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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV97–981–2 FR]

Almonds Grown in California; Interhandler Transfers of Reserve Obligations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises regulations under the California almond marketing order to authorize interhandler transfers of reserve obligations. The almond marketing order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). This rule will allow the Board to implement authority contained in the marketing order to authorize handlers to transfer reserve withholding obligations to other handlers. It will provide handlers with an additional option to satisfy reserve obligations. This rule will enhance the utility and flexibility of the volume control regulations while benefiting producers, handlers, and consumers.

EFFECTIVE DATE: This rule becomes effective November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2530–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1509, Fax: (202) 720–5698; or Martin Engeler, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 720–2491 or Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 981 (7 CFR part 981), as amended, regulating the handling of almonds grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule implements regulations authorizing interhandler transfers of reserve obligations. Sections 981.45 through 981.60 set forth the authority to implement volume control regulations under the order by establishing salable and reserve percentages of almonds. Annually, the Board meets to review projected crop estimates and marketing conditions for the coming season. Variations in production can cause wide fluctuations in prices. These swings in supplies and price levels can result in market instability and uncertainty for growers, handlers, buyers, and consumers.

If it is determined a reserve is warranted, the Board recommends to the Secretary the salable and reserve percentages to be placed on the almond crop. If a reserve is established, handlers are required to refrain from selling to normal market outlets a quantity of almonds equal to the reserve percentage. This percentage becomes the handlers' reserve withholding obligation. Handlers must either maintain product in inventory for possible release at a later date or dispose of product to secondary reserve outlets to satisfy their reserve obligation. The last season a reserve was in effect was during the 1994–95 crop year.

Section 981.55 of the order was amended by final order dated June 26, 1996 (61 FR 32917) to include a provision that allows handlers to transfer reserve withholding obligations to other handlers. Prior to the amendment to the order, § 981.55 authorized only the transfer of almonds (not reserve almonds) or reserve credits to other handlers. Reserve credits are issued to handlers when they dispose of almonds to secondary outlets in satisfaction of their reserve obligation. Handlers can transfer excess credits to other handlers. Receiving handlers can use the credit to meet all or a portion of their reserve obligations. This section of the order further states that the terms and conditions implementing the provision must be recommended by the Board and approved by the Secretary. Adding a third option by amendment to the order was intended to provide more flexibility for handlers in satisfying their reserve obligation.

At a Board meeting held on February 18, 1997, the Board unanimously recommended implementing the third option under § 981.55 concerning reserve withholding obligation transfers by making appropriate changes to the rules and regulations. This rule will enhance the utility and flexibility of the volume control regulations. It will provide handlers with an additional method of satisfying reserve obligations.

Currently, § 981.455 contains three paragraphs setting forth rules and regulations regarding interhandler transfers of almonds. These paragraphs set forth procedures for (1) transferring

non-reserve almonds; (2) transferring reserve credits; and (3) transferring inedible almond obligations. This rule will add a new paragraph including procedures for transferring reserve withholding obligations.

This rule will expand the options available to handlers in the event a reserve is implemented. The ability to transfer reserve obligations will particularly benefit those handlers who do not stay in business all year and do not have facilities for storage of reserve almonds. Such handlers are traditionally the smaller handlers in the industry. Storage and other costs associated with maintaining reserve inventory or disposing of product to secondary outlets will be reduced. This rule will provide another option for handlers to choose from in satisfying their reserve obligations that may better suit their operation.

The objective of the reserve provisions is to keep a certain quantity of almonds off the market in order to maintain market stability. The additional flexibility in the reserve provisions is expected to improve compliance among handlers, which in turn will maintain the integrity of the volume control regulations.

In order to ensure that adequate procedures are in place to monitor transfer of reserve obligations among handlers, ABC Form 11, which currently covers interhandler transfers of reserve credits, will be modified. New information will be added to the form to properly document reserve obligation transfers. Almond handlers wanting to transfer their reserve obligation to another handler will complete one portion of revised Form 11 and forward the form to the receiving handler. The receiving handler will complete their portion of the form and submit it to the Board. Authorized Board personnel will review, and if appropriate, approve the transfer. The Board will then submit copies of the forms to involved parties.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 97 handlers of California almonds who are subject to regulation under the marketing order and approximately 7,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Currently, about 58 percent of the handlers ship under $5 million of almonds and 42 percent ship over $5 million on an annual basis. In addition, based on acreage, production, and grower prices reported by the National Agricultural Statistics Service, and the total number of almond growers, the average annual grower revenue is approximately $156,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California almonds may be classified as small entities.

Sections 981.45 through 981.60 of the almond marketing order provide authority to implement volume control regulations by establishing salable and reserve percentages of almonds. If it is determined a reserve is warranted, the Board recommends to the Secretary the salable and reserve percentages to be placed on the almond crop. If a reserve is established, handlers must refrain from selling to normal market outlets a quantity of almonds equal to the reserve percentage. Handlers must either maintain product in inventory for possible release at a later date or dispose of product to lower value reserve outlets to satisfy their reserve obligation. These lower value outlets are primarily crushing for oil and animal feed.

Section 981.55 of the order provides authority for the interhandler transfer of almonds and reserve credits. This section was recently amended to include authority for interhandler transfer of reserve obligations. This rule will implement the authority to transfer reserve withholding obligations by revising Section 981.455 of the administrative rules and regulations accordingly. This rule will provide another option, in addition to those that appear in that section, for handlers to satisfy their reserve obligations. The ability to transfer reserve obligations will particularly benefit those handlers who do not stay in business all year and do not have facilities for storage of reserve almonds. Such handlers are traditionally the smaller handlers in the industry. Storage and other costs associated with maintaining reserve inventory or disposing of product to secondary outlets will be reduced. This rule will provide another option for handlers to choose from in satisfying their reserve obligations that may better suit their operation.

