions.

XII. Regulatory Implementation

The purpose of this section is to provide assistance and direction to permit writers and control authorities to aid in their implementation of this regulation and its unique compliance alternative. This section also discusses the relationship of upset and bypass provisions, variances and modifications, and analytical methods to the final limitations and standards.

A. Implementation of the Limitations and Standards

1. Pesticide Formulating, Packaging and Repackaging (Subcategory C)

Each PFPR facility subject to this regulation will need to make an initial choice on either a facility-wide basis or on a process basis (i.e., product family/process line/process unit). They will need to choose to either comply with the zero discharge effluent limitation/pretreatment standard *or* choose to agree to conduct the listed pollution prevention practices (or a variation of the listed practices based on self-implemented modifications or those agreed to by the permit/control authority) and also agree to make the practices and the pollution prevention discharge allowance enforceable (see § 455.41 of the final rule for the definition of P2 allowable discharge). However, beyond this initial choice, much of the continued implementation of the Zero/P2 Alternative will differ for direct and indirect dischargers.

Direct Dischargers

For direct dischargers, the Zero/P2 Alternative will be implemented through the NPDES permitting process. For each new or existing direct discharging facility, the facility would need to make the initial choice at the permitting stage or at the time for permit modification or renewal, respectively. Facilities that do not choose the P2 Alternative (or zero discharge) for the facility in its entirety will be required to clearly state in their NPDES permit each product family, process unit or process line and the option selected for each. For those processes for which a direct discharge facility chooses the P2 Alternative over the zero discharge limitation, the permitting authority would include all of the P2 practices and any specified treatment technologies in the facility's NPDES permit. The definition of P2 allowable discharge for direct dischargers requires the appropriate treatment of *all* process wastewater prior to discharge. Therefore, permit writers may want to include in the permit the method chosen by the facility to demonstrate that the treatment system: (1) Is appropriate for the PAIs in their process wastewaters (that are not also being manufactured); and (2) is properly operated and maintained; or the permit writer can set numerical limitations based on BPJ for any additional PAIs, as necessary.

Today's final regulations do not require facilities to submit all of the necessary compliance paperwork to the NPDES permit writer, but instead require the facility choosing the P2 Alternative to keep the paperwork on-site and available for the permitting authority and enforcement officials. However, EPA is requiring the submittal of an initial certification statement at the time of issuance, renewal, or modification of an NPDES permit for direct dischargers. In addition, as suggested by a commenter, EPA is also requiring the submittal of a periodic certification statement to be submitted every year to the NPDES permit writer. The pollution prevention practices and treatment technologies included in such a NPDES permit would be enforceable under CWA sections 309 and 505.

For those processes where a new or existing direct discharge PFPR/Manufacturer has chosen to comply with zero discharge, the permit would include: (1) The pesticide manufacturing limitations (40 CFR part 455, subparts A and B) with no additional allowance for the PFPR wastewaters for those PAIs that are also manufactured; and (2) limitations set equal to the detection limit of the PAIs expected to be in the wastewater (or no PFPR process wastewater flow) for PAIs that are not also manufactured at the facility. The NPDES permits for new or existing stand-alone direct discharging facilities that choose to achieve zero discharge from specified processes will include either limitations set equal to the detection limit of the analytical method for the PAIs expected to be in the wastewater or will allow no process wastewater flow.

Indirect Dischargers

Existing and new PFPR facilities (including PFPR/Manufacturers) which are indirect dischargers would also need to make an initial choice on a process basis of meeting the zero discharge pretreatment standard or adopting and implementing the P2 practices and the treatment technologies (if so specified). Facilities that choose the zero discharge option for specified processes (or for the entire facility) would agree in their control mechanism or pretreatment agreement to demonstrate zero discharge through no process wastewater flow or compliance by meeting a numerical standard be set equal to the detection limit of the analytical method for the PAIs expected in the wastewater.

If the indirect discharging PFPR facility chooses the P2 Alternative for any or all processes/lines/product families, the facility would need to notify the Control Authority of its intention by submitting an initial certification statement as described in § 455.41(a) of the final regulation. Facilities that do not choose the P2 Alternative for the facility in its entirety will be required to include a brief description of each product family, process unit or process line and the option selected for each with the initial certification statement. In addition, the facility must include all of the P2 practices (or modifications) and any specified treatment technologies that will be implemented to meet the requirements of the practices listed in Table 8 to part 455 for those processes which the P2 Alternative was chosen. For indirect dischargers appropriate pretreatment is required for any interior equipment cleaning wastewater (including drums), floor wash [26] or leak/spill cleanup water that is part of the P2 allowable discharge. Other wastewater sources can be discharged to the POTW without pretreatment. The initial certification statement to be submitted requires a signature by the appropriate manager in charge of overall operations of the facility to assure that information provided is true, accurate, and complete to the best of his or her knowledge.

Other required paperwork can be kept on-site (e.g., supporting documentation for any modifications, treatment technologies used that are not listed on Table 10 to part 455 of the regulation, the method chosen and supporting documentation for demonstrating that appropriate treatment is well operated and maintained and the rationale for choosing the method of demonstration). Any modifications for a reason *not* listed on Table 8 to part 455 of the regulation must be submitted to the control authority for approval.

Once an individual control mechanism (or pretreatment agreement) is in place, facilities need to submit a

[26] In individual cases the requirement of wastewater pretreatment prior to discharge to the POTW may be removed by the control authority for floor wash or the final rinse of a non-reusable triple rinse when the facility has demonstrated that the levels of PAIs and priority pollutants in such wastewaters are at a level that is too low to be effectively pretreated at the facility and have been shown to neither pass through or interfere with the operations of the POTW. The control authority should also take into account whether or not the facility has employed water conservation when generating such a non-reusable wastewater.

periodic certification statement to the control authority indicating that the P2 Alternative is being implemented as in the previous period or that a modification to the individual control mechanism is needed. The certification statement is to be submitted to the control authority on the same time table, i.e., twice per year (June and December), as the reporting required by 40 CFR 403.12(e). The control authority, as part of its approved pretreatment program, must have the authority to ensure compliance with a pretreatment standard (40 CFR 403.8(f)(1)(ii)) and to carry out inspections of the indirect dischargers' self-certifications and of the paperwork described below. 40 CFR 403.8(f)(1)(v).

Necessary Paperwork for the P2 Alternative

As briefly mentioned above, both direct and indirect discharging facilities are required to keep certain paperwork on-site and available for permitting/control authorities and enforcement officials.

Note: Although EPA is not requiring submittal of all the paperwork for approval in these national regulations, NPDES programs and control authorities may choose to require submittal of any of the paperwork for approval.

The paperwork which is required to be submitted includes the one-time initial certification statement (see § 455.41(a) of the final rule) and the periodic certification statements (see § 455.41(b) of the final rule). The paperwork which can be kept on-site is referred to in this final rule as the ''On-site Compliance Paperwork'' (see § 455.41(c)). Each of these is described below.

For each PFPR facility, the initial certification statement would include, at a minimum, a listing of and descriptions of the processes (i.e., product families/process lines/process units) for which it chooses the P2 Alternative and those for which it chooses to achieve zero discharge; descriptions of the P2 practices (from Table 8 to part 455 of the regulation) that are being employed and how they are being implemented; description of any justifications allowing modification to the practices listed on Table 8 to part 455; and a description of the treatment system being used to obtain a P2 allowable discharge (as defined in § 455.41). The initial certification statement must be signed by the responsible corporate officer as defined in 40 CFR 403.12(l) or 40 CFR 122.22.

The periodic certification statement is to be submitted twice per year for indirect discharging facilities and once per year for direct discharging facilities and should indicate whether the P2 Alternative is being implemented as set forth in the NPDES permit/control mechanism or that a justification allowing modification of the listed practices has been implemented resulting in a change in the P2 practices conducted at the facility. If the modification needed is not listed on Table 8 of part 455, the facility should request a modification from their permitting/control authority if it has not already done so.

The on-site compliance paperwork should include the information from the initial and periodic certifications but must also include: (1) The supporting documentation for any modifications that have been made to the listed P2 practices (including records that indicate/demonstrate, for example, microbial growth, specific directions for other disposal from the manufacturer, use of a solvent recovery system, etc.); (2) a written discussion demonstrating that the treatment system being used contains the appropriate treatment technologies (i.e., listed by PAI in the Table 10 to Part 455 of the final regulation, equivalent system as defined in § 455.10(h), or pesticide manufacturing system) for removing PAIs that are used in production at their facility and could be in their wastewater; (3) a method for demonstrating that the treatment system is well operated and maintained; and (4) a discussion of the rationale for choosing the method of demonstration. For example, a facility may utilize a surrogate method for determining breakthrough of their carbon adsorption unit. This method could be used instead of performing analytical testing for all or any of the PAIs that may have been in production at the facility over a specific period of time. The facility could possibly use records of carbon change out/purchase to demonstrate that the system is properly operated and maintained and could describe the initial testing and/or vendor information used to determine the useful life of the activated carbon.

Control authorities, at or any time after entering into an individual control mechanism, or permitting authorities, at or any time after issuing, reissuing, or modifying the NPDES permit, could inspect the PFPR facility to see that the listed practices are being employed, that the treatment system is well operated and maintained and that the necessary paperwork provides sufficient justification for any modifications. When facilities need to modify a listed P2 practice for which a justification is not listed in the final regulation, the facility must make a request for the modification from the NPDES permitting authority or the control authority. The permit writer/control authority is expected to use BPJ/BEJ to approve the modification.

Note: EPA is preparing a guidance manual to aid permit writers/control authorities as well as PFPR facilities.

Compliance Dates

EPA has established a three-year deadline for compliance with the PFPR pretreatment standards for existing sources (PSES). Under the zero/P2 alternative facilities will need time to assess which process lines are amenable to the P2 alternative and which lines will have to comply with zero discharge. This decision will most likely be based on economics as well as the characteristics of the individual process line. In addition, facilities will have to determine the treatment necessary for the PAIs expected to be found in the wastewater at their facility and they will need time to design and install these systems. Finally, facilities will need time to prepare the on-site compliance paperwork necessary to support the P2 alternative. Thus, EPA believes that a full three-year compliance period is appropriate.

Existing direct dischargers must comply by the date of issue, reissue or modification of the NPDES permit. New source standards and limitations (PSNS and NSPS) must be complied with when a facility commences the discharging of wastewater.

Note: For this rule, a direct discharge facility is considered a new source if its construction commenced following promulgation of the final rule (40 CFR 122.2); while an indirect discharge facility is considered a new source if construction commenced after proposal (April 1994) of the pretreatment standards (40 CFR 403.3).

Direct dischargers may be subject to the establishment, by the permitting authority, of more stringent effluent limitations based on applicable water quality standards. *See* 40 CFR 122.44. In addition, those PFPR facilities that are indirect dischargers remain subject to the Pass-Through and Interference prohibitions contained in the general pretreatment regulations. 40 CFR 403.5(a)(1). Indirect dischargers could also be subject to local limits established by the control authority receiving the facility's wastewater. 40 CFR 403.5(c).

The Agency emphasizes that although the Clean Water Act is a strict liability statute, EPA can initiate enforcement proceedings at its discretion. EPA has exercised and intends to exercise that

discretion in a manner that recognizes and promotes good faith compliance.

2. Refilling Establishments (Subcategory E)

The limitations and standards for existing and new refilling establishments are set as zero discharge. In addition, many states (with national regulations soon to follow) require these facilities to have secondary containment systems and loading pads for their bulk pesticide and pesticide dispensing operations. Under these state and eventual national secondary containment regulations under FIFRA, facilities are collecting process wastewaters that were formerly contaminating soil and groundwater.

Since the majority of these facilities are not located in an area where direct or indirect discharge is feasible, EPA believes that the zero discharge can be implemented as seen on site visits. Typically, these facilities collect their process wastewaters (including interior equipment cleaning of minibulks, bulk tanks and related ancillary equipment and leak/spill cleanup water) and store these collected rinsates for reuse. The stored rinsates are then used as product make-up water in future custom application activities. Facilities that do not operate their own custom application services or that are located in states where the purchase of make-up water for reuse in applications is prohibited have been known to give away these rinsates to custom applicators or directly to farmers. A small number of facilities in such a situation may choose some means of off-site disposal, such as contract hauling to incineration.

B. Upset and Bypass Provisions

A recurring issue is whether industry limitations and standards should include provisions authorizing noncompliance with effluent limitations during periods of ''upset'' or ''bypass''. An upset, sometimes called an ''excursion,'' is an unintentional and temporary noncompliance with technology-based effluent limitations occurring for reasons beyond the reasonable control of the permittee. EPA believes that upset provisions are necessary to recognize an affirmative defense for an exceptional incident including ''Acts of God''. Because technology-based limitations can require only what properly designed, maintained and operated technology can achieve, it is claimed that liability for such situations is improper.

While an upset is an unintentional episode during which effluent limitations are exceeded, a bypass is an act of intentional noncompliance during which wastewater treatment facilities are circumvented in emergency situations.

EPA has both upset and bypass provisions in NPDES permits, and has promulgated NPDES and pretreatment regulations which include upset and bypass permit provisions. (40 CFR 122.41(m), 122.41(n) and 40 CFR 403.16 and 403.17.) The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. Since there are already upset and bypass provisions in NPDES permits and pretreatment regulations, EPA will let local permit and control authorities deal with individual upsets or requests for bypass.

C. Variances and Modifications

Upon the promulgation of these regulations, the effluent limitations for the appropriate subcategory must be applied in all Federal and State NPDES permits issued to direct dischargers in the pesticide formulating, packaging or repackaging industry. In addition, the pretreatment standards are directly applicable to indirect dischargers.

1. Fundamentally Different Factors Variances

For the BPT effluent limitations, the only exception to the binding limitations is EPA's ''fundamentally different factors'' (''FDF'') variance (40 CFR part 125, subpart D). This variance recognizes factors concerning a particular discharger which are fundamentally different from the factors considered in this rulemaking. Although this variance clause was set forth in EPA's 1973–1976 effluent guidelines, it is now included in the NPDES regulations and not the specific industry regulations. (See 44 FR 32854, 32893 [June 7, 1979] for an explanation of the ''fundamentally different factors'' variance). The procedures for application for a BPT FDF variance are set forth at 40 CFR 122.21(m)(1)(I)(A).

Dischargers subject to the BAT limitations in these final regulations may also apply for an FDF variance, under the provisions of section 301(n) of the Act, which regulates BAT, BCT, and pretreatment FDFs. In addition, BAT limitations for nonconventional pollutants may be modified under section 301(c) (for economic reasons) and 301(g) (for water quality reasons) of the Act. These latter two statutory modifications are not applicable to ''toxic'' or conventional pollutants.

Dischargers subject to pretreatment standards for existing sources (PSES) are also subject to the ''fundamentally different factors'' variance provision (40 CFR 403.13) and credits for pollutants removed by POTWs, as discussed in Section XII.C.2. Dischargers subject to pretreatment standards for new sources (PSNS) are subject only to the removal credit provision (*see* Section XII.C.2).

New sources subject to NSPS are not eligible for EPA's ''fundamentally different factors'' variance or any statutory or regulatory variances. *See E.I. Du Pont* v. *Train*, 430 U.S. 112 (1977).

2. Removal Credits

Congress, in enacting Section 307(b) of the CWA, recognized that, in certain instances, POTWs could provide some or all of the treatment of an industrial user's wastestream that would be required pursuant to the pretreatment standard. Consequently, Congress established a discretionary program for POTWs to grant ''removal credits'' to their indirect dischargers. The credit, in the form of a less stringent pretreatment standard, allows an increased amount of pollutants to flow from the indirect discharger's facility to the POTW.

Section 307(b) of the CWA establishes a three-part test for obtaining removal credit authority for a given pollutant. Removal credits may be authorized only if (1) the POTW ''removes [27] all or any part of such toxic pollutant,'' (2) the POTW's ultimate discharge would ''not violate that effluent limitation, or standard which would be applicable to that toxic pollutant if it were discharged'' directly rather than through a POTW and (3) the POTW's discharge would ''not prevent sludge use and disposal by such [POTW] in accordance with section [405] . . . .'' Section 307(b).

EPA has promulgated removal credit regulations in 40 CFR 403.7. The United States Court of Appeals for the Third Circuit has interpreted the statute to require EPA to promulgate comprehensive sewage sludge regulations before any removal credits could be authorized. *NRDC* v. *EPA*, 790 F.2d 289, 292 (3rd Cir. 1986) *cert. denied*. 479 U.S. 1084 (1987). Congress made this explicit in the Water Quality Act of 1987 which provided that EPA

[27] In 40 CFR 403.7, removal is defined to mean ''a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration can be obtained by physical, chemical or biological means and may be the result of specifically designed POTW capabilities or may be incidental to the operation of the treatment system. Removal as used (in § 403.7) shall not mean dilution of a pollutant in the POTW.''

could not authorize any removal credits until it issued the sewage sludge use and disposal regulations required by section 405(d)(2)(a)(ii).

Section 405 of the CWA requires EPA to promulgate regulations which establish standards for sewage sludge when used or disposed for various purposes. These standards must include sewage sludge management standards as well as numerical limits for pollutants which may be present in sewage sludge in concentrations which may adversely affect public health and the environment. Section 405 requires EPA to develop these standards in two phases. On November 25, 1992, EPA promulgated the Round One sewage sludge regulations establishing standards, including numerical pollutant limits, for the use and disposal of sewage sludge. 58 FR 9248. EPA established pollutant limits for ten metals when sewage sludge is applied to land, for three metals when it is disposed of at surface disposal sites and for seven metals and total hydrocarbons, a surrogate for organic pollutant emissions, when sewage sludge is incinerated. These requirements are codified at 40 CFR part 503.

At the same time EPA promulgated the Round One regulations, EPA also amended its pretreatment regulations to provide that removal credits would be available for certain pollutants regulated in the sewage sludge regulations. *See* 58 FR at 9386. The amendments to Part 403 provide that removal credits may be made potentially available for the following pollutants:

(1) If a POTW applies its sewage sludge to the land for beneficial uses, disposes of it on surface disposal sites or incinerates it, removal credits may be available, depending on which use or disposal method is selected (so long as the POTW complies with the requirements in part 503). When sewage sludge is applied to land, removal credits may be available for ten metals. When sewage sludge is disposed of on a surface disposal site, removal credits may be available for three metals. When the sewage sludge is incinerated, removal credits may be available for seven metals and for 57 organic pollutants. *See* 40 CFR 403.7(a)(3)(iv)(A).

(2) In addition, when sewage sludge is used on land or disposed of on a surface disposal site or incinerated, removal credits may also be available for additional pollutants so long as the concentration of the pollutant in sludge does not exceed a concentration level established in part 403. When sewage sludge is applied to land, removal credits may be available for two additional metals and 14 organic pollutants. When the sewage sludge is disposed of on a surface disposal site, removal credits may be available for seven additional metals and 13 organic pollutants. When the sewage sludge is incinerated, removal credits may be available for three other metals. *See* 40 CFR 403.7(a)(3)(iv)(B).

(3) When a POTW disposes of its sewage sludge in a municipal solid waste land fill that meets the criteria of 40 CFR part 258 (MSWLF), removal credits may be available for any pollutant in sewage sludge. *See* 40 CFR 403.7(a)(3)(iv)(C).

Thus, given compliance with the requirements of EPA's removal credit regulations,[28] following promulgation of the pretreatment standards being proposed here, removal credits may be authorized for any pollutant subject to pretreatment standards if the applying POTW disposes of its sewage sludge in a MSWLF that meets the requirements of 40 CFR part 258. If the POTW uses or disposes of its sewage sludge by land application, surface disposal or incineration, removal credits may be available for the following metal pollutants (depending on the method of use or disposal): Arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium and zinc. Given compliance with § 403.7, removal credits may be available for the following organic pollutants (depending on the method of use or disposal): acrylonitrile, aldrin/dieldrin (total), benzene, benzidine, benzo(a)pyrene, bis(2-chloroethyl)ether, bis(2-ethylhexyl)phthalate, bromodichloromethane, bromoethane, bromoform, carbon tetrachloride, chlordane, chloroform, chloromethane, DDD, DDE, DDT, dibromochloromethane, dibutyl phthalate, 1,2-dichloroethane, 1,1-dichloroethylene, 2,4-dichlorophenol, 1,3-dichloropropene, diethyl phthalate, 2,4-dinitrophenol, 1,2-diphenylhydrazine, di-n-butyl phthalate, endosulfan, endrin, ehtylbenzene, heptachlor, heptachlor epoxide, hexachlorobutadiene, alphahexachlorocyclohexane, betahexachlorocyclohexane, hexachlorocyclopentadiene, hexachloroethane, hydrogen cyanide, isophorone, lindane, methylene chloride, nitrobenzene, n-nitrosodimethylamine, n-nitrosodi-n-propylamine, pentachlorophenol, phenol, polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzo-p-dioxin, 1,1,2,2-tetrachloroethane, tetrachloroethylene, toluene, toxaphene, trichloroethylene, 1,2,4-trichlorobenzene, 1,1,1-trichloroethane, 1,1,2-trichloroethane and 2,4,6-trichlorophenol.

With regard to the use of removal credit authority for any pollutant subject to these pretreatment standards, a POTW (once compliance with 40 CFR 403.7 is shown and removal credit authority is granted) may be able to effectively authorize the waiving of what otherwise would be required treatment of the PFPR wastewaters by authorizing a removal credit to the PFPR industrial user to the extent of any pollutants remaining in its discharge after all applicable pollution prevention practices have been complied with. However, removal credits could only be granted to the extent that granting of such credits would not result in pass through or interference at the POTW as defined in 40 CFR 403.3 and in accordance with the provisions of § 403.5, and EPA would expect that the PFPR industrial user would have to continue to comply with the pollution prevention practices as specified in the P2 Alternative even if a removal credit had been provided.

D. Analytical Methods

Section 304(h) of the Act directs EPA to promulgate guidelines establishing test methods for the analysis of pollutants. These methods are used to determine the presence and concentration of pollutants in wastewater, and are used for compliance monitoring and for filing applications for the NPDES program under 40 CFR 122.21, 122.41, 122.44 and 123.25, and for the implementation of the pretreatment standards under 40 CFR 403.10 and 403.12. To date, EPA has promulgated methods for conventional pollutants, toxic pollutants, and for some non-conventional pollutants. The five conventional pollutants are defined at 40 CFR 401.16. Table I–B at 40 CFR part 136 lists the analytical methods approved for these pollutants. The 65 toxic metals and organic pollutants and classes of pollutants are defined at 40 CFR 401.15. From the list of 65 classes of toxic pollutants EPA identified a list of 126 ''Priority Pollutants.'' This list of Priority Pollutants is shown, for example, at 40 CFR part 423, appendix A. The list includes non-pesticide organic pollutants, metal pollutants, cyanide, asbestos, and pesticide

[28] Under § 403.7, a POTW is authorized to give removal credits only under certain conditions. These include applying for, and obtaining, approval from the Regional Administrator (or Director of a State NPDES program with an approved pretreatment program), a showing of consistent pollutant removal and an approved pretreatment program. *See* 40 CFR 403.7(a)(3)(I), (ii), and (iii).

pollutants. Currently approved methods for metals and cyanide are included in the table of approved inorganic test procedures at 40 CFR 136.3, Table I–B. Table I–C at 40 CFR 136.3 lists approved methods for measurement of non-pesticide organic pollutants, and Table I–D lists approved methods for the toxic pesticide pollutants and for other pesticide pollutants.

EPA believes that the analytical methods for pesticide active ingredients contained in the promulgated pesticide manufacturing effluent guidelines and standards (see *Methods for the Determination of Nonconventional Pesticides in Municipal and Industrial Wastewater*, Volumes I & II, EPA 821–R–93–010–A&B, August 1993, Revision 1) will perform equally well on treated pesticide formulating, packaging or repackaging wastewaters as on pesticide manufacturing wastewaters. Raw wastewater samples may on occasion require some separation prior to analysis, analogous to the emulsion breaking pretreatment included in EPA's costed BAT technology. Many of these methods have in fact been used on the PFPR sampled wastewaters. All of the active ingredient pollutant data that supports the proposed effluent limitations were generated using analytical methods that employ the approved methods or are based upon the approved methods at 40 CFR part 136 or contained in *Methods for the Determination of Nonconventional Pesticides in Municipal and Industrial Wastewater*. For PAI's that have no EPA-approved analytical methods, PFPR facilities may utilize alternative sampling and analysis methods as specified in 40 CFR 136.4 and 403.12(g)(4). At some future date, EPA may transfer the analytical methods promulgated at part 455 to part 136 as a part of EPA's effort to consolidate analytical methods and streamline promulgation of new methods. As discussed in Section XII.A.1, EPA believes that those facilities choosing zero discharge will either demonstrate zero discharge through no process wastewater flow or will demonstrate compliance using the analytical methods to show PAIs levels are at or below detection (or meeting pesticide manufacturing limitations with no allowance given to PFPR wastewater). Facilities choosing to demonstrate that they are in compliance with the P2 Alternative will use submittal of certification statements, inspections, and demonstrated implementation of the listed P2 practices to assure compliance with the final rule. However, some facilities, although not required, may use analytical methods to demonstrate that their treatment system are ''well operated and maintained,'' as explained in the P2 Alternative. In addition, permitting/control authorities can set numerical limitations using BPJ/BEJ which may rely on the use of analytical methods for demonstrating compliance.

List of Subjects in 40 CFR Part 455

Environmental protection, Chemicals, Packaging and containers, Pesticides and pests, Pollution prevention, Waste treatment and disposal, Water pollution control.

Dated: September 30, 1996.

Carol M. Browner,

Administrator.

Appendix A to the Preamble—Abbreviations, Acronyms, and Other Terms Used in This Document

B.t.—Bacillus thuringiensis
BAT—Best Available Control Technology Economically Achievable
BCT—Best Conventional Pollutant Control Technology
BEJ—Best Engineering Judgement
BIF—Boilers and Industrial Furnaces
BOD—Biochemical Oxygen Demand
BPJ—Best Professional Judgement
BPT—Best Practicable Control Technology Currently Available
CAA—Clean Air Act
CO—Carbon Monoxide
CSF—Confidential Statement of Formula
CWA—Clean Water Act
DOT—Department of Transportation
FATES—FIFRA and TSCA Enforcement System
FDA—Food and Drug Administration
FDF—Fundamentally Different Factors
FIFRA—Federal Insecticide, Fungicide, Rodenticide Act
GMPs—Good Manufacturing Practices
GRAS—Generally Recognized As Safe
ICR—Information Collection Request
NO_x—Nitrogen oxides
NPDES—National Pollutant Discharge Elimination System
NSPS—New Source Performance Standards
P2—Pollution Prevention
PAI—Pesticide Active Ingredient
PFPR—Pesticide Formulating, Packaging and Repackaging
PM—Particulate Matter
POTW—Publicly Owned Treatment Works
PPA—Pollution Prevention Act
PSES—Pretreatment Standards for Existing Sources
PSNS—Pretreatment Standards for New Sources
RCRA—Resource Conservation and Recovery Act
R & D—Research and Development
SBREFA—Small Business Regulatory Enforcement Fairness Act
SO_2—Sulfur dioxide
SRRP—Source Reduction Review Project
TDD—Technical Development Document
TSCA—Toxic Substances Control Act
TSD—Treatment, Storage and Disposal
TSS—Total Suspended Solids
UMRA—Unfunded Mandate Reform Act
UTS—Universal Treatment System
VOCs—Volatile Organic Compounds
Zero/P2 Alternative—Zero Discharge/Pollution Prevention Alternative Option

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 455—PESTICIDE CHEMICALS

1. The authority citation for part 455 continues to read as follows:

Authority: Secs. 301, 304, 306, 307, and 501, Pub. L. 92–500, 86 Stat, 816, Pub. L. 95–217, 91 Stat. 156, and Pub. L. 100–4, 101 Stat. 7 (33 U.S.C. 1311, 1314, 1316, 1317, and 1361).

1a. Section 455.10 is amended by adding paragraphs (g) through (u) to read as follows:

§ 455.10 General definitions.

* * * * *

(g) *Appropriate pollution control technology* means the wastewater treatment technology listed in Table 10 to this part 455 for a particular PAI(s) including an emulsion breaking step prior to the listed technology when emulsions are present in the wastewater to be treated.

(h) *Equivalent system* means a wastewater treatment system that is demonstrated in literature, treatability tests or self-monitoring data to remove a similar level of pesticide active ingredient (PAI) or priority pollutants as the applicable appropriate pollution control technology listed in Table 10 to this Part 455.

(i) *Formulation* of pesticide products means the process of mixing, blending or diluting one or more pesticide active ingredients (PAIs) with one or more active or inert ingredients, without an intended chemical reaction to obtain a manufacturing use product or an end use product.

(j) *Group 1 mixtures* means any product whose only pesticidal active ingredient(s) is: a common food/food constituent or non-toxic household item; or is a substance that is generally recognized as safe (GRAS) by the Food and Drug Administration (21 CFR 170.30, 182, 184, and 186) in accordance with good manufacturing practices, as defined by 21 CFR part 182; or is exempt from FIFRA under 40 CFR 152.25.

(k) *Group 2 mixtures* means those chemicals listed in Table 9 to this part 455.

(l) *Inorganic wastewater treatment chemicals* means inorganic chemicals that are commonly used in wastewater treatment systems to aid in the removal

of pollutants through physical/chemical technologies such as chemical precipitation, flocculation, neutralization, chemical oxidation, hydrolysis and/or adsorption.

(m) *Interior wastewater sources* means wastewater that is generated from cleaning or rinsing the interior of pesticide formulating, packaging or repackaging equipment; or from rinsing the interior of raw material drums, shipping containers or bulk storage tanks; or cooling water that comes in direct contact with pesticide active ingredients (PAIs) during the formulating, packaging or repackaging process.

(n) *Microorganisms* means registered pesticide active ingredients that are biological control agents listed in 40 CFR 152.20(a)(3) including Eucaryotes (protozoa, algae, fungi), Procaryotes (bacteria), and Viruses.

(o) *Packaging* of pesticide products means enclosing or placing a formulated pesticide product into a marketable container.

(p) *PFPR/Manufacturer* means a pesticide formulating, packaging and repackaging facility that also performs pesticide manufacturing on-site and commingles their PFPR process wastewaters and pesticide manufacturing process wastewaters.

(q) *Pool chemicals* means pesticide products that are intended to disinfect or sanitize, reducing or mitigating growth or development of microbiological organisms including bacteria, algae, fungi or viruses in the water of swimming pools, hot tubs, spas or other such areas, in the household and/or institutional environment, as provided in the directions for use on the product label.

(r) *Refilling establishment* means an establishment where the activity of repackaging pesticide product into refillable containers occurs.

(s) *Repackaging* of pesticide products means the transfer of a pesticide formulation (or PAI) from one container to another without a change in composition of the formulation or the labeling content, for sale or distribution.

(t) *Sanitizer products* means pesticide products that are intended to disinfect or sanitize, reducing or mitigating growth or development of microbiological organisms including bacteria, fungi or viruses on inanimate surfaces in the household, institutional, and/or commercial environment and whose labeled directions for use result in the product being discharged to Publicly Owned Treatment Works (POTWs). This definition shall also include sanitizer solutions as defined by 21 CFR 178.1010 and pool chemicals as defined in this section (455.10(q)). This definition does not include liquid chemical sterilants (including sporicidals) exempted by § 455.40(f) or otherwise, industrial preservatives, and water treatment microbiocides other than pool chemicals.

(u) *Stand-alone PFPR facility* means a PFPR facility where either: No pesticide manufacturing occurs; or where pesticide manufacturing process wastewaters are not commingled with PFPR process wastewaters. Such facilities may formulate, package or repackage or manufacture other non-pesticide chemical products and be considered a ''stand-alone'' PFPR facility.

1b. Section 455.11 is revised to read as follows:

§ 455.11 Compliance date for pretreatment standards for existing sources (PSES).

All discharges subject to pretreatment standards for existing sources (PSES) in subparts A and B of this part must comply with the standards no later than September 28, 1993.

Subpart C—Pesticide Formulating, Packaging and Repackaging (PFPR) Subcategory

2. Section 455.40 is revised as to read as follows:

§ 455.40 Applicability; description of the pesticide formulating, packaging and repackaging subcategory.

(a) The provisions of this subpart are applicable to discharges resulting from all pesticide formulating, packaging and repackaging operations except as provided in paragraphs (b), (c), (d), (e) and (f) of this section.

(b) The provisions of this subpart do not apply to repackaging of agricultural pesticides performed at refilling establishments, as described in § 455.60.

(c) The provisions of this subpart do not apply to wastewater discharges from: the operation of employee showers and laundry facilities; the testing of fire protection equipment; the testing and emergency operation of safety showers and eye washes; storm water; Department of Transportation (DOT) aerosol leak test bath water from non-continuous overflow baths (batch baths) where no cans have burst from the time of the last water change-out; and on-site laboratories from cleaning analytical equipment and glassware and rinsing the retain sample container (except for the initial rinse of the retain sample container which is considered a process wastewater source for this subpart).

(d) The provisions of this subpart do not apply to wastewater discharges from the formulation, packaging and/or repackaging of sanitizer products (including pool chemicals); microorganisms; inorganic wastewater treatment chemicals; group 1 mixtures and group 2 mixtures, as defined under § 455.10.

(e) The provisions of this subpart do not apply to wastewater discharges from the development of new formulations of pesticide products and the associated efficacy and field testing at on-site or stand-alone research and development laboratories where the resulting pesticide product is not produced for sale.

(f) The provisions of this subpart do not apply to wastewater discharges from the formulation, packaging and/or repackaging of liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in Section 201 of the Federal Food, Drug and Cosmetic Act and in Section 2(u) of the Federal Insecticide, Fungicide and Rodenticide Act.

3. Section 455.41 is added to Subpart C to read as follows:

§ 455.41 Special definitions.

(a) *Initial Certification Statement* for this subpart means a written submission to the appropriate permitting authority, *e.g.*, the local Control Authority (the POTW) or NPDES permit writer which must be signed by the responsible corporate officer as defined in 40 CFR 403.12(l) or 40 CFR 122.22 and which:

(1) Lists and describes those product families, process lines and/or process units for which the PFPR facility is implementing the Pollution Prevention Alternative (''P2 Alternative'');

(2) Describes the PFPR facility specific practices for each product family/process line/process unit which are to be practiced as part of the P2 Alternative;

(3) Describes any justification allowing modification to the practices listed in Table 8 to this part 455; and

(4) Lists the treatment system being used to obtain a P2 allowable discharge (as defined in 455.41).

(b) *Periodic Certification Statement* for this subpart means a written submission to the appropriate permitting authority, *e.g.*, the local Control Authority (the POTW) or NPDES permit writer, which states that the P2 Alternative is being implemented in the manner set forth in the control mechanism (for indirect dischargers) or NPDES permit (for direct dischargers) or that a justification allowing modification of the practices listed in Table 8 to this part 455 has been

implemented resulting in a change in the pollution prevention practices conducted at the facility. The Periodic Certification Statement must be signed by the responsible corporate officer as defined in 40 CFR 403.12(l) or 40 CFR 122.22.

(c) *On-site Compliance Paperwork* for this subpart means data or information maintained in the offices of the PFPR facility which supports the initial and periodic certification statements as follows:

(1) Lists and describes those product families, process lines and/or process units for which the facility is implementing the P2 Alternative;

(2) Describes the facility specific practices for each product family/process line/process unit which are to be practiced as part of the P2 Alternative;

(3) Describes any justification allowing modification to the practices listed in Table 8 to this part 455;

(4) Includes a written discussion demonstrating that the treatment system being used contains the appropriate pollution control technologies (or equivalent systems/pesticide manufacturing systems) for removing the PAIs which may be found in the wastewater;

(5) Establishes a method for demonstrating to the permitting/control authority that the treatment system is well operated and maintained; and

(6) Includes a discussion of the rationale for choosing the method of demonstration.

(d) For Indirect Dischargers:

Pollution prevention (P2) allowable discharge (excluding interior wastewater sources, leak and spill clean-up water, and floor wash) for this subpart means the quantity of/concentrations of pollutants in PFPR process wastewaters that remain after a facility has demonstrated that it is using the specified practices of the Pollution Prevention Alternative as listed in Table 8 to this part 455.

Pollution prevention (P2) allowable discharge for interior wastewater sources, leak and spill cleanup water, and floor wash for this subpart means the quantity of/concentrations of pollutants in PFPR process wastewaters that remain after a facility has demonstrated that it is using the specified practices of the Pollution Prevention Alternative as listed in Table 8 to this part 455 and that have been pretreated using appropriate pollution control technologies, as defined in § 455.10(g), or a pesticide manufacturer's treatment system, or an equivalent system, used individually, or in any combination to achieve a sufficient level of pollutant reduction. Pretreatment requirements may be modified or waived by the Control Authority (POTW) to the extent that removal credits have been granted by the POTW in accordance with 40 CFR 403.7, provided the granting of such credits does not result in pass through or interference as defined in 40 CFR 403.3 and complies with the provisions of 40 CFR 403.5. The facility must demonstrate that the appropriate pollution control technology is properly maintained and operated.

(e) For Direct Dischargers:

Pollution prevention (P2) allowable discharge for this subpart means the quantity of/concentrations of pollutants in PFPR process wastewaters that remain after a facility has demonstrated that it is using the specified practices of the Pollution Prevention Alternative as listed in Table 8 to this part 455 and that have been treated using appropriate pollution control technologies, as defined in § 455.10(g), or a pesticide manufacturer's treatment system, or an equivalent system, used individually, or in any combination to achieve a sufficient level of pollutant reduction. The facility must demonstrate that the appropriate pollution control technology is properly maintained and operated.

(f) *Process wastewater,* for this subpart, means all wastewater associated with pesticide formulating, packaging and repackaging except for sanitary water, non-contact cooling water and those wastewaters excluded from the applicability of the rule in § 455.40.

4. Section 455.42 is revised to read as follows:

§ 455.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available, (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) Except as provided in paragraph (b) of this section, the following limitations establish the quantity or quality of pollutants or pollutant properties controlled by this paragraph which may be discharged from the formulation, packaging or repackaging of pesticides: There shall be no discharge of process wastewater pollutants to navigable waters.

Note: For existing PFPR/Manufacturer facilities, as defined in § 455.10(p), which are also subject to the provisions of § 455.22 or § 455.32, ''zero discharge'' means that permitting authorities shall provide no additional discharge allowance for those pesticide active ingredients (PAIs) in the pesticide formulating, packaging and repackaging wastewaters when those PAIs are also manufactured at the same facility.