In past years, handlers either had to maintain product in inventory or dispose of it in approved reserve outlets to satisfy their withholding obligation, as discussed earlier. Those handlers choosing to maintain product in inventory must locate storage facilities and incur storage costs they may not otherwise incur, until the reserve is lifted.

Storage costs vary, depending upon factors such as the type of facilities utilized and quantities involved. These costs are generally in the range of one cent per pound per month, with additional charges for moving product into and out of storage facilities. These costs could be incurred for approximately six to eighteen months depending on the ultimate disposition of the reserve.

Those handlers choosing to dispose of their reserve to approved outlets may save on storage costs, but receive a lower return on the sales than they may receive if sold in normal market channels if the reserve is ultimately released. Price levels for almonds used for crushing into oil are in the range of 28 to 35 cents per pound, while animal feed brings about two to three cents per pound. Price levels for sales to normal market outlets vary significantly from year to year depending on available supplies and market conditions, and can range from $1 to $3 per pound. The additional option that will be provided by this rule will allow handlers to make arrangements to transfer their reserve obligation to other handlers. Handlers will be able to choose the most cost effective method of satisfying their reserve obligations that best suits their operations. This rule will provide more flexibility if volume control regulations under the almond marketing order are issued.

A current form is being revised for handlers to supply the transfer information to the Board for its approval. The current form (ABC Form 11) provides for handlers to transfer reserve credits. Information will be added to this form to collect information on transfers of withholding obligation. No additional burden will be added to the form because handlers will choose one of the options on the form. The form's current burden time of 5 minutes will not be changed. This action will not impose any significant additional reporting or recordkeeping requirements on either small or large almond

handlers. The benefits of providing another tool to the industry to assist them in making business decisions far outweigh the estimated 5 minutes it will take to complete the form. Further, any additional reporting may be offset by reduced reporting for those handlers choosing to utilize this option in lieu of other options available for satisfying reserve obligations. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. Information generated by State, Federal, and private sector reports pertains to almonds in general and does not contain specific producer and handler information. Therefore, such information would not be detailed enough to be used for the specific purposes required under the order.

The amendment to the marketing order was voted on in a referendum and was overwhelmingly supported by almond growers. This rule will establish procedures to implement the amendment that authorized transfers of reserve obligations. There are no alternatives that would result in the additional flexibility sought by the industry.

In addition, the Board's meeting was widely publicized throughout the almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the February 18, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Board itself is composed of ten industry members, of which five are handlers and five are growers.

A proposed rule concerning this action was issued by the Department on April 4, 1997, and published in the **Federal Register** on April 10, 1997 (62 FR 17569). It was also made available through the Internet by the Office of the Federal Register. A 60 day comment period was provided to allow interested persons to respond to the proposal. No comments were received.

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

The proposed rule regarding the interhandler transfer of almonds also announced the AMS's intent to request a revision to the currently approved information collection requirements issued under the marketing order. The 60 day comment period was also provided to allow interested persons the opportunity to respond to the notice. No comments were received on the information collection requirements.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0071.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 981.455, paragraph (c) is redesignated as paragraph (d) and a new paragraph (c) is added to read as follows:

§ 981.455 Interhandler transfers.

* * * * *

(c) *Transfers of reserve withholding obligation.* A handler may transfer reserve withholding obligation to other handlers pursuant to § 981.55 after having filed with the Board an ABC Form 11 executed by both handlers. The Board shall approve the transfer upon receipt of the properly completed form.

* * * * *

Dated: October 23, 1997.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–28630 Filed 10–28–97; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

RIN 3150–AF69

Information Collection Requirements; Statutory and Technical Amendments; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on October 6, 1997 (62 FR 52184). This action is necessary to correct an erroneous instruction.

EFFECTIVE DATE: October 6, 1997.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, D.C. 20555–0001, telephone (301) 415–7162.

SUPPLEMENTARY INFORMATION: On page 52188, in the second column, instruction number 24 is corrected to read, ''24. In § 60.8, paragraph (a) is revised to read as follows:''.

Dated at Rockville, MD, this 22nd day of October 1997.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 97–28620 Filed 10–28–97; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 792

Production of Nonpublic Records and Testimony of NCUA Employees in Legal Proceedings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA amends its rules regarding subpoenas seeking nonpublic records or the testimony of NCUA employees. The rule provides procedures, requirements and information on how the NCUA will handle these matters and expressly prohibits any disclosure or testimony except as provided by the rule. The rule also amends the current rule regarding release of NCUA records that are exempt from disclosure under the Freedom of

Information Act to conform with the procedures provided in this proposed rule.

DATES: Effective October 29, 1997.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Sheila Albin, Associate General Counsel, or Allan Meltzer, Associate General Counsel, (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

The NCUA receives numerous subpoenas and requests for NCUA employees to provide evidence in litigation. Typically, these subpoenas are for NCUA records that are not available to the public under the Freedom of Information Act (FOIA). Also, we receive numerous subpoenas and requests for NCUA employees to appear as witnesses in litigation in conjunction with a request for nonpublic records or to provide testimony.

In recent years, the number of requests has averaged about two or three a month. Often, these subpoenas and requests relate to litigation involving federally-insured credit unions where there is some issue for which one or both of the parties want to use nonpublic records, such as NCUA examination reports, as evidence in the case. In addition, the parties want to have an NCUA employee, often an examiner, testify to establish the authenticity of the records or explain the information contained in the records. If we provide these records and an examiner appears as a witness, this will mean a significant disruption in the examiner's work schedule. In many cases, parties want to use the examiner as an expert witness on matters such as the financial condition of the credit union or other issues involving opinions. Our experience has been that, in many cases, the parties can deal with these issues through the testimony of other witnesses, including hiring their own independent, expert witness, and using the parties' own records.