(b) Any existing facility subject to paragraph (a) of this section may have a pollution prevention allowable discharge, as defined in § 455.41(e), of wastewater pollutants to navigable waters if the discharger agrees to NPDES permit conditions as follows:

(1) The discharger will meet the requirements of the Pollution Prevention Alternative listed in Table 8 to this part 455 (or received a modification by Best Professional Judgement for modifications not listed in Table 8 of this Part 455);

(2) The discharger will notify its NPDES permit writer at the time of renewal or modification of its permit, of its intent to utilize the Pollution Prevention Alternative by submitting to the NPDES permit writer an initial certification statement as described in § 455.41(a);

(3) The discharger will submit to its NPDES permitting authority a periodic certification statements as described in § 455.41(b) once each year of operation; and

(4) The discharger will maintain at the office of the facility and make available for inspection the on-site compliance paperwork as described in § 455.41(c).

5. New §§ 455.43 through 455.47 are added to subpart C to read as follows:

§ 455.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology.

(a) Except as provided in paragraph (b) of this section, the BCT limitations are established as follows: There shall be no discharge of process wastewater pollutants to navigable waters.

Note: For existing PFPR/Manufacturer facilities, as defined in § 455.10(p), which are also subject to the provisions of §§ 455.23, *zero discharge* means that permitting authorities shall provide no discharge additional discharge allowance for those pesticide active ingredients (PAIs) in the pesticide formulating, packaging and repackaging wastewaters when those PAIs are also manufactured at the same facility.

(b) Any existing facility subject to paragraph (a) of this section may have a pollution prevention allowable discharge, as defined in § 455.41(e), of wastewater pollutants to navigable waters if the discharger agrees to NPDES permit conditions as follows:

(1) The discharger will meet the requirements of the Pollution Prevention Alternative listed in Table 8 to this Part 455 (or received a modification by Best Professional Judgement for modifications not listed in Table 8 of this Part 455);

(2) The discharger will notify its NPDES permit writer at the time of renewal or modification of its permit, of its intent to utilize the Pollution Prevention Alternative by submitting to the NPDES permit writer an initial certification statement as described in § 455.41(a);

(3) The discharger will submit to its NPDES permitting authority a periodic certification statement as described in § 455.41(b) once each year of operation; and

(4) The discharger will maintain at the office of the facility and make available for inspection the on-site compliance paperwork as described in § 455.41(c).

§ 455.44 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available control technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology (BAT).

(a) Except as provided in paragraph (b) of this section, the BAT limitations are established as follows: There shall be no discharge of process wastewater pollutants to navigable waters.

Note: For existing PFPR/Manufacturer facilities, as defined in § 455.10(p), which are also subject to the provisions of §§ 455.24, *zero discharge* means that permitting authorities shall provide no additional discharge allowance for those pesticide active ingredients (PAIs) in the pesticide formulating, packaging and repackaging wastewaters when those PAIs are also manufactured at the same facility.

(b) Any existing facility subject to paragraph (a) of this section may have a pollution prevention allowable discharge, as defined in § 455.41(e), of wastewater pollutants to navigable waters if the discharger agrees to NPDES permit conditions as follows:

(1) The discharger will meet the requirements of the Pollution Prevention Alternative listed in Table 8 to this Part 455 (or received a modification by Best Professional Judgement for modifications not listed on Table 8 of this Part 455);

(2) The discharger will notify its NPDES permitting authority at the time of renewal or modification of its permit, of its intent to utilize the Pollution Prevention Alternative by submitting to the NPDES permit writer an initial certification statement as described in § 455.41(a);

(3) The discharger will submit to its NPDES permit writer a periodic certification statement as described in § 455.41(b) once each year of operation; and

(4) The discharger will maintain at the office of the facility and make available for inspection the on-site compliance paperwork as described in § 455.41(c).

§ 455.45 New Source Performance Standards (NSPS).

(a) Any new source, except as provided in paragraph (b) of this section, subject to this subpart which discharges process wastewater must meet the following standards: There shall be no discharge of process wastewater pollutants to navigable waters.

Note: For new PFPR/Manufacturer facilities, as defined in § 455.10(p), which are also subject to the provisions of §§ 455.25, *zero discharge* means that permitting authorities shall provide no additional discharge allowance for those pesticide active ingredients (PAIs) in the pesticide formulating, packaging and repackaging wastewaters when those PAIs are also manufactured at the same facility.

(b) Any new source subject to paragraph (a) of this section may have a pollution prevention allowable discharge, as defined in § 455.41(e), of wastewater pollutants to navigable waters if the discharger agrees to NPDES permit conditions as follows:

(1) The discharger will meet the requirements of the Pollution Prevention Alternative listed in Table 8 to this Part 455 (or received a modification by Best Professional Judgement for modifications not listed in Table 8 of this Part 455);

(2) The discharger will notify its NPDES permit writer at the time of submitting its application for a permit, of its intent to utilize the Pollution Prevention Alternative by submitting to the NPDES permit writer an initial certification statement as described in § 455.41(a);

(3) The discharger will submit to its NPDES permitting authority a periodic certification statement as described in § 455.41(b) once each year of operation; and

(4) The discharger will maintain at the office of the facility and make available for inspection the on-site compliance paperwork as described in § 455.41(c).

§ 455.46 Pretreatment standards for existing sources (PSES).

(a) Except as provided in 40 CFR 403.7 and 403.13 or in paragraph (b) of this section, no later than November 6, 1999, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve PSES as follows: There shall be no discharge of process wastewater pollutants.

(b) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to paragraph (a) of this section which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and may have a pollution prevention allowable discharge of wastewater pollutants, as defined in § 455.41(d), if the discharger agrees to control mechanism or pretreatment agreement conditions as follows:

(1) The discharger will meet the requirements of the Pollution Prevention Alternative listed in Table 8 to this Part 455 (or received a modification by Best Engineering Judgement for modifications not listed in Table 8 to this Part 455);

(2) The discharger will notify its local Control Authority at the time of renewing or modifying its individual control mechanism or pretreatment agreement of its intent to utilize the Pollution Prevention Alternative by submitting to the local Control Authority an initial certification statement as described in § 455.41(a);

(3) The discharger will submit to its local Control Authority a periodic certification statement as described in § 455.41(b) during the months of June and December of each year of operation; and

(4) The discharger will maintain at the offices of the facility and make available for inspection the on-site compliance paperwork as described in § 455.41(c).

(c) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to § 455.46(b) which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and may submit a request to its Control Authority to waive pretreatment of: floor wash; and/or a non-reusable final rinse of a triple rinse, if the concentrations of pesticide active ingredients and priority pollutants in those wastewater sources have been demonstrated to be too low to be effectively pretreated at the facility. The Control Authority may waive

pretreatment for these two wastewaters only if the existing source makes the demonstrations and is in compliance with 40 CFR 403.5.

§ 455.47 Pretreatment Standards for New Sources (PSNS).

(a) Except as provided in 40 CFR 403.7 and 403.13 or in paragraph (b) of this section, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve PSNS as follows: There shall be no discharge of process wastewater pollutants.

(b) Except as provided in 40 CFR 403.7 and 403.13, any new source subject to paragraph (a) of this section which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and may have a pollution prevention allowable discharge of wastewater pollutants, as defined in § 455.41(d), if the discharger agrees to control mechanism or pretreatment agreement conditions as follows:

(1) The discharger will meet the requirements of the Pollution Prevention Alternative listed in Table 8 to this Part 455 (or received a modification by Best Engineering Judgement for modifications not listed in Table 8 to this Part 455);

(2) The discharger will notify its local Control Authority at the time of submitting its application for an individual control mechanism or pretreatment agreement of its intent to utilize the Pollution Prevention Alternative by submitting to the local Control Authority an initial certification statement as described in § 455.41(a);

(3) The discharger will submit to its local Control Authority a periodic certification statement as described in § 455.41(b) during the months of June and December of each year of operation; and

(4) The discharger will maintain at the offices of the facility and make available for inspection the on-site compliance paperwork as described in § 455.41(c).

(c) Except as provided in 40 CFR 403.7 and 403.13, any new source subject to paragraph (b) of this section which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and may submit a request to its Control Authority to waive pretreatment of: floor wash; and/or a non-reusable final rinse of a triple rinse, if the concentrations of pesticide active ingredients and priority pollutants in those wastewater sources have been demonstrated to be too low to be effectively pretreated at the facility. The Control Authority may waive pretreatment for these two wastewaters only if the new source makes the demonstrations and is in compliance with 40 CFR 403.5.

6. A new subpart E consisting of §§ 455.60 through 455.67 is added to read as follows:

Subpart E—Repackaging of Agricultural Pesticides Performed at Refilling Establishments

Sec.

455.60 Applicability; description of the repackaging of agricultural pesticides performed by refilling establishments subcategory.
455.61 Special Definitions.
455.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).
455.63 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
455.64 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
455.65 New source performance standards (NSPS).
455.66 Pretreatment standards for existing sources (PSES).
455.67 Pretreatment standards for new sources (PSNS).

Subpart E—Repackaging of Agricultural Pesticides Performed at Refilling Establishments

§ 455.60 Applicability; description of repackaging of agricultural pesticides performed by refilling establishments subcategory.

(a) The provisions of this subpart are applicable to discharges resulting from all repackaging of agricultural pesticides performed by refilling establishments, as defined in § 455.10; whose primary business is wholesale or retail sales; and where no pesticide manufacturing, formulating or packaging occurs, except as provided in paragraphs (b), (c) and (d) of this section.

(b) The provisions of this subpart do not apply to wastewater discharges from custom application or custom blending, as defined in 40 CFR 167.3.

(c) The provisions of this subpart do not apply to wastewater discharges from: the operation of employee showers and laundry facilities; the testing of fire protection equipment; the testing and emergency operation of safety showers and eye washes; or storm water.

(d) The provisions of this subpart do not apply to wastewater discharges from the repackaging of microorganisms or Group 1 Mixtures, as defined under § 455.10, or non-agricultural pesticide products.

§ 455.61 Special definitions.

Process wastewater, for this subpart, means all wastewater except for sanitary water and those wastewaters excluded from the applicability of the rule in § 455.60.

§ 455.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable pollutant control technology: There shall be no discharge of process wastewater pollutants.

§ 455.63 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollution control technology: There shall be no discharge of process wastewater pollutants.

§ 455.64 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable: There shall be no discharge of process wastewater pollutants.

§ 455.65 New source performance standards (NSPS).

Any new source subject to this subpart which discharges process wastewater pollutants must meet the following standards: There shall be no discharge of process wastewater pollutants.

§ 455.66 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, no later than November 6, 1999 subpart which introduces pollutants into a publicly owned treatment works must comply with 40

CFR part 403 and achieve the pretreatment standards for existing sources as follows: There shall be no discharge of process wastewater pollutants.

§ 455.67 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7 and 403.13, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the pretreatment standards for existing sources as follows: There shall be no discharge of process wastewater pollutants.

7. Tables 8, 9, and 10 are added to part 455 to read as follows:

Table 8 to Part 455—List of Pollution Prevention Alternative Practices

A modification to the list of practices on this table that an individual facility must comply with to be eligible for the pollution prevention alternative is allowed with acceptable justification as listed on this table as approved by the permit writer or control authority (using BPJ/BEJ) after submittal by the facility of a request for modification. A modification, for purposes of this table, means that a facility would no longer have to perform a listed practice or would need to comply with a modified practice. However, the modification only applies to the specific practice for which the modification has been justified and to no other listed practices. Facilities are required to thoroughly discuss all modifications in the on-site compliance paperwork as described above in the limitations and standards (§ 455.41(c)).

1. Must use water conservation practices. These practices may include, but are not limited to using: spray nozzles or flow reduction devices on hoses, low volume/high pressure rinsing equipment, floor scrubbing machines, mop(s) and bucket(s), and counter current staged drum rinsing stations.

[Modification allowed when: Rinsing narrow transfer lines or piping where sufficient rinsing is better achieved by flushing with water.]

2. Must practice good housekeeping:

(a) Perform preventative maintenance on all valves and fittings and repair leaky valves and fittings in a timely manner;

(b) Use drip pans under any valves or fittings where hoses or lines are routinely connected and disconnected, collect for reuse when possible; and

(c) Perform quick cleanup of leaks and spills in outdoor bulk storage or process areas.

3. Must sweep or vacuum dry production areas prior to rinsing with water.

4. Must clean interiors of dry formulation equipment with dry carrier prior to any water rinse. The carrier material must be stored and reused in future formulation of the same or compatible product or properly disposed of as solid waste.

5. If operating continuous overflow Department of Transportation (DOT) aerosol leak test baths—>

Must operate with some recirculation.

6. If operating air pollution control wet scrubbers—>

Must operate as recirculating scrubbers (periodic blowdown is allowed as needed).

[Modification allowed when: Facility demonstrates that they would not be able to meet Resource Conservation Recovery Act or Clean Air Act (CAA) requirements.]

7. When performing rinsing of raw material drums, storage drums, and/or shipping containers that contained liquid PAI(s) and/or inert ingredients for the formulation of water-based products—>

Must reuse the drum/shipping container rinsate DIRECTLY into the formulation at the time of formulation; or store for use in future formulation of same or compatible product; or use a staged drum rinsing station (counter current rinsing).

[Modification allowed when: the drum/shipping container holds inert ingredient(s) only and (1) the facility can demonstrate that, after using water conservation practices, the large concentration of inert ingredient in the formulation creates more volume than could feasibly be reused; or (2) the facility can demonstrate that the concentration of the inert in the formulation is so small that the reuse would cause a formulation to exceed the ranges allowed in the Confidential Statement of Formula (CSF) (40 CFR 158.155).]

8. When performing rinsing of raw material drums, storage drums, and/or shipping containers that contained liquid PAI(s) and/or inert ingredients for the formulation of solvent-based products—>

Must reuse the drum/shipping container rinsate DIRECTLY into the formulation at the time of formulation or store for use in future formulation of same or compatible product.

[Modification allowed when:

(a) The drum/shipping container holds inert ingredient(s) only *and*: (1) The facility can demonstrate that, after using water conservation practices, the large concentration of inert ingredient in the formulation creates more volume than could feasibly be reused; or (2) the facility can demonstrate that the concentration of the inert in the formulation is so small that the reuse would cause a formulation to exceed the ranges allowed in the Confidential Statement of Formula (CSF) (40 CFR 158.155); *or*

(b) Drums/shipping containers are going to a drum refurbisher/recycler who will only accept drums rinsed with water.]

9. Must dedicate PFPR production equipment by water-based versus solvent-based products. Dedicated solvent-based or water-based equipment may be used on a non-routine basis for non-dedicated operations; however the facility may not discharge the solvent/aqueous changeover rinsate as part of their P2 allowable discharge (i.e., the facility must achieve zero discharge of those process wastewater pollutants).

[Modification allowed when: Facility has installed and is using a solvent recovery system for the changeover rinsate (can also be used for other solvent recovery).]

10. Must store the rinsate from interior rinsing (does not include drum/shipping container rinsate) for reuse in future formulation of same or compatible product.

[Modification allowed when:

(a) Facility has evidence of biological growth or other product deterioration over a typical storage period;

(b) Facility has space limitations, BUT must still store rinsates for most frequently produced products;

(c) Manufacturer (or formulator contracting for toll formulating) has directed otherwise (i.e., send back to them or send for off-site disposal);

(d) Facility is dropping registration or production of the formulation and there is no compatible formulation for reuse of the rinsates or facility can provide reasonable explanation of why it does not anticipate formulation of same or compatible formulation within the next 12 months;

(e) Facility only performs packaging of the pesticide product from which interior rinsate is generated; or

(f) Facility has demonstrated that it must use a detergent to clean the equipment.]

Notes

For indirect dischargers: After following the practices above, some wastewaters may require pretreatment prior to discharge to POTWs. See definition of pollution prevention allowable discharge for indirect dischargers (§ 455.41(d)).

For direct dischargers: After following the practices above, all wastewaters require treatment prior to discharge directly to the nation's waters. See definition of pollution prevention allowable discharge for direct dischargers (§ 455.41(e)).

Additional information and guidance on implementing these P2 practices as well as evaluating compliance with these practices will be available in a P2 Guidance Manual for the PFPR Industry.

TABLE 9 TO PART 455.—GROUP 2 MIXTURES

Shaughnessey code	Chemical name[1]
002201	Sabadilla alkaloids.
006501	Aromatic petroleum derivative solvent.
006602	Heavy aromatic naphtha.
016601[2]	Dry ice.
022003	Coal tar.
025001	Coal tar neutral oils.
025003	Creosote oil (Note: Derived from any source).
025004	Coal tar creosote.
031801	Ammonium salts of C8–18 and C18' fatty acids.
055601	BNOA.
063501	Kerosene.
063502	Mineral oil—includes paraffin oil from 063503.
063503	Petroleum distillate, oils, solvent, or hydrocarbons; also p.
063506	Mineral spirits.
067003	Terpineols (unspec.).
067205	Pine tar oil.
067207	Ester gum.
067302	Amines, N-coco alkyltrimethylenedi-, acetates.
069152	Amines, coco alkyl, hydrochlorides.
070801	Red Squill glycoside.

TABLE 9 TO PART 455.—GROUP 2 MIXTURES—Continued

Shaughnessey code	Chemical name[1]
071004	Cube Resins other than rotenone.
071501	Ryania speciosa, powdered stems of.
072602[2]	Silica gel.
072605[2]	Silicon dioxide.
079014	Turkey red oil.
079021	Potassium salts of fatty acids.
079029	Fatty alcohols (52–61% C10, 39–46% C8, 0–3% C6, 0–3% C12).
079034	Methyl esters of fatty acids (100% C8–C12)
079059	Fatty alcohols (54.5% C10, 45.1% C8, 0.4% C6)
086803	Xylene range aromatic solvent
107302	Polyhedral inclusion bodies of Douglas fir tussock moth nucl.
107303	Polyhedral inclusion bodies of gypsy moth nucleopolyhedrosis.
107304	Polyhedral inclusion bodies of n. sertifer
116902	Gibberellin A4 mixt. with Gibberellin A7.
117001	Nosema locustae.
128888	Lactofen (ANSI).
128934[2]	Nitrogen, liquid.
129029	Bergamot Oil.
224600	Diethanolamides of the fatty acids of coconut oil (coded 079).
505200	Isoparaffinic hydrocarbons.

[1] Shaughnessey codes and chemical names are taken directly from the FATES database. Several chemical names are truncated because the chemical names listed in the FATES database are limited to 60 characters.

[2] EPA does not believe this PAI will persist in sanitary streams long enough to reach a POTW.

Table 10 to Part 455—List of Appropriate Pollution Control Technologies

This table contains those pollutant control technologies, such as hydrolysis, chemical oxidation, precipitation and activated carbon adsorption, which have been used for estimating compliance costs on a PAI specific basis. In general, these treatment technologies have been determined to be effective in treating pesticide containing wastewaters in literature, in bench or pilot scale treatability studies or in the Pesticide Manufacturing effluent guidelines. These are the same technologies that are presented as part of the Universal Treatment System. However, these technologies are PAI specific and may need to be used in conjunction with one another to provide treatment for all PAIs used at a facility over a period of time. In addition, facilities may experience difficulties treating wastewaters that contain emulsions, therefore, ''appropriate'' treatment for emulsified wastewaters must include an emulsion breaking step. For PAIs whose technology is listed as ''Pollution Prevention'', the permitting authority/control authority can determine if additional treatment is necessary through best professional judgement/best engineering judgement, respectively.

TABLE 10 TO PART 455.—LIST OF APPROPRIATE POLLUTION CONTROL TECHNOLOGIES[1]

PAI name[2]	PAI code[3]	Shaughnessy code[4]	Structural group[5]	Treatment technology
Dicofol	001	10501	DDT	Hydrolysis.
Maleic Hydrazide	002	51501	Hydrazide	Activated Carbon.
EDB	003	42002	EDB	Activated Carbon.
Vancide TH	004	82901	s-Triazine	Activated Carbon.
1,3-Dichloropropene	005	29001	EDB	Hydrolysis.
Thenarsazine Oxide	006	12601	Organoarsenic	Precipitation.
Dowicil 75	007	17901	NR4	Activated Carbon.
Triadimefon	008	109901	s-Triazine	Activated Carbon.
Hexachlorophene	009	44901	Chlorophene	Activated Carbon.
Tetrachlorophene	010		Chlorophene	Activated Carbon.
Dichlorophene	011	55001	Chlorophene	Activated Carbon.
Dichlorvos	012	84001	Phosphate	Hydrolysis.
Landrin-2	013		Carbamate	Activated Carbon.
2,3,6-T, S&E or Fenac	014	82605	2,4-D	Activated Carbon.
2,4,5-T and 2,4,5-T, S&E	015	(*)	2,4-D	Activated Carbon.
2,4-D (2,4-D, S&E)	016	(*)	2,4-D	Chemical Oxidation.
2,4-DB, S&E	017	(*)	2,4-D	Activated Carbon.
Dyrene or Anilazine	018	80811	s-Triazine	Activated Carbon.
Dinocap	019	36001	Phenylcrotonate	Activated Carbon.
Dichloran or DCNA	020	31301	Aryl Halide	Activated Carbon.
Busan 90	021	8707	Miscellaneous Organic	Activated Carbon.
Mevinphos	022	15801	Phosphate	Hydrolysis.
Sulfallate	023		Dithiocarbamate	Activated Carbon.

TABLE 10 TO PART 455.—LIST OF APPROPRIATE POLLUTION CONTROL TECHNOLOGIES [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	Structural group [5]	Treatment technology
Chlorfenvinphos	024	84101	Phosphate	Activated Carbon.
Cyanazine or Bladex	025	100101	s-Triazine	Activated Carbon.
Propachlor	026	19101	Acetanilide	Activated Carbon.
MCPA, S&E	027	(*)	2,4-D	Activated Carbon.
Octhilinone	028	99901	Heterocyclic	Activated Carbon.
Pindone	029	67703	Miscellaneous Organic	Activated Carbon.
Dichlorprop, S&E	030	(*)	2,4-D	Activated Carbon.
MCPP, S&E or Mecoprop	031	(*)	2,4-D	Activated Carbon.
Thiabendazole	032	60101	Heterocyclic	Activated Carbon.
Belclene 310	033	80815	s-Triazine	Activated Carbon.
Chlorprop, S&E	034	21202	2,4-D	Activated Carbon.
Busan 72 or TCMTB	035	35603	Heterocyclic	Hydrolysis.
Chlorophacinone	037	67707	Miscellaneous Organic	Activated Carbon.
Landrin-1	038		Carbamate	Activated Carbon.
Pronamide	039	101701	Chlorobenzamide	Activated Carbon.
Methiocarb or Mesurol	040	100501	Carbamate	Hydrolysis.
Propanil	041	28201	Chloropropionanilide	Activated Carbon.
Polyphase [6]	042	107801	Carbamate	Activated Carbon.
Coumafuryl or Fumarin	043	86001	Coumarin	Activated Carbon.
DNOC	044		Phenol	Activated Carbon.
Metribuzin	045	101101	Triazathione	Activated Carbon.
CPA, S&E	046	(*)	2,4-D	Activated Carbon.
MCPB, S&E	047	19202	2,4-D	Activated Carbon.
Aminocarb	048		Carbamate	Hydrolysis.
Etridiazole	049	84701	Heterocyclic	Activated Carbon.
Ethoxyquin	050	55501	Quinolin	Activated Carbon.
Acephate or Orthene	052	103301	Phosphoroamidothioate	Activated Carbon.
Acifluorfen	053	114402	Benzoic Acid	Activated Carbon.
Alachlor	054	90501	Acetanilide	Activated Carbon.
Aldicarb	055	98301	Carbamate	Hydrolysis.
Allethrin	057	(*)	Pyrethrin	Activated Carbon.
Ametryn	058	80801	s-Triazine	Activated Carbon.
Amitraz	059	106201	Iminamide	Activated Carbon.
Atrazine	060	80803	s-Triazine	Hydrolysis.
Bendiocarb	061	105201	Carbamate	Hydrolysis.
Benomyl	062	99101	Carbamate	Hydrolysis.
BHC	063		Lindane	Hydrolysis.
Benzyl Benzoate	064	9501	Ester	Activated Carbon.
Lethane 60	065		Thiocyanate	Activated Carbon.
Bifenox	066	104301	Nitrobenzoate	Activated Carbon.
Biphenyl	067	17002	Aryl	Activated Carbon.
Bromacil (Lithium Salt)	068	(*)	Uracil	Activated Carbon.
Bromoxynil	069	(*)	Benzonitrile	Activated Carbon.
Butachlor	070		Acetanilide	Activated Carbon.
Giv-gard	071	101401	Miscellaneous Organic	Activated Carbon.
Cacodylic Acid	072	(*)	Organoarsenic	Precipitation.
Captafol	073		Phthalimide	Hydrolysis.
Captan	074	81301	Phthalimide	Hydrolysis.
Carbaryl	075	56801	Carbamate	Hydrolysis.
Carbofuran	076	90601	Carbamate	Hydrolysis.
Carbosulfan	077		Carbamate	Activated Carbon.
Chloramben	078	(*)	Benzoic Acid	Activated Carbon.
Chlordane	079	58201	Tricyclic	Activated Carbon.
Chloroneb	080	27301	Aryl Halide	Chemical Oxidation.
Chloropicrin	081	81501	Alkyl Halide	Chemical Oxidation.
Chlorothalonil	082	81901	Chloropropionanilide	Activated Carbon.
Chloroxuron	083		Urea	Activated Carbon.
Stirofos	084	83701	Phosphate	Hydrolysis.
Chlorpyrifos Methyl	085	59102	Phosphorothioate	Hydrolysis.
Chlorpyrifos	086	59101	Phosphorothioate	Chemical Oxidation.
Mancozeb	087	14504	Dithiocarbamate	Activated Carbon.
Bioquin (Copper)	088	24002	Organocopper	Precipitation.
Copper EDTA	089	39105	Organocopper	Precipitation.
Pydrin or Fenvalerate	090	109301	Pyrethrin	Activated Carbon.
Cycloheximide	091		Cyclic Ketone	Activated Carbon.
Dalapon	092	(*)	Alkyl Halide	Activated Carbon.
Dienochlor	093	27501	HCp	Activated Carbon.
Demeton	094		Phosphorothioate	Hydrolysis.
Desmedipham	095	104801	Carbamate	Hydrolysis.
Amobam	096		Miscellaneous Organic	Activated Carbon.
DBCP	097		EDB	Activated Carbon.

TABLE 10 TO PART 455.—LIST OF APPROPRIATE POLLUTION CONTROL TECHNOLOGIES [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	Structural group [5]	Treatment technology
Dicamba	098	(*)	Aryl Halide	Activated Carbon.
Dichlone	099	29601	Quinone	Activated Carbon.
Thiophanate Ethyl	100	103401	Carbamate	Hydrolysis.
Perthane	101		DDT	Activated Carbon.
EXD	102		Dithiocarbamate	Activated Carbon.
Diazinon	103	57801	Phosphorothioate	Hydrolysis.
Diflubenzuron	104	108201	Urea	Activated Carbon.
Dimethoate	106	35001	Phosphorodithioate	Hydrolysis.
Parathion Methyl	107	53501	Phosphorothioate	Hydrolysis.
Dicrotophos	108	35201	Phosphate	Activated Carbon.
Crotoxyphos	109	58801	Phosphate	Activated Carbon.
DCPA	110	78701	Aryl Halide	Activated Carbon.
Trichlorofon	111	57901	Phosphonate	Activated Carbon.
Dinoseb	112	37505	Phenol	Activated Carbon.
Dioxathion	113	37801	Phosphorodithioate	Hydrolysis.
Diphacinone	114	67701	Indandione	Activated Carbon.
Diphenamide	115	36601	Acetamide	Activated Carbon.
Diphenylamine	116	38501	Aryl Amine	Activated Carbon.
MGK 326	117	47201	Ester	Activated Carbon.
Nabonate	118	63301	Isocyanate	Chemical Oxidation.
Diuron	119	35505	Urea	Activated Carbon.
Metasol DGH	120	44303	NR4	Activated Carbon.
Dodine	121	44301	NR4	Activated Carbon.
Endosulfan	122	79401	Tricyclic	Activated Carbon.
Endothall (Endothall S&E)	123	(*)	Bicyclic	Activated Carbon.
Endrin	124	41601	Tricyclic	Activated Carbon.
Ethalfluralin	125	113101	Toluidine	Activated Carbon.
Ethion	126	58401	Phosphorodithioate	Hydrolysis.
Ethoprop	127	41101	Phosphorodithioate	Activated Carbon.
Fenamiphos	128	100601	Phosphoroamidate	Activated Carbon.
Chlorobenzilate	129	28801	Aryl Halide	Activated Carbon.
Butylate	130	41405	Thiocarbamate	Activated Carbon.
Famphur	131		Phosphorothioate	Hydrolysis.
Fenarimol	132	206600	Pyrimidine	Activated Carbon.
Fenthion or Baytex	133	53301	Phosphorothioate	Hydrolysis.
Ferbam	134	34801	Dithiocarbamate	Activated Carbon.
Fluometuron	135	35503	Urea	Activated Carbon.
Fluoroacetamide	136		Acetamide	Activated Carbon.
Folpet	137	81601	Phthalimide	Hydrolysis.
Glyphosate (Glyphosate S&E)	138	(*)	Phosphoroamidate	Chemical Oxidation.
Glyphosine	139		Phosphoroamidate	Activated Carbon.
Heptachlor	140	44801	Tricyclic	Activated Carbon.
Cycloprate	141		Thiocarbamate	Activated Carbon.
Hexazinone	142	107201	s-Triazine	Activated Carbon.
Isofenphos	143	109401	Phosphoroamidothioate	Activated Carbon.
Isopropalin	144	100201	Toluidine	Activated Carbon.
Propham	145		Carbamate	Hydrolysis.
Karabutilate	146	97401	Carbamate	Hydrolysis.
Lindane	147	9001	Lindane	Activated Carbon.
Linuron	148	35506	Urea	Chemical Oxidation.
Malachite Green	149	39504	NR4	Activated Carbon.
Malathion	150	57701	Phosphorodithioate	Hydrolysis.
Maneb	151	14505	Dithiocarbamate	Activated Carbon.
Manam	152		Dithiocarbamate	Activated Carbon.
Mefluidide	153	114002	Carbamate	Activated Carbon.
Methamidophos	154	101201	Phosphoroamidothioate	Activated Carbon.
Methidathion	155	100301	Phosphorodithioate	Activated Carbon.
Methomyl	156	90301	Carbamate	Hydrolysis.
Methoprene	157	(*)	Ester	Activated Carbon.
Methoxychlor	158	34001	DDT	Hydrolysis.
Methyl Bromide	160	53201	Alkyl Halide	Activated Carbon.
Monosodium Methyl Arsenate	161	(*)	Organoarsenic	Precipitation.
Nalco D-2303	163	68102	Thiocyanate	Activated Carbon.
Quinomethionate	164	54101	Miscellaneous Organic	Activated Carbon.
Metolachlor	165	108801	Acetanilide	Activated Carbon.
Mexacarbate	166		Carbamate	Hydrolysis.
Metiram	167	14601	Dithiocarbamate	Activated Carbon.
Monuron TCA	168	35502	Urea	Activated Carbon.
Monuron	169	35501	Urea	Activated Carbon.
Napropamide	170	103001	Carbamate	Activated Carbon.
Deet	171	80301	Toluamide	Activated Carbon.

TABLE 10 TO PART 455.—LIST OF APPROPRIATE POLLUTION CONTROL TECHNOLOGIES [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	Structural group [5]	Treatment technology
Nabam	172	14503	Dithiocarbamate	Chemical Oxidation.
Naled	173	34401	Phosphate	Hydrolysis.
Norea	174		Urea	Activated Carbon.
Norflurazon	175	105801	Heterocyclic	Activated Carbon.
Naptalam or Neptalam	176	30703	Phthalamide	Activated Carbon.
MGK 264	177	57001	Bicyclic	Activated Carbon.
Benfluralin	178	84301	Toluidine	Activated Carbon.
Sulfotepp	179	79501	Phosphorothioate	Activated Carbon.
Aspon	180		Phosphorothioate	Activated Carbon.
Coumaphos	181	36501	Phosphorothioate	Hydrolysis.
Fensulfothion	182	32701	Phosphorothioate	Hydrolysis.
Disulfoton	183	32501	Phosphorodithioate	Hydrolysis.
Fenitrothion	184	105901	Phosphorothioate	Hydrolysis.
Phosmet	185	59201	Phosphorodithioate	Hydrolysis.
Azinphos Methyl (Guthion)	186	58001	Phosphorodithioate	Hydrolysis.
Oxydemeton Methyl	187	58702	Phosphorothioate	Activated Carbon.
Organo-Arsenic Pesticides	188		Organoarsenic	Precipitation.
Organo-Cadmium Pesticides	189		Organocadmium	Precipitation
Organo-Copper Pesticides	190	(*)	Organocopper	Precipitation.
Organo-Mercury Pesticides	191	(*)	Organomercury	Precipitation.
Organo-Tin Pesticides	192	(*)	Organotin	Precipitation.
o-Dichlorobenzene	193	59401	Aryl Halide	Activated Carbon.
Oryzalin	194	104201	Sulfanilamide	Activated Carbon.
Oxamyl	195	103801	Carbamate	Hydrolysis.
Oxyfluorfen	196	111601	Miscellaneous Organic	Activated Carbon.
Bolstar	197	111501	Phosphorodithioate	Activated Carbon.
Sulprofos Oxon	198		Phosphorothioate	Hydrolysis.
Santox (EPN)	199	41801	Phosphorodithioate	Hydrolysis.
Fonofos	200	41701	Phosphorodithioate	Hydrolysis.
Propoxur	201	47802	Carbamate	Hydrolysis.
p-Dichlorobenzene	202	61501	Aryl Halide	Activated Carbon.
Parathion Ethyl	203	57501	Phosphorothioate	Hydrolysis.
Pendimethalin	204	108501	Benzeneamine	Activated Carbon.
PCNB	205	56502	Aryl Halide	Activated Carbon.
PCP or Penta	206	(*)	Phenol	Activated Carbon.
Perfluidone	207		Sulfonamide	Activated Carbon.
Permethrin	208	109701	Pyrethrin	Activated Carbon.
Phenmedipham	209	98701	Carbamate	Hydrolysis.
Nemazine	210	64501	Heterocyclic	Activated Carbon.
Phorate	212	57201	Phosphorodithioate	Hydrolysis.
Phosalone	213	97701	Phosphorodithioate	Hydrolysis.
Phosphamidon	214	18201	Phosphate	Hydrolysis.
Picloram	215	(*)	Pyridine	Activated Carbon.
Piperonyl Butoxide	216	67501	Ester	Activated Carbon.
PBED or WSCP (Busan 77)	217	69183	NR4	Activated Carbon.
Busan 85 or Arylane	218	34803	Dithiocarbamate	Chemical Oxidation.
Busan 40	219	102901	Dithiocarbamate	Chemical Oxidation.
KN Methyl	220	39002	Dithiocarbamate	Chemical Oxidation.
Metasol J26	221	101301	Miscellaneous Organic	Activated Carbon.
Profenofos	222	111401	Phosphorothioate	Activated Carbon.
Prometon or Caparol	223	80804	s-Triazine	Chemical Oxidation.
Prometryn	224	80805	s-Triazine	Activated Carbon.
Propargite	225	97601	Miscellaneous Organic	Activated Carbon.
Propazine	226	80808	s-Triazine	Activated Carbon.
Propionic Acid	227	77702	Alkyl Acid	Activated Carbon.
Previcur N	228	119301	Carbamate	Hydrolysis.
Pyrethrin Coils	229	69004	Pyrethrin	Activated Carbon.
Pyrethrum I	230	69001	Pyrethrin	Hydrolysis.
Pyrethrum II	231	69002	Pyrethrin	Hydrolysis.
Pyrethrins	232	(*)	Pyrethrin	Hydrolysis.
Resmethrin	233	(*)	Pyrethrin	Activated Carbon.
Fenchlorphos or Ronnel	234	58301	Phosphorothioate	Hydrolysis.
Mexide or Rotenone	235	71003	Miscellaneous Organic	Activated Carbon.
DEF	236	74801	Phosphorotrithioate	Activated Carbon.
Siduron or Tupersan	237	35509	Urea	Activated Carbon.
Silvex	238	(*)	2,4-D	Activated Carbon.
Simazine	239	80807	s-Triazine	Activated Carbon.
Sodium Bentazon	240	103901	Heterocyclic	Chemical Oxidation.
Carbam-S or Sodam	241	34804	Dithiocarbamate	Chemical Oxidation.
Sodium Fluoroacetate	242	75003	Acetamide	Activated Carbon.
Vapam or Metham Sodium	243	39003	Dithiocarbamate	Chemical Oxidation.