Proposed Rule

On April 16, 1997, the NCUA Board issued a proposed rule to revise Part 792.62 FR 19941 (April 24, 1997). The proposed rule was presented in a question and answer format to promote clarity and uses simple terms. It continued the basic prohibition against disclosure of nonpublic records or testimony by NCUA employees without obtaining permission. The proposed rule also set out for the public what information to submit and what factors the NCUA will consider; and identified filing times, fees, and potential restrictions on disclosures or testimony. The rule identified the proposed charges for witnesses as the same as those provided by the federal courts and the fees related to production of records are the same as those charged under FOIA.

Comments

In the Supplementary Information section of the proposed rule, the NCUA stated its interest in receiving comments on the application of the proposed regulation to former as well as current employees, including its application to proceedings to which NCUA is a party, the exception from coverage for expert testimony by former employees, and any other factors that commenters believed the NCUA should consider in addition to those set out in §792.46 in reaching a final determination. Four comment letters were received: two from national trade associations, one from a state league and one from a federal credit union.

Comments from the two national trade associations indicated their general support for more efficient procedures and recognized the need to protect the confidentiality of examination-related records. Both trade associations commented on NCUA's authority to prevent former employees from testifying. One trade association stated that it questioned NCUA's authority to prevent the testimony of former employees unless it was clear that nonpublic records such as examination records would be divulged.

We first want to note that the rule is substantially similar to regulations issued by our sister financial regulatory agencies that also restrict disclosure of confidential information by former employees or any person in possession of such information. Federal Deposit Insurance Corporation, 12 C.F.R. 309.7; Office of Thrift Supervision, 12 C.F.R. 510.5; The Federal Reserve System, 12 C.F.R. 261.14. The focus of the rule is on requiring that NCUA receive notice of proposed testimony by a former employee. The purpose is not to restrict former employees but to protect the release of confidential records and information that may be in their possession. Even when former employees are not in possession of nonpublic records, they may still have substantial knowledge and information that they recall regarding matters that remain confidential. For this reason, the NCUA wants an opportunity, in advance of testimony being given, to consult with former employees and any party wishing to use their testimony in order to protect the confidentiality of that information by prohibiting or limiting such testimony as appropriate.

Our view is that the definition of employee makes clear that the NCUA's intent is to protect confidential information. Former employees remain prohibited from testifying about specific matters for which they had responsibility during their active employment, unless permitted to testify as provided in the rule. They would not, however, be barred from appearing on general matters or otherwise employing their expertise as, for example, expert witnesses. Finally, we want to highlight the fact that the final rule, as in the proposed rule, contains a prohibition against release of nonpublic records by any person who may have custody of them.

Both trade associations also commented on § 792.46 that sets out the factors NCUA will consider in reviewing a request. One commented that the factors were too subjective. The other commented that a better rationale would be to rely on a legal basis such as a statute or evidentiary privilege and suggested using the standard used by the Federal Reserve Board which is whether the need for the information outweighs the need for confidentiality and whether disclosure is consistent with Board policy and supervisory and regulatory responsibilities. 12 CFR 261.13(c). We believe that the factors we have listed include several examples of established statutory and evidentiary privileges and that, although phrased differently, the factors in the final rule set the same basic standard used by the Federal Reserve Board but in simpler, more specific language. We do not think the factors are subjective but are necessarily and appropriately flexible. For example, the factor of whether a request is burdensome must be considered on a case-by-case.

Both trade associations commented on the information that a written request must include. One commented that it made difficult for a litigant to know the relevance of what is sought and offered as an alternative that a requester only be required to assert affirmatively that the documents are relevant. We disagree. The regulation is designed to protect nonpublic records and the testimony of employees, which by their nature, will likely contain sensitve and confidential information. Without a basis for concluding that the records or testimony are relevant in a particular matter, the NCUA should not consider releasing them. In addition, merely establishing that records or testimony are relevant is not sufficient. In order to be able to consider the factors set out in § 792.46,

the NCUA must have information about the nature of the proceedings. The NCUA must know something about the proceedings in order to consider whether the litigant can obtain the information or testimony from other sources. For example, if litigants want nonpublic records or the testimony of NCUA employees merely to establish the general financial condition of a credit union, we think they should seek financial records directly from the credit union and hire their own expert witness to testify about them. In response to the comment that it may be difficult for a requester to specify what records it wants because he or she may not know what is available, we think a requester can phrase such a request in terms of the facts or issues that are relevant in much the same way that the Freedom of Information Act requests or discovery requests in civil litigation are prepared. Thus, if a requester cannot identify specific records, the description of the facts or issues involved should be sufficient to permit the NCUA to identify responsive records.

With regard to application of the rule to proceedings to which NCUA is a party, there was one comment that NCUA should have to abide by the same rules of evidence as other litigants. Another comment was to the effect that the statement that NCUA will be subject to applicable rules of civil procedure when it is a party to a proceeding should be more conspiculously placed. This statement appears in the definition of ''legal proceedings'' and, we believe, states clearly that NCUA will be subject to the applicable rules of procedure when it is a party. As a matter of drafting, we believe that it is appropriately placed in the definition section. That same definition also states clearly that, the rule will still apply to the testimony of former employees even when the NCUA is a party to a proceeding. Unless the NCUA receives notice as provided under the rule, it may not otherwise receive notice of a former employee's testimony even though NCUA is a party to a proceeding. This is because a former employee may otherwise be contacted for testimony in the form of declarations, affidavits, statements or interviews, which could involve the former employee's revealing confidential information without any prior notice to NCUA of the nature of the testimony. For that reason, the rule will still apply to former employees when NCUA is a party to a proceeding. Obviously, where NCUA is a party to a proceeding, it will be in a position to receive notice of any requests for records or the testimony of current employees.