TABLE 10 TO PART 455.—LIST OF APPROPRIATE POLLUTION CONTROL TECHNOLOGIES [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	Structural group [5]	Treatment technology
Sulfoxide	244	57101	Miscellaneous Organic	Activated Carbon.
Cycloate or Ro-Neet	245	41301	Thiocarbamate	Activated Carbon.
EPrecipitationC or Eptam	246	41401	Thiocarbamate	Activated Carbon.
Molinate	247	41402	Thiocarbamate	Activated Carbon.
Pebulate or Tillman	248	41403	Thiocarbamate	Activated Carbon.
Vernolate or Vernam	249	41404	Thiocarbamate	Activated Carbon.
HPrecipitationMS	250	35604	Thiosulphonate	Activated Carbon.
Bensulide or Betesan	251	9801	Phosphorodithioate	Activated Carbon.
Tebuthiuron	252	105501	Urea	Activated Carbon.
Temephos	253	59001	Phosphorothioate	Hydrolysis.
Terbacil	254	12701	Uracil	Activated Carbon.
Terbufos or Counter	255	105001	Phosphorodithioate	Activated Carbon.
Terbuthylazine	256	80814	s-Triazine	Activated Carbon.
Terbutryn	257	80813	s-Triazine	Activated Carbon.
Tetrachlorophenol	258	63004	Phenol	Activated Carbon.
Dazomet	259	35602	Heterocyclic	Chemical Oxidation.
Thiophanate Methyl	260	102001	Carbamate	Hydrolysis.
Thiram	261	79801	Dithiocarbamate	Activated Carbon.
Toxaphene	262	80501	Bicyclic	Activated Carbon.
Merphos	263	74901	Phosphorotrithioate	Hydrolysis.
Trifluralin or Treflan	264	36101	Toluidine	Activated Carbon.
Warfarin	265	(*)	Coumarin	Activated Carbon.
Zinc MBT	266	51705	Organozinc	Precipitation.
Zineb	267	14506	Dithiocarbamate	Activated Carbon.
Ziram	268	34805	Dithiocarbamate	Activated Carbon.
Triallate	269	78802	Thiocarbamate	Activated Carbon.
Phenothrin	270	69005	Pyrethrin	Activated Carbon.
Tetramethrin	271	69003	Pyrethrin	Activated Carbon.
Chloropropham	272	18301	Carbamate	Hydrolysis.
Non-272 PAIs				
CFC 11	.....	13	Alkyl Halide	Activated Carbon.
CFC 12	.....	14	Alkyl Halide	Activated Carbon.
Polyethylene	.....	152	Polymer	Activated Carbon.
Acrolein	.....	701	Alcohol	Activated Carbon.
Dimethyl-m-dioxan-4-ol acetate	.....	1001	Heterocyclic	Activated Carbon.
Dodecyl alcohol	.....	1509	Alcohol	Activated Carbon.
Tetradecyl alcohol	.....	1510	Alcohol	Activated Carbon.
Rosin amine D acetate	.....	4201	Alkyl Acid	Activated Carbon.
Dihydroabietylamine acetate	.....	4213	Alkyl Acid	Activated Carbon.
Amitrole	.....	4401	Heterocyclic	Activated Carbon.
Allyl isothiocyanate	.....	4901	Thiocyanate	Activated Carbon.
AMS	.....	5501	Inorganic	Pollution Prevention.
Calcium sulfate	.....	5602	Inorganic	Pollution Prevention.
Tartar emetic	.....	6201	Inorganic	Pollution Prevention.
Diphenylstibene 2-ethylhexanoate	.....	6202	Aryl	Activated Carbon.
Streptomycin	.....	6306	Heterocyclic	Activated Carbon.
Oxytetracycline hydrochloride	.....	6308	Phthalamide	Activated Carbon.
Streptomycin sesquisulfate	.....	6310	Heterocyclic	Activated Carbon.
Neomycin sulfate	.....	6313	Benzeneamine	Activated Carbon.
Antimycin A	.....	6314	Heterocyclic	Activated Carbon.
Calcium oxytetracycline	.....	6321	Phthalamide	Activated Carbon.
Espesol 3A	.....	6601	Phosphorothioate	Activated Carbon.
Arsenic acid	.....	6801	Metallic	Precipitation.
Arsenic acid anhydride	.....	6802	Metallic	Precipitation.
Arsenous acid anhydride	.....	7001	Metallic	Precipitation.
Copper oxychloride	.....	8001	Metallic	Precipitation.
Basic cupric sulfate	.....	8101	Metallic	Precipitation.
Basic copper III—zinc sulfate complex (Declare copper and.	.....	8102	Metallic	Precipitation.
Bromophos	.....	8706	Phosphorothioate	Activated Carbon.
Benzyl bromoacetate	.....	8710	Benzoic acid	Activated Carbon.
Benzoic acid	.....	9101	Benzoic acid	Activated Carbon.
Benzyl diethyl ((2,6-xylylcarbamoyl)methyl) ammonium benzoate.	.....	9106	NR4	Activated Carbon.
Benzyl alcohol	.....	9502	Aryl	Activated Carbon.
3–Chloro-p-toluidine hydrochloride	.....	9901	Chloropropionanilide	Activated Carbon.
Butoxyethoxy)ethyl thiocyanate	.....	10002	Thiocyanate	Activated Carbon.
2-Naphthol	.....	10301	Phenol	Activated Carbon.
Boric acid	.....	11001	Inorganic	Pollution Prevention.
Barium metaborate	.....	11101	Inorganic	Pollution Prevention.

TABLE 10 TO PART 455.—LIST OF APPROPRIATE POLLUTION CONTROL TECHNOLOGIES [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	Structural group [5]	Treatment technology
Boron sodium oxide (B8Na2O13), tetrahydrate (12280–03–4).	.....	11103	Inorganic	Pollution Prevention.
Sodium metaborate (NaBO2)	.....	11104	Inorganic	Pollution Prevention.
Boron sodium oxide (B8Na2O13) (12008–41–2).	.....	11107	Inorganic	Pollution Prevention.
Boron sodium oxide (B4Na2O7), pentahydrate (12179–04–3).	.....	11110	Inorganic	Pollution Prevention.
Boron sodium oxide (B4Na2O7) (1330–43–4).	.....	11112	Inorganic	Pollution Prevention.
Polybutene	.....	11402	Polymer	Activated Carbon.
Polyisobutylene	.....	11403	Polymer	Activated Carbon.
Butyl cellosolve	.....	11501	Alcohol	Activated Carbon.
Butoxypolypropylene glycol	.....	11901	Polymer	Activated Carbon.
Neburon (ANSI)	.....	12001	Chloropropionanilide	Activated Carbon.
Methyltrimethylenedioxy)bis(4-methyl-1,3,2-dioxaborinane).	.....	12401	Bicyclic	Activated Carbon.
Oxybis(4,4,6-trimethyl-1,3,2-dioxaborinane)	.....	12402	Bicyclic	Activated Carbon.
Cadmium chloride	.....	12902	Metallic	Precipitation.
Lead arsenate, basic	.....	13502	Metallic	Precipitation.
Lead arsenate	.....	13503	Metallic	Precipitation.
Sodium arsenate	.....	13505	Metallic	Precipitation.
Sodium arsenite	.....	13603	Metallic	Precipitation.
Potassium bromide	.....	13903	Inorganic	Pollution Prevention.
Camphor	.....	15602	Bicyclic	Activated Carbon.
Carbon disulfide	.....	16401	Inorganic	Pollution Prevention.
Carbon tetrachloride	.....	16501	Alkyl Halide	Activated Carbon.
Barban (ANSI)	.....	17601	Carbamate	Activated Carbon.
Chloro-2-propenyl)-3,5,7,triaza-1-azo niatricyclo(3.3.1.1)sup.	.....	17902	Tricyclic	Activated Carbon.
Chlormequat chloride	.....	18101	NR4	Activated Carbon.
Chloromethoxypropylmercuric acetate	.....	18401	Metallic	Precipitation.
Allidochlor	.....	19301	Acetanilide	Activated Carbon.
Chromic acid	.....	21101	Metallic	Precipitation.
Chromic oxide	.....	21103	Metallic	Precipitation.
Cresol (unspec) (Cresylic acid)	.....	22101	Phenol	Activated Carbon.
Cresol	.....	22102	Phenol	Activated Carbon.
Copper (metallic)	.....	22501	Metallic	Precipitation.
Copper ammonium carbonate	.....	22703	Metallic	Precipitation.
Copper carbonate	.....	22901	Metallic	Precipitation.
Copper hydroxide	.....	23401	Metallic	Precipitation.
Copper chloride hydroxide (Cu2Cl(OH)3)	.....	23501	Metallic	Precipitation.
Copper oxychloride sulfate	.....	23503	Metallic	Precipitation.
Copper sulfate	.....	24401	Metallic	Precipitation.
Copper (from triethanolamine complex)	.....	24403	Metallic	Precipitation.
Copper as metallic (in the form of chelates of copper citrat).	.....	24405	Metallic	Precipitation.
Copper as elemental from copper—ethylenediamine complex.	.....	24407	Metallic	Precipitation.
Copper sulfate (anhydrous)	.....	24408	Metallic	Precipitation.
Copper(I) oxide	.....	25601	Metallic	Precipitation.
Cuprous thiocyanate	.....	25602	Metallic	Precipitation.
Cyclohexane	.....	25901	Aryl	Activated Carbon.
Cyclohexanone	.....	25902	Cyclic Ketone	Activated Carbon.
Dichlobenil	.....	27401	Chloropropionanilide	Activated Carbon.
Diquat dibromide	.....	32201	NR4	Activated Carbon.
Dimethrin (ANSI)	.....	34101	Pyrethrin	Activated Carbon.
Dicapthon	.....	34502	Phosphorothioate	Activated Carbon.
Ziram, cyclohexylamine complex	.....	34806	Dithiocarbamate	Activated Carbon.
Butyl dimethyltrithioperoxycarbamate	.....	34807	Dithiocarbamate	Activated Carbon.
Daminozide	.....	35101	Acetanilide	Activated Carbon.
Bis(trichloromethyl) sulfone	.....	35601	Miscellaneous Organic	Activated Carbon
Bis(bromoacetoxy)-2-butene	.....	35605	Alkyl Halide	Activated Carbon.
Dazomet, sodium salt	.....	35607	Heterocyclic	Activated Carbon.
Butonate	.....	35701	Phosphonate	Activated Carbon.
Trifluoro-4-nitro-m-cresol(**)=alpha,alpha,alpha-.	.....	6201	Phenol	Activated Carbon.
Triethanolamine dinoseb (2-sec-Butyl-4,6-dinitrophenol).	.....	37506	Phenol	Activated Carbon.
Sodium 4,6-dinitro-o-cresylate	.....	37508	Phenol	Activated Carbon.
Dinitrophenol	.....	37509	Phenol	Activated Carbon.

TABLE 10 TO PART 455.—LIST OF APPROPRIATE POLLUTION CONTROL TECHNOLOGIES [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	Structural group [5]	Treatment technology
Alkanol* amine dinoseb (2-sec-butyl-4,6-dinitrophenol) *(s.	.....	37511	Phenol	Activated Carbon.
Sodium dinoseb (2-sec-Butyl-4,6-dinitrophenol).	.....	37512	Phenol	Activated Carbon.
Nitrilotriacetic acid, trisodium salt	.....	39106	Acetamide	Activated Carbon.
Trisodium(2-hydroxyethyl)ethylene diaminetriacetate.	.....	39109	Acetanilide	Activated Carbon.
Ammonium ethylenediaminetetraacetate	.....	39117	Acetamide	Activated Carbon.
Pentasodium diethylenetriaminepentaacetate.	.....	39120	Acetanilide	Activated Carbon.
Ethyl-1,3-hexanediol	.....	41001	Alcohol	Activated Carbon.
Ethylene	.....	41901	Miscellaneous Organic	Pollution Prevention.
EDC	.....	42003	EDB	Activated Carbon.
Methylene chloride	.....	42004	Alkyl Halide	Activated Carbon.
Methoxyethanol	.....	42202	Alcohol	Activated Carbon.
Ethylene glycol	.....	42203	Alcohol	Activated Carbon.
Butylene glycol	.....	42205	Alcohol	Activated Carbon.
Ethylene oxide	.....	42301	Miscellaneous Organic	Pollution Prevention.
Copper(II) oxide	.....	42401	Metallic	Precipitation.
Cuprous and cupric oxide, mixed	.....	42403	Metallic	Precipitation.
Propylene oxide	.....	42501	Miscellaneous Organic	Pollution Prevention.
Formaldehyde	.....	43001	Miscellaneous Organic	Pollution Prevention.
Paraformaldehyde	.....	43002	Polymer	Activated Carbon.
Bis(2-butylene) tetrahydro-2-furaldehyde	.....	43302	Tricyclic	Activated Carbon.
Giberellic acid	.....	43801	Tricyclic	Activated Carbon.
Potassium gibberellate	.....	43802	Tricyclic	Activated Carbon.
Glutaral	.....	43901	Alcohol	Activated Carbon.
Copper citrate	.....	44005	Metallic	Precipitation.
Methyl nonyl ketone	.....	44102	Miscellaneous Organic	Activated Carbon.
Methyl-2-pentanone	.....	44105	Miscellaneous Organic	Activated Carbon.
Monosodium 2,2'-methylenebis (3,4,6-trichlorophenate).	.....	44902	Chlorophene	Activated Carbon.
Potassium 2,2'-methylenebis (3,4,6-trichlorophenate).	.....	44904	Chlorophene	Activated Carbon.
Hexachloroepoxyoctahydro-endo, exo-dimethanoaphthalene 85%.	.....	45001	Tricyclic	Activated Carbon.
Chlorhexidine diacetate	.....	45502	Chloropropionanilide	Activated Carbon.
Hydrocyanic acid	.....	45801	Inorganic	Activated Carbon.
Hydroxyethyl octyl sulfide	.....	46301	Alcohol	Activated Carbon.
Heptadecenyl-2-(2-hydroxyethyl)-2-i midazolinium chloride.	.....	46608	NR4	Activated Carbon.
Hydroxyethyl)-2-alkyl-2-imidazoline (as in fatty acids of t.	.....	46609	NR4	Activated Carbon.
IBA	.....	46701	Bicyclic	Activated Carbon.
Dihydropyrone	.....	46801	Cyclic ketone	Activated Carbon.
Butoxypolypropoxypolyethoxyethanol-iodine complex.	.....	46901	Polymer	Activated Carbon.
Polyethoxypolypropoxyethanol-iodine complex.	.....	46904	Polymer	Activated Carbon.
Use code no. 046904 (polyethoxypolypropoxy ethanol-iodine complex).	.....	46909	Polymer	Activated Carbon.
Iodine-potassium iodide complex	.....	46917	Inorganic	Pollution Prevention.
Alkyl-omega-hydroxypoly(oxyethylen e)-iodine complex *(100%.	.....	46921	Polymer	Activated Carbon.
Lead acetate	.....	48001	Metallic	Precipitation.
Nickel sulfate hexahydrate	.....	50505	Metallic	Precipitation.
Maleic hydrazide, diethanolamine salt	.....	51502	Hydrazide	Activated Carbon.
Maleic hydrazide, potassium salt	.....	51503	Hydrazide	Activated Carbon.
Sodium 2-mercaptobenzothiolate	.....	51704	Heterocyclic	Activated Carbon.
Mercuric chloride	.....	52001	Metallic	Precipitation.
Mercurous chloride	.....	52201	Metallic	Precipitation.
Metaldehyde	.....	53001	Miscellaneous Organic	Activated Carbon.
Methylated naphthalenes	.....	54002	Aryl	Activated Carbon.
Sodium 2,2'-methylenebis(4-chlorophenate)	.....	55005	Chlorophene	Activated Carbon.
Naphthalene	.....	55801	Aryl	Activated Carbon.
NAD	.....	56001	Benzoic Acid	Activated Carbon.
NAA (1–Naphthaleneacetic Acid)	.....	56002	Benzoic Acid	Activated Carbon.
Potassium 1-naphthaleneacetate	.....	56003	Benzoic Acid	Activated Carbon.
Ammonium 1-naphthaleneacetate	.....	56004	Benzoic Acid	Activated Carbon.
Sodium 1-naphthaleneacetate	.....	56007	Benzoic Acid	Activated Carbon.

TABLE 10 TO PART 455.—LIST OF APPROPRIATE POLLUTION CONTROL TECHNOLOGIES [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	Structural group [5]	Treatment technology
Ethyl 1-naphthaleneacetate	.....	56008	Benzoic Acid	Activated Carbon.
Nitrophenol	.....	56301	Phenol	Activated Carbon.
Nicotine	.....	56702	Pyridine	Activated Carbon.
Carbophenothion (ANSI)	.....	58102	Phosphorodithioate	Activated Carbon.
Sodium 5-chloro-2-(4-chloro-2-(3-(3,4-dichlorophenyl)ureido).	.....	58802	Aryl Halide	Activated Carbon.
Monocrotophos	.....	58901	Phosphate	Activated Carbon.
Chlordimeform	.....	59701	Chloropropionanilide	Activated Carbon.
Chlordimeform hydrochloride	.....	59702	Chloropropionanilide	Activated Carbon.
Thiabendazole hypophosphite	.....	60102	Hydrazide	Activated Carbon.
Hexachlorobenzene	.....	61001	Lindane	Activated Carbon.
Butyl paraben	.....	61205	Phenol	Activated Carbon.
Paraquat dichloride	.....	61601	Pyridine	Activated Carbon.
Chloro-4-phenylphenol	.....	62206	Chlorophene	Activated Carbon.
Chloro-2-phenylphenol	.....	62208	Chlorophene	Activated Carbon.
Chloro-2-biphenylol, potassium salt	.....	62209	Chlorophene	Activated Carbon.
Chloro-2-phenylphenol	.....	62210	Chlorophene	Activated Carbon.
Chloro-2-phenylphenol, potassium salt	.....	62211	Chlorophene	Activated Carbon.
Sodium phenate	.....	64002	Phenol	Activated Carbon.
Butylphenol, sodium salt	.....	64115	Phenol	Activated Carbon.
Ammonium 2-phenylphenate	.....	64116	Phenol	Activated Carbon.
Chloro-2-cyclopentylphenol	.....	64202	Chlorophene	Activated Carbon.
Bithionolate sodium	.....	64203	Chlorophene	Activated Carbon.
Chloro-3-cresol	.....	64206	Chlorophene	Activated Carbon.
Sodium 2,4,5-trichlorophenate	.....	64217	Chlorophene	Activated Carbon.
Aluminum phosphide	.....	66501	Inorganic	Pollution Prevention.
Phosphorus	.....	66502	Inorganic	Pollution Prevention.
Magnesium phosphide	.....	66504	Inorganic	Pollution Prevention.
1-(Alkyl*amino)-3-aminopropane* (Fatty acids of coconut oil).	.....	67301	Iminamide	Activated Carbon.
Alkyl* amino)-3-aminopropane *(53%C12, 19%C14, 8.5%C16, 7%C8.	.....	67305	Iminamide	Activated Carbon.
Alkyl*amino)-3-aminopropane benzoate*(fatty acids of coconut.	.....	67307	Iminamide	Activated Carbon.
Alkyl* dipropoxyamine *(47% C12, 18% C14, 10% C18, 9% C10, 8.	.....	67308	Iminamide	Activated Carbon.
Alkyl*amino)-3-aminopropane hydroxyacetate* (acids of coconut.	.....	67309	Iminamide	Activated Carbon.
Alkyl* amino)-3-aminopropane *(42%C12, 26%C18, 15%C14, 8%C16.	.....	67310	Iminamide	Activated Carbon.
Alkyl*amino)-3-aminopropane diacetate* (fatty acids of coconut.	.....	67313	Iminamide	Activated Carbon.
Octadecenyl-1,3-propanediamine monogluconate.	.....	67316	Acetamide	Activated Carbon.
Alkyl* amine acetate *(5%C8, 7%C10, 54%C12, 19%C14, 8%C16,.	.....	67329	Iminamide	Activated Carbon.
Pindone sodium salt	.....	67704	Indandione	Activated Carbon.
Diphacinone, sodium salt	.....	67705	Indandione	Activated Carbon.
Isovaleryl-1,3-indandione, calcium salt	.....	67706	Indandione	Activated Carbon.
Methyl isothiocyanate	.....	68103	Thiocyanate	Pollution Prevention.
Potassium dichromate	.....	68302	Inorganic	Pollution Prevention.
Sodium chromate	.....	68303	Inorganic	Pollution Prevention.
Sodium dichromate	.....	68304	Metallic	Precipitation.
Alkenyl* dimethyl ethyl ammonium bromide *(90%C18', 10%C16').	.....	69102	NR4	Activated Carbon.
Alkyl*-N-ethyl morpholinium ethyl sulfate *(92%C18, 8%C16).	.....	69113	Heterocyclic	Activated Carbon.
Alkyl* isoquinolinium bromide *(50% C12, 30% C14, 17% C16, 3).	.....	69115	Quinolin	Activated Carbon.
Alkyl* methyl isoquinolinium chloride *(55%C14, 12%C12, 17%C).	.....	69116	Quinolin	Activated Carbon.
Cetyl trimethyl ammonium bromide	.....	69117	NR4	Activated Carbon.
Cetyl pyridinium bromide	.....	69118	Pyridine	Activated Carbon.
Dodecyl dimethyl benzyl ammonium naphthenate.	.....	69127	NR4	Activated Carbon.
Alkyl* dimethyl ethylbenzyl ammonium cyclohexylsulfamate *(5).	.....	69135	NR4	Activated Carbon.
Alkyl*-N-ethyl morpholinium ethyl sulfate *(66%C18, 25%C16).	.....	69147	Heterocyclic	Activated Carbon.
Alkyl* trimethyl ammonium bromide *(95%C14, 5%C16).	.....	69153	NR4	Activated Carbon.

TABLE 10 TO PART 455.—LIST OF APPROPRIATE POLLUTION CONTROL TECHNOLOGIES [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	Structural group [5]	Treatment technology
Benzyl((dodecylcarbamoyl) methyl)di methyl ammonium chloride.	.....	69159	NR4	Activated Carbon.
Cetyl pyridinium chloride	.....	69160	Pyridine	Activated Carbon.
Alkyl* dimethyl ethyl ammonium bromide *(85%C16, 15%C18).	.....	69186	NR4	Activated Carbon.
Cetyl-N-ethylmorpholinium ethyl sulfate	.....	69187	Heterocyclic	Activated Carbon.
Use code no. 069102 (Alkenyl* Dimethyl Ethyl Ammonium bromide).	.....	69198	NR4	Activated Carbon.
p-Aminopyridine	.....	69201	Pyridine	Activated Carbon.
Nitrapyrin (ANSI)	.....	69203	Pyridine	Activated Carbon.
Alkyl pyridines	.....	69205	Pyridine	Activated Carbon.
Pyrazon (ANSI)	.....	69601	Heterocyclic	Activated Carbon.
Capsaicin (in oleoresin of capsicum)	.....	70701	Phenol	Activated Carbon.
Ryanodine	.....	71502	Tricyclic	Activated Carbon.
Silver	.....	72501	Inorganic	Pollution Prevention.
Silver chloride	.....	72506	Inorganic	Pollution Prevention.
Silver thiuronium acrylate co-polymer	.....	72701	Polymer	Activated Carbon.
Sodium chlorate	.....	73301	Inorganic	Pollution Prevention.
Calcium cyanide	.....	74001	Inorganic	Pollution Prevention.
Sodium cyanide	.....	74002	Inorganic	Pollution Prevention.
Cryolite	.....	75101	Inorganic	Pollution Prevention.
Sodium fluoride	.....	75202	Inorganic	Pollution Prevention.
Ammonium fluosilicate	.....	75301	Inorganic	Pollution Prevention.
Sodium fluosilicate	.....	75306	Inorganic	Pollution Prevention.
Potassium iodide	.....	75701	Inorganic	Pollution Prevention.
Potassium tetrathionate	.....	75903	Inorganic	Pollution Prevention.
Potassium nitrate	.....	76103	Inorganic	Pollution Prevention.
Sodium nitrate	.....	76104	Inorganic	Pollution Prevention.
Sodium nitrite	.....	76204	Inorganic	Pollution Prevention.
Benzenesulfonamide, N-chloro-, sodium salt	.....	76501	Sulfonamide	Activated Carbon.
Salicyclic acid	.....	76202	Benzoic Acid	Activated Carbon.
Ethoxyethyl p-methoxycinnamate	.....	76604	Aryl	Activated Carbon.
Calcium polysulfide	.....	76702	Polymer	Activated Carbon.
Strychnine	.....	76901	Tricyclic	Activated Carbon.
Strychnine sulfate	.....	76902	Tricyclic	Activated Carbon.
Niclosamide	.....	77401	Chlorobenzamide	Activated Carbon.
Dibromosalicylamilide	.....	77402	Chlorobenzamide	Activated Carbon.
Tribromsalan	.....	77404	Chlorobenzamide	Activated Carbon.
Dibromosalicylanilide	.....	77405	Chlorobenzamide	Activated Carbon.
Chlorosalicylanilide	.....	77406	Chlorobenzamide	Activated Carbon.
Sulfur	.....	77501	Inorganic	Pollution Prevention.
Sulfaquinoxaline	.....	77901	Sulfanilamide	Activated Carbon.
Sulfacetamide	.....	77904	Sulfanilamide	Activated Carbon.
Sulfuryl fluoride	.....	78003	Inorganic	Pollution Prevention.
Sodium bisulfite	.....	78201	Inorganic	Pollution Prevention.
Tetrachloroethylene	.....	78501	EDB	Activated Carbon.
Ethoxylated isooctylphenol	.....	79004	Phenol	Activated Carbon.
Lauric diethanolamide	.....	79018	Acetanilide	Activated Carbon.
Triethanolamine oleate	.....	79025	NR4	Activated Carbon.
Dioctyl sodium sulfosuccinate	.....	79027	Thiosulfonate	Activated Carbon.
Use code no. 069179 (alkyl*mono-ethanolamide).	.....	79036	Miscellaneous Organic	Activated Carbon.
Alkyl* diethanolamide *(70%C12, 30%C14)	.....	79045	Miscellaneous Organic	Activated Carbon.
Tetradecyl formate	.....	79069	Alkyl Acid	Activated Carbon.
Polyoxyethylene sorbitol oleate-laurate	.....	79075	Polymer	Activated Carbon.
Polyethoxylated stearylamine	.....	79094	Polymer	Activated Carbon.
Capric diethanolamide	.....	79099	Acetanilide	Activated Carbon.
Calcium thiosulfate	.....	80101	Inorganic	Pollution Prevention.
Ammonium thiosulfate	.....	80103	Inorganic	Pollution Prevention.
Thymoxydichloroacetic acid	.....	80401	Benzoic Acid	Activated Carbon.
Thymol	.....	80402	Phenol	Activated Carbon.
Sodium trichloroacetate	.....	81001	Alkyl Halide	Activated Carbon.
Trichloroacetic acid	.....	81002	Alkyl Halide	Activated Carbon.
Hexahydro-1,3,5-tris(2-hydroxyethyl)-s-tri-azine.	.....	83301	s-Triazine	Activated Carbon.
2-(Hydroxymethyl)-2-nitro-1,3-propanediol	.....	83902	Alcohol	Activated Carbon.
Bomyl	.....	84201	Phosphate	Activated Carbon.
Turpentine	.....	84501	Miscellaneous Organic	Activated Carbon.
Chloro-1-(2,5-dichlorophenyl)vinyl) O,O-diethyl phosphorothi.	.....	84901	Phosphorothioate	Activated Carbon.
Zinc chloride	.....	87801	Metallic	Precipitation.

TABLE 10 TO PART 455.—LIST OF APPROPRIATE POLLUTION CONTROL TECHNOLOGIES [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	Structural group [5]	Treatment technology
Zinc 2-pyridinethiol-1-oxide	.....	88002	Metallic	Precipitation.
Hydroxy-2-(1H)-pyridinethione, sodium salt	.....	88004	Pyridine	Activated Carbon.
Omadine TBAO	.....	88005	Pyridine	Activated Carbon.
Zinc naphthenate	.....	88301	Metallic	Precipitation.
Zinc oxide	.....	88502	Metallic	Precipitation.
Zinc phosphide (Zn3P2)	.....	88601	Metallic	Precipitation.
Zinc phenol sulfonate	.....	89002	Metallic	Precipitation.
Zinc sulfate, basic	.....	89101	Metallic	Precipitation.
Dimetilan	.....	90101	Carbamate	Activated Carbon.
Carboxin	.....	90201	Heterocyclic	Activated Carbon.
Oxycarboxin	.....	90202	Heterocyclic	Activated Carbon.
Benzocaine	.....	97001	Benzeneamine	Activated Carbon.
Piperalin	.....	97003	2,4-D	Activated Carbon.
Tetracaine hydrochloride	.....	97005	Benzeneamine	Activated Carbon.
Formetanate hydrochloride	.....	97301	Toluamide	Activated Carbon.
Azacosterol HCl	.....	98101	Tricyclic	Activated Carbon.
Use code no. 039502 (gentian violet)	.....	98401	NR4	Activated Carbon.
Ammonium alum	.....	98501	Inorganic	Pollution Prevention.
Bismuth subgallate	.....	98601	Metallic	Precipitation.
Chlorflurenol, methyl ester	.....	98801	Aryl Halide	Activated Carbon.
Benzisothiazolin-3-one	.....	98901	Heterocyclic	Activated Carbon.
Methyl 2-benzimidazolecarbamate phosphate.	.....	99102	Carbamate	Activated Carbon.
Ethephon	.....	99801	Phosphate	Activated Carbon.
Pentanethiol	.....	100701	Miscellaneous Organic	Activated Carbon.
Nitrobutyl)morpholine	.....	100801	Heterocyclic	Activated Carbon.
Ethyl-2-nitrotrimethylene)dimorpholine	.....	100802	Heterocyclic	Activated Carbon.
Tolyl diiodomethyl sulfone	.....	101002	Thiosulfonate	Activated Carbon.
Isobutyric acid	.....	101502	Alkyl Acid	Activated Carbon.
Dibromo-3-nitrilopropionamide	.....	101801	Acetamide	Activated Carbon.
Polyethoxylated oleylamine	.....	101901	Acetamide	Activated Carbon.
Dinitramine (ANSI)	.....	102301	Nitrobenzoate	Activated Carbon.
Phenylethyl propionate	.....	102601	Phenylcrotonate	Activated Carbon.
Eugenol	.....	102701	Phenol	Activated Carbon.
Tricosene	.....	103201	Miscellaneous Organic	Activated Carbon.
Tricosene	.....	103202	Miscellaneous Organic	Activated Carbon.
Sodium 1,4′,5′-trichloro-2′-(2,4,5-trichlorophenoxy)methanes.	.....	104101	2,4-D	Activated Carbon.
Hexahydro-1,3,5-tris(2-hydroxypropyl)-s-triazine.	.....	105601	s-Triazine	Activated Carbon.
Methazole	.....	106001	Hydrazide	Activated Carbon.
Difenzoquat methyl sulfate	.....	106401	Hydrazide	Activated Carbon.
Butralin	.....	106501	Benzeneamine	Activated Carbon.
Fosamine ammonium	.....	106701	Carbamate	Activated Carbon.
Asulam	.....	106901	Carbamate	Activated Carbon.
Sodium asulam	.....	106902	Carbamate	Activated Carbon.
Hydroxymethoxymethyl-1-aza-3,7-dioxabicyclo(3.3.0)octane.	.....	107001	Bicyclic	Activated Carbon.
Hydroxymethyl-1-aza-3,7-dioxabicyclo(3.3.0)octane.	.....	107002	Bicyclic	Activated Carbon.
Hydroxypoly(methyleneoxy)* methyl-1-aza-3,7-dioxabicyclo(3.3).	.....	107003	Bicyclic	Activated Carbon.
Chloro-2-methyl-3(2H)-isothiazolone	.....	107103	Heterocyclic	Activated Carbon.
Methyl-3(2H)-isothiazolone	.....	107104	Heterocyclic	Activated Carbon.
Trimethoxysilyl)propyl dimethyl octadecyl ammonium chloride.	.....	107401	NR4	Activated Carbon.
Kinoprene	.....	107502	Ester	Activated Carbon.
Triforine (ANSI)	.....	107901	Hydrazide	Activated Carbon.
Pirimiphos-methyl (ANSI)	.....	108102	Phosphorothioate	Activated Carbon.
Thiobencarb	.....	108401	Thiocarbamate	Activated Carbon.
Ancymidol (ANSI)	.....	108601	Pyrimidine	Activated Carbon.
Oxadiazon (ANSI)	.....	109001	Hydrazide	Activated Carbon.
Mepiquat chloride	.....	109101	NR4	Activated Carbon.
Fluvalinate	.....	109302	Toluamide	Activated Carbon.
Chloro-N-(hydroxymethyl)acetamide	.....	109501	Acetamide	Activated Carbon.
Dikegulac sodium	.....	109601	Tricyclic	Activated Carbon.
Iprodione (ANSI)	.....	109801	Hydrazide	Activated Carbon.
Phenylmethyl)-9-(tetrahydro-2H-pyran-2-yl)-9H-purin-6-amine.	.....	110001	Pyrimidine	Activated Carbon.
Prodiamine	.....	110201	Benzeneamine	Activated Carbon.
Erioglaucine	.....	110301	Benzeneamine	Activated Carbon.

TABLE 10 TO PART 455.—LIST OF APPROPRIATE POLLUTION CONTROL TECHNOLOGIES [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	Structural group [5]	Treatment technology
Tartrazine		110302	Hydrazide	Activated Carbon.
Dodemorph acetate		110401	Heterocyclic	Activated Carbon.
Ethofumesate (ANSI)		110601	Bicyclic	Activated Carbon.
Aldoxycarb (ANSI)		110801	Carbamate	Activated Carbon.
Diclofop-methyl		110902	Aryl Halide	Activated Carbon.
Bromo-1-(bromomethyl)-1,3-propanediCarbon.itrile.		111001	Isocyanate	Activated Carbon.
Poly (imino imidocarbonyliminoimidocarbonyliminohexamethylene).		111801	Polymer	Activated Carbon.
Imazalil		111901	Aryl Halide	Activated Carbon.
Bromadiolone		112001	Coumarin	Activated Carbon.
Brodifacoum		112701	Coumarin	Activated Carbon.
Bromethalin (ANSI)		112802	Aryl Amine	Activated Carbon.
Fluridone (ANSI)		112900	Aryl Halide	Activated Carbon.
Vinclozolin		113201	Aryl Halide	Activated Carbon.
Metalaxyl		113501	Benzeneamine	Activated Carbon.
Propetamphos (ANSI)		113601	Phosphoroamidothioate	Activated Carbon.
Methyl-1-naphthyl)maleimide		113701	Phthalamide	Activated Carbon.
Hexadecadien-1-yl acetate		114101	Ester	Activated Carbon.
Hexadecadien-1-yl acetate		114102	Ester	Activated Carbon.
Epoxy-2-methyloctadecane		114301	Heterocyclic	Activated Carbon.
Thiodicarb (ANSI)		114501	Thiocarbamate	Activated Carbon.
Dimethyloxazolidine (8CA & 9CA)		114801	Heterocyclic	Activated Carbon.
Trimethyloxazolidine		114802	Heterocyclic	Activated Carbon.
Hydroxyphenyl)oxoacetohydroximic chloride		114901	Phenol	Activated Carbon.
EEEBC		115001	Carbamate	Activated Carbon.
MDM Hydantoin		115501	Hydrazide	Activated Carbon.
DMDM Hydantoin		115502	Hydrazide	Activated Carbon.
Triclopyr (ANSI)		116001	Pyridine	Activated Carbon.
Triethylamine triclopyr		116002	Pyridine	Activated Carbon.
Butoxyethyl triclopyr		116004	Pyridine	Activated Carbon.
Decenyl)dihydro-2(3H)-furanone		116501	Ester	Activated Carbon.
Cytokinins		116801	Toluidine	Activated Carbon.
Benzyladenine		116901	Pyrimidine	Activated Carbon.
Clopyralid, monoethanolamine salt		117401	Pyridine	Activated Carbon.
Clopyralid (ANSI)		117403	Pyridine	Activated Carbon.
Flucythrinate (ANSI)		118301	Pyrethrin	Activated Carbon.
Hydramethylnon (ANSI)		118401	Iminimide	Activated Carbon.
Chlorsulfuron		118601	s-Triazine	Activated Carbon.
Dimethipin		118901	Heterocyclic	Activated Carbon.
Hexadecenal		120001	Miscellaneous Organic	Activated Carbon.
Tetradecenal		120002	Miscellaneous Organic	Activated Carbon.
Thidiazuron		120301	Urea	Activated Carbon.
Metronidazole		120401	Hydrazide	Activated Carbon.
Erythrosine B		120901	Tricyclic	Activated Carbon.
Sethoxydim		121001	Cyclic Ketone	Activated Carbon.
Clethodim		121011	Heterocyclic	Activated Carbon.
Cyromazine		121301	s-Triazine	Activated Carbon.
Tralomethrin		121501	Pyrethrin	Activated Carbon.
Azadirachtin		121701	Tricyclic	Activated Carbon.
Tridecen-1-yl acetate		121901	Ester	Activated Carbon.
Tridecen-1-yl acetate		121902	Ester	Activated Carbon.
Sulfometuron methyl		122001	Pyrimidine	Activated Carbon.
Metsulfuron-methyl		122010	s-Triazine	Activated Carbon.
Propiconazole		122101	Aryl Halide	Activated Carbon.
Furanone, dihydro-5-pentyl		122301	Cyclic Ketone	Activated Carbon.
Furanone, 5-heptyldihydro-		122302	Cyclic Ketone	Activated Carbon.
Abamectin (ANSI)		122804	Tricyclic	Activated Carbon.
Fluazifop-butyl		122805	Pyridine	Activated Carbon.
Fluazifop-R-butyl		122809	Pyridine	Activated Carbon.
Flumetralin		123001	Nitrobenzoate	Activated Carbon.
Fosetyl-Al		123301	Phosphate	Activated Carbon.
Methanol, (((2-(dihydro-5-methyl-3(2H)-oxazolyl)-1-methyl)et.		123702	Heterocyclic	Activated Carbon.
Fomesafen		123802	Nitrobenzoate	Activated Carbon.
Tridiphane		123901	Aryl Halide	Activated Carbon.
POE isooctadecanol		124601	Alcohol	Activated Carbon.
Periplanone B		124801	Bicyclic	Activated Carbon.
Fenoxycarb		125301	Carbamate	Activated Carbon.
Clomazone		125401	Aryl Halide	Activated Carbon.