Comments from the state league and one federal credit union generally were supportive of the proposed regulation but indicated some concern that the regulation should not be used to deny access to records that should be made available. The NCUA reiterates its position stated when it issued the proposed regulation. The final rule is essentially procedural, not substantive. It does not create a right to obtain records or the testimony of an NCUA employee nor does it create any additional right or privilege not already available to NCUA to deny such a request.

Final Rule

The final rule is the same as the proposed rule. It solves some problems that have arisen in the past. It should eliminate or reduce eleventh hour requests. Also, by centralizing the service of subpoenas and the determination of the NCUA's response, it should eliminate attempts to serve subpoenas or present requests for disclosure of nonpublic records to field staff and regional offices. The procedures and criteria will ensure a more efficient use of NCUA resources, minimize the possibility of involving the NCUA in issues unrelated to its responsibilities, promote uniformity in responding to such requests and subpoenas and maintain the impartiality of NCUA between private litigants. The final rule will serve NCUA's interest in protecting sensitive, confidential and privileged information and records generated by its supervisory and regulatory work.

The NCUA reiterates its position that, in issuing this regulation, it is not making any waiver of its sovereign immunity. For reference, the NCUA notes that, in addition to the foregoing, a discussion of the legal authority for issuance of this regulation is set out in the Supplemental Information accompanying the publication of the proposed regulation. 62 FR 19941 (April 24, 1997).

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions, meaning those under $1 million in assets. The NCUA Board has determined and certifies that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. The reasons for this determination are that the copying and witness fees to be charged to person and entities submitting requests under the regulation are not large and will not create a financial burden. The proposed rule will not create any significant demand for legal, accounting, or consulting expenditures. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The NCUA submitted a copy of the proposed rule to the Office of Management and Budget (OMB) for its review. OMB received no comments on the proposed rule. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. OMB has assigned 31330146 as the control number that will be displayed in the table at 12 CFR Part 795.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. This final rule is essentially of a procedural nature only governing release of NCUA's own nonpublic records and the appearance of NCUA employees in legal proceedings. The NCUA has determined that the final rule does not constitute a significant regulatory action for purposes of the Executive Order.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for congressional review of agency rules. The reporting requirement is triggered when a final rule is issued. The rule was submitted to OMB for determination of whether this final rule constitutes a major rule as defined under the statute. A major rule is one that OMB finds has resulted in or is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual, industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic and export markets. OMB has determined that this is not a major rule.

List of Subjects in 12 CFR Part 792

Administrative practice and procedure, Credit unions, Confidential business information, Freedom of Information Act, Government employees, Reporting and recordkeeping requirement, Subpoenas.

By the National Credit Union Administration Board on October 22, 1997.

Hattie Ulan,

Acting Secretary of the Board.

For the reasons set forth in the preamble, NCUA proposes to amend 12 CFR part 792 as set forth below:

PART 792—[AMENDED]

1. The authority citation for part 792 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b; 12 U.S.C. 1752a(d), 1766, 1789, 1795f; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333.

2. Amend §792.4 to remove paragraph (b)(3) and revise paragraph (a) to read as follows:

§792.4 Release of exempt records.

(a) *Prohibition against disclosure.* Except as provided in paragraph (b) of this section and subpart C of this part, no officer, employee, or agent of NCUA or of any federally-insured credit union shall disclose or permit the disclosure of any exempt records of the Agency to any person other than those NCUA or credit union officers, employees, or agents properly entitled to such information for the performance of their official duties.

* * * * *

3. Revise subpart C of part 792 to read as follows:

Subpart C—Production of Nonpublic Records and Testimony of NCUA Employees in Legal Proceedings

Sec.
792.40 What does this subpart prohibit?
792.41 When does this subpart apply?
792.42 How do I request nonpublic records or testimony?
792.43 What must my written request contain?
792.44 When should I make a request?
792.45 Where do I send my request?
792.46 What will the NCUA do with my request?
792.47 If my request is granted, what fees apply?
792.48 If my request is granted, what restrictions may apply?
792.49 Definitions.

Subpart C—Production of Nonpublic Records and Testimony of NCUA Employees in Legal Proceedings

§792.40 What does this subpart prohibit?

This subpart prohibits the release of nonpublic records or the appearance of an NCUA employee to testify in legal proceedings except as provided in this subpart. Any person possessing nonpublic records may release them or permit their disclosure only as provided in this subpart.

(a) *Duty of NCUA employees.* (1) If an NCUA employee is served with a subpoena requiring him or her to appear as a witness or produce records, the employee must promptly notify the Office of General Counsel. The General Counsel has the authority to instruct NCUA employees to refuse appearing as a witness or to withhold nonpublic records. The General Counsel may let an NCUA employee provide testimony, including expert or opinion testimony, if the General Counsel determines that the need for the testimony clearly outweighs contrary considerations.

(2) If a court or other appropriate authority orders or demands expert or opinion testimony or testimony beyond authorized subjects contrary to the General Counsel's instructions, an NCUA employee must immediately notify the General Counsel of the order and respectfully decline to comply. An NCUA employee must decline to answer questions on the grounds that this subpart forbids such disclosure and should produce a copy of this subpart, request an opportunity to consult with the Office of General Counsel, and explain that providing such testimony without approval may expose him or her to disciplinary or other adverse action.