TABLE 10 TO PART 455.—LIST OF APPROPRIATE POLLUTION CONTROL TECHNOLOGIES [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	Structural group [5]	Treatment technology
Clofentezine		125501	Aryl Halide	Activated Carbon.
Paclobutrazol		125601	Hydrazide	Activated Carbon.
Flurprimidol		125701	Pyrimidine	Activated Carbon.
Isoxaben		125851	Heterocyclic	Activated Carbon.
Isazofos		126901	Phosphorothioate	Activated Carbon.
Triadimenol		127201	Hydrazide	Activated Carbon.
Fenpropathrin		127901	Pyrethrin	Activated Carbon.
Sulfosate		128501	Phosphorothioate	Activated Carbon.
Fenoxaprop-ethyl		128701	Heterocyclic	Activated Carbon.
Quizalofop-ethyl		128711	Phthalimide	Activated Carbon.
Bensulfuron-methyl		128820	Pyrimidine	Activated Carbon.
Imazapyr		128821	Hydrazide	Activated Carbon.
Bifenthrin		128825	Pyrethrin	Activated Carbon.
Imazapyr, isopropylamine salt		128829	Hydrazide	Activated Carbon.
Sodium salt of 1-carboxymethyl-3,5,7-triaza-1-azoniatricyclo.		128832	s-Triazine	Activated Carbon.
Linalool		128838	Alcohol	Activated Carbon.
Imazaquin, monoammonium salt		128840	Pyrimidine	Activated Carbon.
Imazethabenz		128842	Pyrimidine	Activated Carbon.
Thifensulfuron methyl		128845	s-Triazine	Activated Carbon.
Imazaquin		128848	Pyrimidine	Activated Carbon.
Myclobutanil (ANSI)		128857	s-Triazine	Activated Carbon.
Zinc borate (3ZnO, 2B03, 3.5H2O; mw 434.66).		128859	Metallic	Precipitation.
Cyhalothrin		128867	Pyrethrin	Activated Carbon.
Potassium cresylate		128870	Phenol	Activated Carbon.
Triflumizole		128879	Toluidine	Activated Carbon.
Tribenuron methyl		128887	s-Triazine	Activated Carbon.
Cyhalothrin		128897	Pyrethrin	Activated Carbon.
Chlorimuron-ethyl		128901	Pyrimidine	Activated Carbon.
Dodecen-1-yl acetate		128906	Ester	Activated Carbon.
Dodecen-1-yl acetate		128907	Ester	Activated Carbon.
DDOL		128908	Alcohol	Activated Carbon.
Farnesol		128910	Alcohol	Activated Carbon.
Nerolidol		128911	Alcohol	Activated Carbon.
Tefluthrin		128912	Pyrethrin	Activated Carbon.
Bromoxynil heptanoate		128920	Chloropropionanilide	Activated Carbon.
Imazethapyr		128922	Pyrimidine	Activated Carbon.
Imazethapyr, ammonium salt		128923	Pyrimidine	Activated Carbon.
Chitosan		128930	Polymer	Activated Carbon.
Sulfuric acid, monourea adduct		128961	Urea	Activated Carbon.
Hydroprene		128966	Miscellaneous Organic	Activated Carbon.
Triasulfuron		128969	Urea	Activated Carbon.
Primisulfuron-methyl		128973	Urea	Activated Carbon.
Uniconazole (ANSI)		128976	s-Triazine	Activated Carbon.
Tetradecenyl acetate		128980	Miscellaneous Organic	Activated Carbon.
Chitin		128991	Polymer	Activated Carbon.
Sulfluramid		128992	Sulfonamide	Activated Carbon.
Dithiopyr (ANSI)		128994	Pyridine	Activated Carbon.
Nicosulfuron		129008	Pyrimidine	Activated Carbon.
Zinc		129015	Metallic	Precipitation.
Tetradecen-1-ol, acetate, (E)-		129019	Alkyl Acid	Activated Carbon.
Imazaquin, sodium salt		129023	Pyrimidine	Activated Carbon.
Dodecadien-1-ol		129028	Alcohol	Activated Carbon.
Ionone		129030	Miscellaneous Organic	Activated Carbon.
Dicamba, aluminum salt		129042	Aryl Halide	Activated Carbon.
Benzenemethanaminium, N-(2-((2,6-dimethylphenyl)amino)-2-oxo.		129045	NR4	Activated Carbon.
Fenoxaprop-p-Ethyl		129092	Tricyclic	Activated Carbon.
Alkyl* bis(2-hydroxyethyl) ammonium acetate *(as in fatty ac.		169103	NR4	Activated Carbon.
Alkenyl* dimethyl ammonium acetate *(75% C18', 25% C16').		169104	NR4	Activated Carbon.
Amines, N-coco alkyltrimethylenedi-, adipates.		169109	Iminamide	Activated Carbon.
Dialkyl* dimethyl ammonium bentonite *(as in fatty acids of.		169111	NR4	Activated Carbon.
Alkyl* bis(2-hydroxyethyl) amine acetate *(65% C18, 30% C16,.		169125	Acetamide	Activated Carbon.
Dodecyl bis(hydroxy ethyl) dioctyl ammonium phosphate.		169154	NR4	Activated Carbon.

TABLE 10 TO PART 455.—LIST OF APPROPRIATE POLLUTION CONTROL TECHNOLOGIES [1]—Continued

PAI name [2]	PAI code [3]	Shaughnessy code [4]	Structural group [5]	Treatment technology
Dodecyl bis(2-hydroxyethyl) octyl hydrogen ammonium phosphat.	.....	169155	NR4	Activated Carbon.
Didecyl-N-methyl-3-(trimethoxysilyl)propanaminium chloride.	.....	169160	NR4	Activated Carbon.
Cholecalciferol	.....	202901	Bicyclic	Activated Carbon.
Use code no. 202901 (Vitamin D3)	.....	208700	Bicyclic	Activated Carbon.
Alkyl* N,N-bis(2-hydroxyethyl)amine *(100% C8–C18).	.....	210900	NR4	Activated Carbon.
Bromo-2-nitropropane-1,3-diol	.....	216400	Alcohol	Activated Carbon.
Use code no. 114601 (cyclohexyl-4, 5-dichloro- 4-isothioazolin-3-one).	.....	229300	Heterocyclic	Activated Carbon.
Diethatyl ethyl	.....	279500	Toluidine	Activated Carbon.
Hydroprene (ANSI)	.....	486300	Miscellaneous Organic	Activated Carbon.
Zinc sulfate monohydrate	.....	527200	Metallic	Precipitation
Geraniol	.....	597501	Alcohol	Activated Carbon.

[1] The 272 Pesticide Active Ingredients (PAIs) are listed first, by PAI code, followed by the non-272 PAIs from the 1988 FIFRA and TSCA Enforcement System (FATES) Database, which are listed in Shaughnessy code order. PAIs that were exempted or reserved from the PFPR effluent guidelines are not listed in the table.

[2] The non-272 PAI names are taken directly from the 1988 FATES database. Several of the PAI names are truncated because the PAI names listed in the FATES database are limited to 60 characters.

[3] The non-272 PAIs do not have PAI codes.

[4] All Shaughnessy codes are taken from the 1988 FATES database. Some of the 272 PAIs are not listed in the 1988 FATES database; therefore, no Shaughnessy codes are listed for these PAIs.

[5] Structural groups are based on an analysis of the chemical structures of each PAI.

[6] EPA has also received data indicating that acid hydrolysis may also be effective in treating this PAI.

* This PAI code represents a category or group of PAIs; therefore, it has multiple Shaughnessy codes.

[FR Doc. 96–25771 Filed 11–5–96; 8:45 am]

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federal register

Wednesday
November 6, 1996

Part III

Department of Justice

Bureau of Prisons

28 CFR Part 540

Incoming Publications: Nudity and Sexually Explicit Material or Information; Interim Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP–1064–I]

RIN 1120–AA59

Incoming Publications: Nudity and Sexually Explicit Material or Information

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: This rule modifies the Bureau of Prisons rule on Incoming Publications in order to implement the provisions of the Fiscal Year 1997 Omnibus Budget Act (Public Law 104–208) prohibiting use of appropriated funds for distributing or making available to an inmate any commercially published information or material when such information or material is sexually explicit or features nudity.

DATES: Effective December 1, 1996; comments must be submitted by January 6, 1997.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is adopting interim regulations to its existing rule on incoming publications (28 CFR part 540, subpart F). A final rule on this subject was published June 29, 1979 (44 FR 38260), as amended December 7, 1982 (47 FR 55129) and January 3, 1985 (50 FR 411).

The current modification implements a provision of the Fiscal Year 1997 Omnibus Budget Act (P.L. 104–208) that directly affects the Bureau. The specific provision provides that none of the funds made available in this Act to the Federal Bureau of Prisons may be used to distribute or make available any commercially published information or material to a prisoner when it is made known to the Federal Official having authority to obligate or expend such funds that such information or material is sexually explicit or features nudity.

Based on this statutory restriction, a new § 540.72 is being added, entitled, ''Statutory restrictions requiring return of commercially published information or material which is sexually explicit or features nudity''. This section implements the provisions of Public Law 104–208 by providing for the return of the disallowed information or material to the publisher or sender. The rule provides for the publisher or sender to be notified that an independent review of the decision may be obtained by writing to the Regional Director within 20 days of receipt of the letter returning the material. The inmate is to be provided with written notice of the action. The new section contains definitions of ''commercially published information or material'', ''nudity'', ''features'', and ''sexually explicit''.

Other provisions in subpart F have been amended in order to improve organization and to update references to the Bureau's provisions on the Administrative Remedy Program. Section 540.70, on purpose and scope, has been revised to remove procedural details on delegation of authority. Those procedural details have been included in § 540.71(a). The definition of publication contained in that section has been updated to include better examples of material likely to be submitted. An introductory phrase, ''Except when precluded by statute (see § 540.72),'' has been added to the section in recognition of the new legislative requirement. Admendments also have been made in § 540.71 (d) and (e) to indicate the retitled Administrative Remedy Program and to indicate the longer period of time now available to the inmate for filing a remedy request (20 days rather than 15 days).

Because this statutory restriction on the Bureau of Prisons' appropriated funds is applicable with the Fiscal Year beginning October 1, 1996, the Bureau finds good cause for making this amendment effective without a full thirty day delay and without notice of proposed rulemaking. The Bureau, however, has elected to publish this regulation as an interim rule in order to invite public comment and to delay effectiveness until December 1, 1996. Members of the public may submit comments concerning this rule by writing to the previously cited address. Comments received before the deadline will be considered before the rule is finalized; comments received after the deadline will be considered to the extent practicable.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), does not have a significant impact on a substantial number of small entities beyond that required by the Fiscal Year 1997 Omnibus Budget Act. The economic impact of this regulation is either limited to the Bureau's appropriated funds or is required by the Fiscal Year 1997 Omnibus Budget Act.

List of Subjects in 28 CFR Part 540

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 540 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 is revised to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; Public Law 104–208, Section 614 (110 Stat. 3009); 28 CFR 0.95–0.99.

2. Section 540.70 is revised to read as follows:

§ 540.70 Purpose and scope.

Except when precluded by statute (see § 540.72), the Bureau of Prisons permits an inmate to subscribe to or to receive publications without prior approval and has established procedures to determine if an incoming publication is detrimental to the security, discipline, or good order of the institution or if it might facilitate criminal activity. The term publication, as used in this subpart, means a book, booklet, pamphlet, or similar document, or a single issue of a magazine, periodical, newsletter, newspaper, plus such other materials addressed to a specific inmate such as advertising brochures, flyers, and catalogs.

3. In § 540.71, paragraph (a) is amended by adding two sentences at the end, paragraph (d) is amended by revising the phrase ''Administrative Remedy Procedure'' to read ''Administrative Remedy Program'', and paragraph (e) is amended by revising the phrase ''Administrative Remedy Procedure'' to read ''Administrative Remedy Program'' and by revising the phrase ''15 days'' to read ''20 days''.

§ 540.71 Procedures.

(a) * * * The Warden may designate staff to review and where appropriate to

approve all incoming publications in accordance with the provisions of this subpart. Only the Warden may reject an incoming publication.

* * * * *

4. Section 540.72 is added to read as follows:

§ 540.72 Statutory restrictions requiring return of commercially published information or material which is sexually explicit or features nudity.

(a) When commercially published information or material may not be distributed by staff or made available to inmates due to statutory restrictions (for example, a prohibition on the use of appropriated funds to distribute or make available to inmates information or material which is sexually explicit or features nudity), the Warden or designee shall return the information or material to the publisher or sender. The Warden or designee shall advise the publisher or sender that an independent review of the decision may be obtained by writing to the Regional Director within 20 days of receipt of the notification letter. Staff shall provide the inmate with written notice of the action.

(b) Definitions: For the purpose of this section:

(1) *Commercially published information or material* means any book, booklet, pamphlet, magazine, periodical, newsletter, or similar document, including stationery and greeting cards, published by any individual, organization, company, or corporation which is distributed or made available through any means or media for a commercial purpose. This definition includes any portion extracted, photocopied, or clipped from such items.

(2) *Nudity* means a pictorial depiction where genitalia or female breasts are exposed.

(3) *Features* means the publication contains depictions of nudity or sexually explicit conduct on a routine or regular basis or promotes itself based upon such depictions in the case of individual one-time issues. Publications containing nudity illustrative of medical, educational, or anthropological content may be excluded from this definition.

(4) *Sexually explicit* means a pictorial depiction of actual or simulated sexual acts including sexual intercourse, oral sex, or masturbation.

[FR Doc. 96–28565 Filed 11–5–96; 8:45 am]

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federal register

Wednesday
November 6, 1996

Part IV

Federal Emergency Management Agency

44 CFR Part 64

Suspension of Community Eligibility; Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7652]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Acting Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Acting Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

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.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 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.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Massachusetts: Nantucket, town of, Nantaucket County.	250230	Jan. 21, 1974, Emerg.; June 3, 1986, Reg.; Nov. 6, 1996, Susp.	Nov. 6, 1996	Nov. 6, 1996.
Region III				
Pennsylvania:				
Auburn, borough of, Schuylkill County ...	420766	July 29, 1975, Emerg.; May 17, 1989, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Schuylkill Haven, borough of, Schuylkill County.	420787	Oct. 20, 1972, Emerg.; Dec. 1, 1977, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
South Manheim, township of, Schuylkill County.	422022	Aug. 6, 1975, Emerg.; May 4, 1989, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Region V				
Michigan: Muir, village of, Ionia County	260916	June 20, 1994, Emerg.; Nov. 6, 1996, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Wisconsin: New Berlin, City of, Waukesha County.	550487	May 18, 1973, Emerg.; Mar. 18, 1987, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Region VI				
Texas:				
Baytown, city of, Harris County	485456	July 17, 1970, Emerg.; July 1, 1974, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Bellaire, city of, Harris County	480289	Aug. 12, 1975, Emerg.; Sept. 30, 1981, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Chelford City M.U.D., Harris County	481568	July 21, 1980, Emerg.; Dec. 18, 1987, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Deer Park, city of, Harris County	480291	Feb. 22, 1974, Emerg.; Aug. 15, 1980, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
El Lago, city of, Harris County	485466	Aug. 14, 1970, Emerg.; July 2, 1971, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Fort Bend County M.U.D. No. 2, Harris County.	481272	June 25, 1976, Emerg.; Nov. 15, 1984, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Galena Park, city of, Harris County	480293	Nov. 29, 1974, Emerg.; Nov. 2, 1982, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Harris County, unincorporated areas	480287	May 14, 1970, Emerg.; May 26, 1970, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Hilshire Village, city of, Harris County	480295	Dec. 13, 1974, Emerg.; June 28, 1979, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Houston, city of, Harris County	480296	Sept. 14, 1973, Emerg.; Dec. 11, 1979, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Hunters Creek Village, city of, Harris County.	480298	Nov. 27, 1973, Emerg.; Nov. 5, 1980, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Jacinto City, city of, Harris County	480299	Sept. 4, 1975, Emerg.; Sept. 2, 1981, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Jersey Village, city of, Harris County	480300	Oct. 9, 1974, Emerg.; Mar. 15, 1982, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
La Porte, city of, Harris County	485487	Aug. 28, 1970, Emerg.; Feb. 12, 1970, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Mission Bend M.U.D. No. 1, Harris County.	481578	Mar. 30, 1982, Emerg.; Sept. 4, 1987, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Missouri City, city of, Harris County	480304	Aug. 29, 1973, Emerg.; Jan. 6, 1982, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Morgans Point, city of, Harris County	480305	July 7, 1975, Emerg.; Dec. 1, 1983, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Nassau Bay, city of, Harris County	485491	July 24, 1970, Emerg.; Nov. 13, 1970, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Pasadena, city of, Harris County	480307	July 2, 1971, Emerg.; May 26, 1970, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Pearland, city of, Harris County	480077	Dec. 19, 1973, Emerg.; July 5, 1984, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Piney Point Village, city of, Harris County.	480308	July 1, 1974, Emerg.; Dec. 2, 1980, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Seabrook, city of, Harris County	485507	May 29, 1970, Emerg.; Apr. 23, 1971, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Shoreacres, city of, Harris County	485510	Sept. 11, 1970, Emerg.; Nov. 20, 1970, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
South Houston, city of, Harris County	480311	Apr. 17, 1975, Emerg.; Mar. 18, 1987, Reg.; Nov. 6, 1996, Susp.	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Southside Place, city of, Harris County	480312	Nov. 13, 1974, Emerg.; Feb. 11, 1976, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Spring Valley, city of, Harris County	480313	July 31, 1974, Emerg.; June 4, 1980, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Tomball, city of, Harris County	480315	July 18, 1979, Emerg.; Dec. 18, 1984, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Webster, city of, Harris County	485516	Oct. 30, 1970, Emerg.; May 19, 1972, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Willow Fork Drainage District, Harris County.	481603	Sept. 8, 1986, Reg.; Nov. 6, 1996, Susp	.....do	Do.
Region X				
Washington: Thurston County, unincorporated areas.	530188	Sept. 13, 1974, Emerg.; Dec. 1, 1982, Reg.; Nov. 6, 1996, Susp.	.....do	Do.
Region II				
New York: Putnam, town of, Washington County.	361236	May 7, 1976, Emerg.; Aug. 19, 1986, Reg.; Nov. 20, 1996, Susp.	Nov. 20, 1996 ...	Nov. 20, 1996.
Region III				
Pennsylvania:				
Avondale, borough of, Chester County	421473	Aug. 29, 1975, Emerg.; Nov. 4, 1987, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Birmingham, township of, Chester County.	421474	Nov. 14, 1974, Emerg.; April 15, 1981, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Caln, township of, Chester County	422247	Aug. 14, 1975, Emerg.; Sept. 30, 1981, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Charlestown, township of, Chester County.	421475	Nov. 24, 1975, Emerg.; Dec. 4, 1984, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Coatesville, city of, Chester County	420274	Dec. 26, 1974, Emerg.; May 17, 1982, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Downingtown, borough of, Chester County.	420275	Dec. 3, 1971, Emerg.; Apr. 15, 1977, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
East Bradford, township of, Chester County.	420276	Aug. 16, 1974, Emerg.; Apr. 15, 1977, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
East Brandywine, township of, Chester County.	421476	Nov. 21, 1975, Emerg.; Feb. 1, 1984, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
East Caln, township of, Chester County	421477	Oct. 10, 1974, Emerg.; Sept. 30, 1980, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
East Coventry, township of, Chester County.	421478	Dec. 3, 1975, Emerg.; Feb. 17, 1982, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
East Fallowfield, township of, Chester County.	421479	Nov. 3, 1975, Emerg.; June 1, 1983, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
East Goshen, township of, Chester County.	420277	Jan. 21, 1972, Emerg.; July 5, 1977, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
East Marlborough, township of, Chester County.	421480	Mar. 28, 1975, Emerg.; July 16, 1981, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
East Nantmeal, township of, Chester County.	421481	Apr. 14, 1976, Emerg.; Feb. 1, 1984, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
East Nottingham, township of, Chester County.	421482	Feb. 9, 1976, Emerg.; Sept. 4, 1985, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
East Pikeland, township of, Chester County.	421483	Sept. 6, 1974, Emerg.; Mar. 16, 1981, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
East Vincent, township of, Chester County.	420278	Feb. 9, 1973, Emerg.; Dec. 1, 1977, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
East Whiteland, township of, Chester County.	420279	June 16, 1972, Emerg.; June 1, 1989, Reg.; Nov. 20, 1996 Susp.	.....do	Do.
Easttown, township of, Chester County	422600	Nov. 14, 1974, Emerg.; March 16, 1981, Reg., Nov. 20, 1996, Susp.	.....do	Do.
Elk, township of, Chester County	422286	Jan. 14, 1975, Emerg.; July 30, 1982, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Elverson, borough of, Chester County ...	422287	Feb. 13, 1976, Emerg.; Feb. 25, 1983, Reg.; Nov. 20, 1986, Susp.	.....do	Do.
Franklin, township of, Chester County ...	422288	July 6, 1983, Emerg.; Mar. 1, 1986, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Highland, township of, Chester County	422289	Aug. 25, 1977, Emerg.; Apr. 8, 1983, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Kennett, township of, Chester County	422586	Dec. 8, 1975, Emerg.; June 1, 1984, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Kennett Square, borough of, Chester County.	420280	Apr. 21, 1975, Emerg.; July 16, 1981, Reg.; Nov. 20, 1996, Susp.	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
London Britain, township of, Chester County.	422273	Feb. 5, 1975, Emerg.; Dec. 31, 1982, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Londonderry, township of, Chester County.	421484	Dec. 12, 1974, Emerg.; Sept. 24, 1984, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
London Grove, township of, Chester County.	422274	Oct. 17, 1974, Emerg.; Feb. 11, 1983, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Lower Oxford, township of, Chester County.	421485	Sept. 30, 1975, Emerg.; Oct. 15, 1985, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
New London, township of, Chester County.	422276	May 13, 1975, Emerg.; Nov. 12, 1982, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
New Garden, township of, Chester County.	422275	Nov. 3, 1975, Emerg.; Oct. 15, 1982, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Newlin, township of, Chester County	421486	Oct. 24, 1975, Emerg.; Aug. 1, 1984, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
North Coventry, township of, Chester County.	420283	Jan. 26, 1973, Emerg.; Aug. 15, 1978, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Oxford, borough of, Chester County	420284	June 17, 1975, Emerg.; Sept. 17, 1982, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Parkesburg, borough of, Chester County	422277	June 11, 1975, Emerg.; June 1, 1983, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Penn, township of, Chester County	421487	Oct. 15, 1975, Emerg.; Dec. 17, 1982, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Pennsbury, township of, Chester County	420285	Sept. 29, 1972, Emerg.; Dec. 28, 1976, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Phoenixville, borough of, Chester County.	420287	Aug. 1, 1974, Emerg.; Nov. 5, 1980, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Pocopson, township of, Chester County	420286	Jan. 21, 1972, Emerg.; Apr. 15, 1977, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Sadsbury, township of, Chester County	421488	Dec. 31, 1975, Emerg.; Oct. 15, 1985, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Schuykill, township of, Chester County	421489	Jan. 30, 1975, Emerg.; Nov. 5, 1980, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
South Coatesville, borough, Chester County.	420288	Dec. 10, 1975, Emerg.; May 3, 1982, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
South Coventry, township of, Chester County.	421490	Apr. 29, 1975, Emerg.; July 18, 1983, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Thornbury, township of, Chester County	420290	Feb. 18, 1972, Emerg.; Mar. 1, 1977, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Upper Oxford, township of, Chester County.	422278	Aug. 6, 1975, Emerg.; Feb. 25, 1983, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Upper Uwchlan, township of, Chester County.	421491	Mar. 10, 1976, Emerg.; Aug. 19, 1985, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Uwchlan, township of, Chester County	421492	Oct. 11, 1974, Emerg.; Sept. 30, 1980, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Valley, township of, Chester County	421206	May 23, 1974, Emerg.; Aug. 1, 1984, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Wallace, township of, Chester County ...	421493	Feb. 11, 1976, Emerg.; Mar. 11, 1983, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
West Bradford, township of, Chester County.	421495	Feb. 10, 1975, Emerg.; July 16, 1981, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
West Brandywine, township of, Chester County.	421496	Aug. 6, 1975, Emerg.; Sept. 28, 1979, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
West Caln, township of, Chester County	421497	May 19, 1976, Emerg.; Jan. 17, 1985, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
West Chester, borough of, Chester County.	420292	Dec. 3, 1971, Emerg.; July 5, 1977, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
West Fallowfield, township of, Chester County.	422602	Mar. 19, 1975, Emerg.; Apr. 1, 1983, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
West Goshen, township of, Chester County.	420293	Jan. 26, 1973, Emerg.; Nov. 2, 1977, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
West Nantmeal, township of, Chester County.	421498	Feb. 12, 1975, Emerg.; Aug. 1, 1984, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
West Marlborough, township of, Chester County.	422279	May 20, 1975, Emerg.; Jan. 18, 1984, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
West Nottingham, township of, Chester County.	422280	July 2, 1976, Emerg.; Oct. 18, 1985, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
West Pikeland, township of, Chester County.	421151	Apr. 10, 1974, Emerg.; June 1, 1983, Reg.; Nov. 20, 1996, Susp.	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
West Sadsbury, township of, Chester County.	422281	Mar. 23, 1976, Emerg.; Aug. 5, 1985, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
West Vincent, township of, Chester County.	421499	Aug. 11, 1975, Emerg.; Nov. 19, 1987, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
West Whiteland, township of, Chester County.	420295	Nov. 5, 1971, Emerg.; May 2, 1977, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Westtown, township of, Chester County	420294	Nov. 26, 1971, Emerg.; June 1, 1977, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Willistown, township of, Chester County	422282	Oct. 17, 1974, Emerg.; Oct. 15, 1981, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Region V				
Illinois:				
Aroma Park, village of, Kankakee County.	170740	Aug. 25, 1975, Emerg.; Nov. 2, 1977, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Momence, city of, Kankakee County	170340	Aug. 8, 1975, Emerg.; Nov. 2, 1977, Reg.; Nov. 20, 1996, Susp.	.....do	Do.
Michigan: Bruce, township of, Macomb County.	260884	Nov. 27, 1991, Emerg.; Nov. 20, 1996, Reg.; Nov. 20, 1996, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.
(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: November 1, 1996.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