(b) *Duty of persons who are not NCUA employees.* (1) If you are not an NCUA employee but have custody of nonpublic records and are served with a subpoena requiring you to appear as a witness or produce records, you must promptly notify the NCUA about the subpoena. Also, you must notify the issuing court or authority and the person or entity for whom the subpoena was issued of the contents of this subpart. Notice to the NCUA is made by sending a copy of the subpoena to the General Counsel of the NCUA, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314–3428. After receiving notice, the NCUA may advise the issuing court or authority and the person or entity for whom the subpoena was issued that this subpart applies and, in addition, may intervene, attempt to have the subpoena quashed or withdrawn, or register appropriate objections.

(2) After notifying the Office of General Counsel, you should respond to a subpoena by appearing at the time and place stated in the subpoena. Unless authorized by the General Counsel, you should decline to produce any records or give any testimony, basing your refusal on this subpart. If the issuing court or authority orders the disclosure of records or orders you to testify, you should continue to decline to produce records or testify and should advise the Office of General Counsel.

(c) *Penalties.* Anyone who discloses nonpublic records or gives testimony related to those records, except as expressly authorized by the NCUA or as ordered by a federal court after NCUA has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Also, former NCUA employees, in addition to the prohibition contained in this subpart, are subject to the restrictions and penalties of 18 U.S.C. 207.

§792.41 When does this subpart apply?

This subpart applies if you want to obtain nonpublic records or testimony of an NCUA employee for legal proceedings. It doesn't apply to the release of records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a, or the release of records to federal or state investigatory agencies under §792.4(b)(2).

§ 792.42 How do I request nonpublic records or testimony?

(a) To request nonpublic records or the testimony of an NCUA employee, you must submit a written request to the General Counsel of the NCUA. If you serve a subpoena on the NCUA or an NCUA employee before submitting a written request and receiving a final determination, the NCUA will oppose the subpoena on the grounds that you failed to follow the requirements of this subpart. You may serve a subpoena as long as it is accompanied by a written request that complies with this subpart.

(b) To request nonpublic records that are part of the records of the Office of the Inspector General or the testimony of an NCUA employee on matters within the knowledge of the NCUA employee as a result of his or her employment with the Office of the Inspector General, you must submit a written request to the Office of the Inspector General. Your request will be handled in accordance with the provisions of this subpart except that the Inspector General will be

responsible for those determinations that would otherwise be made by the General Counsel.

§ 792.43 What must my written request contain?

Your written request for records or testimony must include:

(a) The caption of the legal proceeding, docket number, and name of the court or other authority involved.

(b) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance.

(c) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought.

(d) A statement as to how the need for the information outweighs the need to maintain the confidentiality of the information and outweighs the burden on the NCUA to produce the records or provide testimony.

(e) A statement indicating that the information sought is not available from another source, such as a credit union's own books and records, other persons or entities, or the testimony of someone other than an NCUA employee, for example, retained experts.

(f) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the records or testimony you want.

(g) The name, address, and telephone number of counsel to each party in the case.

(h) An estimate of the amount of time you anticipate that you and other parties will need with each NCUA employee for interviews, depositions, or testifying.

§ 792.44 When should I make a request?

You should submit your request at least 45 days before the date that you need the records or testimony. If you want to have your request processed in less time, you must explain why you couldn't submit the request earlier and why you need expedited processing. If you are requesting the testimony of an NCUA employee, the NCUA expects you to anticipate your need for the testimony in sufficient time to obtain it by a deposition. The General Counsel may deny a request for testimony at a legal proceeding unless you explain why you could not use deposition testimony. The General Counsel will determine the location of a deposition taking into consideration the NCUA's interest in minimizing the disruption for an NCUA employee's work schedule and the costs and convenience of other persons attending the deposition.

§ 792.45 Where do I send my request?

You must send your request or subpoena for records or testimony to the attention of the General Counsel for the NCUA, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314–3428. You must send your request or subpoena for records or testimony from the Office of the Inspector General to the attention of the NCUA Inspector General, 1775 Duke Street, Alexandria, Virginia 22314–3428.

§ 792.46 What will the NCUA do with my request?

(a) *Factors the NCUA will consider.* The NCUA may consider various factors in reviewing a request for nonpublic records or testimony of NCUA employees, including:

(1) Whether disclosure would assist or hinder the NCUA in performing its statutory duties or use NCUA resources unreasonably, including whether responding to the request will interfere with NCUA employees' ability to do their work.

(2) Whether disclosure is necessary to prevent the perpetration of a fraud or other injustice in the matter or if you can get the records or testimony you want from sources other than the NCUA.

(3) Whether the request is unduly burdensome.

(4) Whether disclosure would violate a statute, executive order, or regulation, for example, the Privacy Act, 5 U.S.C. 552a.

(5) Whether disclosure would reveal confidential, sensitive or privileged information, trade secrets or similar, confidential commercial or financial information, or would otherwise be inappropriate for release and, if so, whether a confidentiality agreement or protective order as provided in § 792.48(a) can adequately limit the disclosure.

(6) Whether the disclosure would interfere with law enforcement proceedings, compromise constitutional rights, or hamper NCUA research or investigatory activities.

(7) Whether the disclosure could result in NCUA appearing to favor one litigant over another.

(8) Any other factors the NCUA determines to be relevant to the interests of the NCUA.

(b) *Review of your request.* The NCUA will process your request in the order it is received. The NCUA will try to respond to your request within 45 days, but this may vary depending on the scope of your request.

(c) *Final determination.* The General Counsel makes the final determination on requests for nonpublic records or NCUA employee testimony. All final determinations are in the sole discretion of the General Counsel. The General Counsel will notify you and the court or other authority of the final determination of your request. In considering your request, the General Counsel may contact you to inform you of the requirements of this subpart, ask that the request or subpoena be modified or withdrawn, or may try to resolve the request or subpoena informally without issuing a final determination. You may seek judicial review of the final determination under the Administrative Procedure Act. 5 U.S.C. 702.

§ 792.47 If my request is granted, what fees apply?

(a) *Generally.* You must pay any fees associated with complying with your request, including copying fees for records and witness fees for testimony. The General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the fees.

(b) *Fees for records.* You must pay all fees for searching, reviewing and duplicating records produced in response to your request. The fees will be the same as those charged by the NCUA under its Freedom of Information Act regulations, § 792.5.

(c) *Witness fees.* You must pay the fees, expenses, and allowances prescribed by the court's rules for attendance by a witness. If no such fees are prescribed, the local federal district court rule concerning witness fees, for the federal district court closest to where the witness appears, will apply. For testimony by current NCUA employees, you must pay witness fees, allowances, and expenses to the General Counsel by check made payable to the ''National Credit Union Administration'' within 30 days from receipt of NCUA's billing statement. For the testimony of a former NCUA employee, you must pay witness fees, allowances, and expenses directly to the former employee, in accordance with 28 U.S.C. 1821 or other applicable statutes.

(d) *Certification of records.* The NCUA may authenticate or certify records to facilitate their use as evidence. If you require authenticated records, you must request certified copies at least 45 days before the date they will be needed. The request should be sent to the General Counsel. You will be charged a certification fee of $5.00 per document.

(e) *Waiver of fees.* A waiver or reduction of any fees in connection with the testimony, production, or

certification or authentication of records may be granted in the discretion of the General Counsel. Waivers will not be granted routinely. If you request a waiver, your request for records or testimony must state the reasons why a waiver should be granted.

§ 792.48 If my request is granted, what restrictions apply?

(a) *Records.* The General Counsel may impose conditions or restrictions on the release of nonpublic records, including a requirement that you obtain a protective order or execute a confidentiality agreement with the other parties in the legal proceeding that limits access to and any further disclosure of the nonpublic records. The terms of a confidentiality agreement or protective order must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements have already been executed, the NCUA may condition the release of nonpublic records on an amendment to the existing protective order or confidentiality agreement.

(b) *Testimony.* The General Counsel may impose conditions or restrictions on the testimony of NCUA employees, including, for example, limiting the areas of testimony or requiring you and the other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which you requested the testimony. The General Counsel may also require you to provide a copy of the transcript of the testimony to the NCUA at your expense.

§ 792.49 Definitions.

Legal proceedings means any matter before any federal, state or foreign administrative or judicial authority, including courts, agencies, commissions, boards or other tribunals, involving such proceedings as lawsuits, licensing matters, hearings, trials, discovery, investigations, mediation or arbitration. When the NCUA is a party to a legal proceeding, it will be subject to the applicable rules of civil procedure governing production of documents and witnesses, however, this subpart will still apply to the testimony of former NCUA employees.

NCUA employee means current and former officials, members of the Board, officers, directors, employees and agents of the National Credit Union Administration, including contract employees and consultants and their employees. This definition does not include persons who are no longer employed by the NCUA and are retained or hired as expert witnesses or agree to testify about general matters, matters available to the public, or matters with which they had no specific involvement or responsibility during their employment.

Nonpublic records means any NCUA records that are exempt from disclosure under §792.3, the NCUA regulations implementing the provisions of the Freedom of Information Act. For example, this means records created in connection with NCUA's examination and supervision of insured credit unions, including examination reports, internal memoranda, and correspondence, and, also, records created in connection with NCUA's enforcement and investigatory responsibilities.

Subpoena means any order, subpoena for records or other tangible things or for testimony, summons, notice or legal process issued in a legal proceeding.

Testimony means any written or oral statements made by an individual in connection with a legal proceeding including personal appearances in court or at depositions, interviews in person or by telephone, responses to written interrogatories or other written statements such as reports, declarations, affidavits, or certifications or any response involving more than the delivery of records.

[FR Doc. 97–28585 Filed 10–28–97; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–84–AD; Amendment 39–10178; AD 97–06–07 R1]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes Equipped With Burns Aerospace Corporation Passenger Seats

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that currently requires modification of the restraining systems of certain passenger seats by replacing anchor point fasteners with fasteners that are able to withstand required 16g load conditions. That AD was prompted by a report indicating that the restraining systems on these seats failed to meet 16g test load requirements during dynamic testing. The actions specified by that AD are intended to prevent the fasteners from failing, which could result in release of the seat restraint and consequent injury to passengers. This amendment revises the applicability of the existing AD to specify serial numbers of the affected passenger seats.

DATES: Effective November 13, 1997.

The incorporation by reference of Dornier Service Bulletin SB–328–25–114, Revision 1, dated April 17, 1997, as listed in the regulations, is approved by the Director of the Federal Register as of November 13, 1997.

The incorporation by reference of Dornier Service Bulletin SB–328–25–114, dated July 10, 1995, as listed in the regulations, was approved previously by the Director of the Federal Register as of April 18, 1997 (62 FR 12081, March 14, 1997).

Comments for inclusion in the Rules Docket must be received on or before November 28, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–84–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined 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.