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Federal Register

Vol. 61, No. 216

Wednesday, November 6, 1996

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FEDERAL REGISTER PAGES AND DATES, NOVEMBER

56397–56622 1
56623–56876 4
56877–57280 5
57281–57576 6

CFR PARTS AFFECTED DURING NOVEMBER

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:
6949 56397
6950 56873

Executive Orders:
199–A (Superseded in part by EO 13022) 56875
8682 (Superseded in part by EO 13022) 56875
8729 (Superseded in part by EO 13022) 56875
11048 (Superseded in part by EO 13022) 56875
11593 (See EO 13022) 56875
12996 (See EO 13022) 56875
13022 56875

Administrative Orders:
Presidential Determinations:
No. 96–53 of September 26, 1996 56859
No. 96–55 of September 30, 1996 56861
No. 96–56 of September 30, 1996 56863
No. 96–57 of September 30, 1996 56865
No. 96–58 of September 30, 1996 56857
No. 96–59 of September 30, 1996 56859

5 CFR

Ch. XLII 57281
Ch. LVII 56399

Proposed Rules:
1605 56904

7 CFR

301 56403

9 CFR

53 56877
71 56877
82 56877
92 56877
94 56877
161 56877

10 CFR

2 56623
13 56623

Proposed Rules:
430 56918

12 CFR

218 57287
225 56404
250 57287
263 56407
747 57290

14 CFR

21 57002
25 56408
39 ..... 57291, 57295, 57296, 57298, 57299, 57300, 57301, 57304, 57311, 57313, 57315, 57317, 57319, 57322, 57232
71 ..... 56623, 56624, 57324
97 57003
382 56409

Proposed Rules:
39 ..... 56640, 56642, 56919, 56921, 56923, 56925, 57342
71 ..... 56479, 56480, 56644
73 56927
382 56481

15 CFR

902 56425

17 CFR

200 56891

Proposed Rules:
300 56485

18 CFR

365 57325
375 57325

19 CFR

Proposed Rules:
10 56645
18 56645
114 56645

21 CFR

50 57278
178 56892
312 57278
520 56892
556 56892
610 57328
812 57278
1308 56893

22 CFR

41 56438
121 56894

23 CFR

640 57330

24 CFR
3500 56624

25 CFR
309 57002

26 CFR
Proposed Rules:
1 56647

27 CFR
Proposed Rules:
4 56928
5 56928
7 56928
19 56928
20 56928
22 56928
24 56928
25 56928
27 56928
70 56928
250 56928
251 56928

28 CFR
540 57568

29 CFR
0 57281
1910 56746
1915 56746
1926 56746

30 CFR
Proposed Rules:
943 56648

32 CFR
92 56896
176 56896
Proposed Rules:
199 56929

37 CFR
1 56439
2 56439
5 56439
10 56439

38 CFR
2 56448
3 56626
17 56897
36 56449
42 56449
Proposed Rules:
17 56486

39 CFR
233 56450

40 CFR
52 ..... 56461, 56470, 56472, 56474, 56627, 56629, 56897, 57331
70 056631
261 57334
266 56631
300 56477
455 57518
Proposed Rules:
52 ..... 56491, 56492, 56649, 56650, 56930, 57343
82 56493
152 57356
156 57356
180 57356
300 56931
437 56650

41 CFR
105–735 56399

42 CFR
50 56631

43 CFR
Proposed Rules:
2090 56496
3100 56651
4300 56497
6400 56651

44 CFR
64 57572

45 CFR
1301 57186
1303 57186
1304 57186
1305 57186
1306 57186
1308 57186

46 CFR
14 56632
28 57268
221 56900

47 CFR
1 57334
73 ..... 57335, 57336
Proposed Rules:
73 ..... 57359, 57360

48 CFR
1501 57336
1503 57336
1509 57336
1510 57336
1511 57336
1512 57336
1513 57336
1516 57336
1519 57336
1527 57336
1532 57336
1533 57336
1535 57336
1542 57336
1552 57336

49 CFR
27 56409
1011 57339
1104 57339
1111 57339
1112 57339
1113 57339
1114 57339
1115 57339
1121 57339
Proposed Rules:
383 56936
391 56936
395 57252
571 56652
1310 56652

50 CFR
285 57340
679 ..... 56425, 56477, 57340, 57341
Proposed Rules:
17 56501
36 56502
285 57361
630 57361
644 57361
648 56902
660 56902
678 57361
679 56902

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 TODAY

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Horses from contagious equine metritis-affected countries

Mares and stallions, etc.; new testing and treatment protocols; published 10-7-96

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Satellite communications--

Earth-to-space (''uplink'') transmissions; fixed-satellite service 13.75-14.0 GHz band allocation; published 10-7-96

Telecommunications Act of 1996; implementation--

Pay telephone reclassification and compensation provisions; published 10-7-96

Radio stations; table of assignments:

California et al.; published 11-6-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Inspector General Office, Health and Human Services Department

Medicare programs:

Fraud and abuse--

Civil money penalties inflation adjustments; published 10-7-96

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Southern maritime chaparral plant taxa from coastal Southern California et al.; published 10-7-96

LABOR DEPARTMENT

Conflict of interests; published 11-6-96

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Acquisition regulations:

FAR supplement rewrite; published 10-7-96

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Civil monetary penalty inflation adjustment; published 11-6-96

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Rate procedures:

Rail rate reasonableness, exemption and revocation proceedings; expedited procedures

Effective date delayed; published 11-6-96

COMMENTS DUE NEXT WEEK

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Historic Preservation, Advisory Council

Historic and cultural properties protection; comments due by 11-12-96; published 9-13-96

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Perishable Agricultural Commodities Act:

Retailers and grocery wholesalers; phase-out of license fee payments, etc.; comments due by 11-12-96; published 9-10-96

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):

Brucellosis in cattle, bison, and swine--

Rapid automated presumptive test; comments due by 11-12-96; published 9-13-96

Plant-related quarantine, domestic:

Fire ant, imported; comments due by 11-14-96; published 10-15-96

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Cranberry crop; comments due by 11-12-96; published 9-13-96

Forage production crop; comments due by 11-12-96; published 9-13-96

AGRICULTURE DEPARTMENT

Food and Consumer Service

Food stamp program:

Quality control system; technical amendments; comments due by 11-12-96; published 9-10-96

ARMS CONTROL AND DISARMAMENT AGENCY

National Security Information; comments due by 11-15-96; published 10-10-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Bering Sea and Aleutian Islands and Gulf of Alaska groundfish; comments due by 11-12-96; published 9-27-96

Bering Sea and Aleutian Islands groundfish; comments due by 11-12-96; published 9-19-96

Northeast multispecies, Atlantic sea scallop, and American lobster; comments due by 11-11-96; published 9-20-96

Puerto Rico and U.S. Virgin Islands queen conch; comments due by 11-12-96; published 9-27-96

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Contracting by negotiation; Phase I rewrite; comments due by 11-12-96; published 9-12-96

Contractors and offerors; certification requirements removed; comments due by 11-12-96; published 9-12-96

Performance-based payments; comments due by 11-12-96; published 9-10-96

Simplified acquisition procedures; comments due by 11-12-96; published 9-13-96

EDUCATION DEPARTMENT

Federal regulatory review:

Vocational and adult education programs; comments due by 11-15-96; published 10-16-96

ENERGY DEPARTMENT

Property management:

Federal regulatory review; comments due by 11-12-96; published 9-11-96

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Fuel and fuel additives--

Guam; anti-dumping and detergent additization requirements for conventional gasoline; exemption petition; comments due by 11-15-96; published 10-16-96

Guam; anti-dumping and detergent additization requirements for conventional gasoline; exemption petition; comments due by 11-15-96; published 10-16-96

Air quality implementation plans; approval and promulgation; various States:

Alaska; comments due by 11-12-96; published 10-10-96

District of Columbia; comments due by 11-12-96; published 10-10-96

Maine; comments due by 11-14-96; published 10-15-96

New Jersey; comments due by 11-14-96; published 10-15-96

Pennsylvania; comments due by 11-12-96; published 10-10-96

Tennessee; comments due by 11-14-96; published 10-15-96

Utah; comments due by 11-12-96; published 10-10-96

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Louisiana et al.; comments due by 11-14-96; published 10-15-96

Hazardous waste:

Identification and listing--

Exclusions; comments due by 11-14-96; published 10-2-96

Pesticide programs:

Risk/benefit information; reporting requirements; comments due by 11-12-96; published 10-25-96

FARM CREDIT ADMINISTRATION

Farm credit system:

Disclosure to shareholders and investors in systemwide and consolidated bank debt obligations; quarterly

report; comments due by 11-12-96; published 10-11-96

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
Interstate operator services calls from payphones, other away-from-home aggregator locations, and collect calls from prison inmates; charges; comments due by 11-13-96; published 10-23-96

Radio stations; table of assignments:
Florida; comments due by 11-12-96; published 9-30-96
Illinois et al.; comments due by 11-12-96; published 9-30-96
South Carolina; comments due by 11-12-96; published 9-30-96

FEDERAL DEPOSIT INSURANCE CORPORATION

Assessments:
Savings Association Insurance Fund--
Base assessment, adjusted assessment and special interim rate schedules; comments due by 11-15-96; published 10-16-96

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
Contracting by negotiation; Phase I rewrite; comments due by 11-12-96; published 9-12-96
Contractors and offerors; certification requirements removed; comments due by 11-12-96; published 9-12-96
Performance-based payments; comments due by 11-12-96; published 9-10-96
Simplified acquisition procedures; comments due by 11-12-96; published 9-13-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:
Food labeling--
Free glutamate content of foods; label information requirements; comments due by 11-12-96; published 9-12-96

INTERIOR DEPARTMENT

Land Management Bureau

Disposition; sales:
Special areas: State irrigation districts; comments due by 11-12-96; published 9-13-96

Forest management:
Nonsale disposals--
Timber use by settlers and homesteaders on pending claims and free use of timber upon oil and gas leases; Federal regulatory review; comments due by 11-12-96; published 9-13-96

Indian allotments:
Federal regulatory review; comments due by 11-15-96; published 10-16-96

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
Cactus ferruginous pygmy-owl; comments due by 11-12-96; published 10-10-96
Northern copperbelly water snake; comments due by 11-15-96; published 9-17-96

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Indian lands program:
Abandoned mine land reclamation plan--
Hopi Tribe; comments due by 11-15-96; published 10-16-96

Permanent program and abandoned mine land reclamation plan submissions:
Kentucky; comments due by 11-12-96; published 10-25-96

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:
Agreements promising non-deportation or other immigration benefits; comments due by 11-12-96; published 9-13-96
Children born outside United States; citizenship certificate applications; comments due by 11-12-96; published 9-10-96

LABOR DEPARTMENT

Occupational Safety and Health Administration

Safety and health standards:
Exit routes (means of egress); comments due by 11-12-96; published 9-10-96

State plans; development, enforcement, etc.:
California; comments due by 11-12-96; published 9-13-96

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Contracting by negotiation; Phase I rewrite; comments due by 11-12-96; published 9-12-96
Contractors and offerors; certification requirements removed; comments due by 11-12-96; published 9-12-96
Performance-based payments; comments due by 11-12-96; published 9-10-96
Simplified acquisition procedures; comments due by 11-12-96; published 9-13-96

PANAMA CANAL COMMISSION

Shipping and navigation:
Canal tolls rates and vessel management rules--
Toll rates increase and on-deck container capacity measurement; comments due by 11-15-96; published 10-16-96

POSTAL SERVICE

Domestic Mail Manual:
Address correction information; comments due by 11-12-96; published 10-10-96

SECURITIES AND EXCHANGE COMMISSION

Securities:
Quote Rule; continuous two-sided quotations from over-the-counter market makers and exchange specialists; comments due by 11-12-96; published 9-12-96

TRANSPORTATION DEPARTMENT

Coast Guard

Ports and waterways safety:
Charleston Harbor and Cooper River, SC; safety zone; comments due by 11-12-96; published 9-11-96

Regattas and marine parades:
Holiday Boat Parade of the Palm Beaches; comments due by 11-12-96; published 10-11-96
Key West Super Boat Race; comments due by 11-12-96; published 10-11-96

TRANSPORTATION DEPARTMENT

Economic regulations:
Passenger manifest information; comments due by 11-12-96; published 9-10-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:
Grand Canyon National Park, CO; special flight rules in vicinity (SFAR No. 50-2)--
Flight free zones and reporting requirements for commercial sightseeing companies; comments due by 11-14-96; published 10-21-96

Aircraft products and parts; certification procedures:
Replacement and modification parts; standard parts interpretation; comments due by 11-12-96; published 9-10-96

Airworthiness directives:
Allison; comments due by 11-12-96; published 9-11-96
Beech; comments due by 11-15-96; published 10-25-96
Boeing; comments due by 11-12-96; published 10-3-96
Fokker; comments due by 11-12-96; published 10-1-96
Hiller Aircraft Corp.; comments due by 11-12-96; published 9-13-96
Jetstream; comments due by 11-15-96; published 9-16-96
Saab; comments due by 11-15-96; published 9-16-96

Class E airspace; comments due by 11-13-96; published 10-16-96

TRANSPORTATION DEPARTMENT

Maritime Administration

Subsidized vessels and operators:
Maritime security program; establishment; comments due by 11-15-96; published 10-16-96

TRANSPORTATION DEPARTMENT

Saint Lawrence Seaway Development Corporation

Seaway regulations and rules:
Great Lakes Pilotage Regulations; rates increase; comments due by 11-12-96; published 9-25-96

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcoholic beverages:

Distilled spirits; labeling and advertising--

Grape brandy, unaged; comments due by 11-11-96; published 9-23-96

TREASURY DEPARTMENT

Customs Service

Customs relations with Canada and Mexico:

Port Passenger Acceleration Service System (PORTPASS); land-border inspection programs; comments due by 11-12-96; published 9-12-96

Information availability:

Export manifest data; confidential treatment of shippers' name and address information on Automated Export System (AES); comments due by 11-12-96; published 9-12-96