FOR FURTHER INFORMATION CONTACT: Connie Beane, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2796; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On March 6, 1997, the FAA issued AD 97–06–07, amendment 39–9964 (62 FR 12081, March 14, 1997), applicable to certain Dornier Model 328–100 series airplanes, to require modification of the restraining systems on certain passenger seats by replacing the anchor point fasteners with new fasteners that are able to withstand the required 16g load conditions. That action was prompted by a report indicating that the restraining systems on these seats failed to meet 16g test load requirements during dynamic testing. The requirements of that AD are intended to prevent the fasteners from failing, which

could result in release of the seat restraint and consequent injury to passengers.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, Dornier has issued Service Bulletin SB–328–25–114, Revision 1, dated April 17, 1997. The modification procedures described in this revision are identical to those described in the original version of the service bulletin (which was referenced in AD 97–06–07 as the appropriate source of service information for accomplishment of the modification). The only change made by Revision 1 is to limit the effectivity to airplanes on which seats with specific serial numbers are installed. Seats with later serial numbers have been modified in production. The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Findings

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, 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 revises AD 97–06–07 to continue to require modification of the restraining systems on certain passenger seats installed on Dornier Model 328–100 series airplanes. This AD also revises the applicability of the existing AD to specify serial numbers of the affected passenger seats.

Determination of Rule's Effective Date

As with all AD's, AD 97–06–07 requires accomplishment of certain actions ''unless accomplished previously.'' For the airplanes that are excluded from the applicability of this AD by this revision, the required actions have been ''accomplished previously'' during production, and this revision simply identifies explicitly those airplanes on which no further action is required. Consequently, this revision makes no substantive change to the requirements of the existing AD. For this reason, it is found that the notice and opportunity for prior public comment hereon for this action are unnecessary, 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 97–NM–84–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 removing amendment 39–9964 (62 FR 12081, arch 14, 1997), and by adding a new airworthiness directive (AD), amendment 39–10178, to read as follows:

97–06–07 R1 Dornier: Amendment 39–10178. Docket 97-NM–84-AD. Revises AD 97–06–07, Amendment 39–9964.

Applicability: Model 328–100 series airplanes equipped with Burns Aerospace Corporation commuter seat models JB6.8–1–22 and JB6.8–2–42 passenger seats having serial numbers up to and including 384616; 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 failure of the anchor point fasteners on the seat restraining system, which could result in release of the seat restraint and consequent injury to passengers, accomplish the following:

(a) Within 60 days after April 18, 1997 (the effective date of AD 97–06–07, amendment 39–9964), replace each anchor point fastener on the restraining system of each seat with a fastener of improved design, in accordance with Dornier Service Bulletin SB–328–25–114, dated July 10, 1995, or Revision 1, dated April 17, 1997.

Note 2: The referenced Dornier service bulletin refers to Burns Aerospace Corporation Service Bulletin 25–20–989, Revision B, dated June 14, 1995, or Revision D, dated August 25, 1995, as an additional source of service information for identifying the affected seats and replacing the anchor point fasteners on their restraining systems.

(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 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.

(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 replacement shall be done in accordance with Dornier Service Bulletin SB–328–25–114, dated July 10, 1995, or Dornier Service Bulletin SB–328–25–114, Revision 1, dated April 17, 1997.

(1) The incorporation by reference of Dornier Service Bulletin SB–328–25–114, Revision 1, dated April 17, 1997, is approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Dornier Service Bulletin SB–328–25–114, dated July 10, 1995, was approved previously by the Director of the Federal Register as of April 18, 1997 (62 FR 12081, March 14, 1997).

(3) Copies may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. 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.

Note 4: The subject of this AD is addressed in German airworthiness directive 95–240/2, dated August 10, 1995.

(e) This amendment becomes effective on November 13, 1997.

Issued in Renton, Washington, on October 21, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–28573 Filed 10–28–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–24–AD; Amendment 39–10182; AD 97–22–10]

RIN 2120–AA64

Airworthiness Directives; Partenavia Costruzioni Aeronauticas, S.p.A. Models AP68TP 300 ''Spartacus'' and AP68TP 600 ''Viator'' Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Partenavia Costruzioni Aeronauticas, S.p.A. (Partenavia) Models AP68TP 300 ''Spartacus'' and AP68TP 600 ''Viator'' airplanes. This AD requires amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This AFM amendment will include a statement of consequences if the limitation is not followed. This AD results from numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by this AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: December 5, 1997.

ADDRESSES: Information related to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–24–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

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

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Partenavia Models AP68TP 300 ''Spartacus'' and AP68TP 600 ''Viator'' airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 2, 1997 (62 FR 35702).

The NPRM proposed to require amending the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

> Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

The NPRM is the result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight.

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.

The 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.

Compliance Time of This AD

The FAA has determined that the compliance time of this AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by this AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the

unsafe condition occurring is the same on the first flight as it is for subsequent flights. The compliance time of ''30 days after the effective date of this AD'' will not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish this AD in a reasonable time period.

Cost Impact

The FAA estimates that 5 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to incorporate the required AFM amendment, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by §§ 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish this AD, the only cost impact upon the public is the time it will take the affected airplane owner/operators to amend the AFM.

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, 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 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–22–10 Partenavia Costruzioni Aeronauticas, S.P.A: Amendment 39–10182; Docket No. 97–CE–24–AD.

Applicability: Models AP68TP 300 ''Spartacus'' and AP68TP 600 ''Viator'' 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 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

(c) Amending the AFM, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(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 time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment (39–10182) becomes effective on December 5, 1997.

Issued in Kansas City, Missouri, on October 21, 1997.

Mary Ellen A. Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–28574 Filed 10–28–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–23–AD; Amendment 39–10181; AD 97–22–09]

RIN 2120–AA64

Airworthiness Directives; Dornier Luftfahrt GMBH Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Dornier Luftfahrt GMBH (Dornier) Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes. This AD requires amending the Limitations Section of the Dornier 228 Pilot's Operating Handbook (POH) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This POH amendment will include a statement of consequences if the limitation is not followed. This AD results from numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by this AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned

below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: December 5, 1997.

ADDRESSES: The POH revisions referenced in this document may be received from Dornier Luftfahrt GmbH, Postfach/P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (0 81 53) 300; facsimile: (0 81 53) 30 29 01. Information related to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

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

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Dornier Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 2, 1997 (62 FR 35706).

The NPRM proposed to require amending the Limitations Section of the Dornier 228 POH to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This POH amendment shall consist of the following language:

> Power levers selection below the flight idle (FI) gate is prohibited during flight. Movement of any power lever below the FI gate during flight could lead to loss of airplane control from which recovery may not be possible.

The NPRM is the result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight.

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.

Actions Since Issuance of the NPRM

In the NPRM, the FAA included a provision to include in the final rule any POH revisions that the manufacturer completed and were approved by the FAA before issuance of the final rule. Dornier has issued Temporary Revision No. 014, dated September 30, 1996, and the FAA has approved it. The FAA will incorporate this POH revision into the final rule.

The 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.

Compliance Time of This AD

The FAA has determined that the compliance time of this AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by this AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The compliance time of ''30 days after the effective date of this AD'' will not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish this AD in a reasonable time period.

Cost Impact

The FAA estimates that 12 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to incorporate the required POH amendment, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish this AD, the only cost impact upon the public is the time it will take the affected airplane owner/operators to amend the POH.

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, 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 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–22–09 Dornier Luftfahrt GMBH: Amendment 39–10181; Docket No. 97–CE–23–AD.

Applicability: Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 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 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop

while the airplane is in flight, accomplish the following:

(a) Accomplish one of the following:

(1) Insert the following language into the Limitations section of the Dornier 228 Pilot's Operating Handbook (POH):

''Power levers selection below the flight idle (FI) gate is prohibited during flight. Movement of any power lever below the FI gate during flight could lead to loss of airplane control from which recovery may not be possible.''; or

(2) Insert Dornier Temporary Revision No. 014, page 1, dated September 30, 1996, into the Limitations section of the Dornier 228 POH.

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the Dornier 228 POH.

(c) Amending the POH, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(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 time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) The POH revisions referenced in this document may be received from Dornier Luftfahrt GmbH, Postfach/P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment (39–10181) becomes effective on December 5, 1997.

Issued in Kansas City, Missouri, on October 21, 1997.

Mary Ellen A. Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–28575 Filed 10–28–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–25–AD; Amendment 39–10183; AD 97–22–11]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A. Model P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A. (Piaggio) Model P–180 airplanes. This AD requires amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This AFM amendment will include a statement of consequences if the limitation is not followed. This AD results from numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by this AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: December 5, 1997.

ADDRESSES: Information related to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–25–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

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

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Piaggio Model P–180 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 2, 1997 (62 FR 35698).

The NPRM proposed to require amending the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

The NPRM is the result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight.

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.

The 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.

Compliance Time of This AD

The FAA has determined that the compliance time of this AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by this AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The compliance time of ''30 days after the effective date of this AD'' will not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish this AD in a reasonable time period.

Cost Impact

The FAA estimates that 4 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to incorporate the required AFM amendment, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's

certificate as authorized by §§ 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish this AD, the only cost impact upon the public is the time it will take the affected airplane owner/operators to amend the AFM.

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, 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 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–22–11 Industrie Aeronautiche E Meccaniche Rinaldo Piaggio S.P.A: Amendment 39–10183; Docket No. 97–CE–25–AD.

Applicability: Model P–180 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 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

(c) Amending the AFM, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(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 time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment (39–10183) becomes effective on December 5, 1997.

Issued in Kansas City, Missouri, on October 21, 1997.

Mary Ellen A. Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–28576 Filed 10–28–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–26–AD; Amendment 39–10184; AD 97–22–12]

RIN 2120–AA64

Airworthiness Directives; SIAI Marchetti S.r.1. Models SF600 and SF600A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all SIAI Marchetti S.r.1. Models SF600 and SF600A airplanes. This AD requires amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This AFM amendment will include a statement of consequences if the limitation is not followed. This AD results from numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by this AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: December 5, 1997.

ADDRESSES: Information related to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97-CE–26-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

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

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all SIAI Marchetti S.r.1. Models SF600 and SF600A airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 2, 1997 (62 FR 35709).

The NPRM proposed to require amending the Limitations Section of the AFM to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

The NPRM is the result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight.

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.

The 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.

Compliance Time of This AD

The FAA has determined that the compliance time of this AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by this AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The compliance time of ''30 days after the effective date of this AD'' will not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish this AD in a reasonable time period.

Cost Impact

None of the SIAI Marchetti S.r.l. Models SF600 and SF600A airplanes affected by this AD are on the U.S. Register, and are therefore, not directly affected by this AD. However, the FAA considers the AD necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register.

Should an affected airplane be imported and placed on the U.S. Register, it would take approximately 1 workhour per airplane to incorporate the required AFM amendment, at an average labor rate of approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by §§ 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish the required action, the only cost impact upon the public is the time it would take the affected airplane owner/operator to amend the AFM.

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, 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 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–22–12 SIAI Marchetti S.R.1.: Amendment 39–10184; Docket No. 97–CE–26–AD.

Applicability: Models SF600 and SF600A 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 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

Positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

(c) Amending the AFM, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(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 time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment (39–10184) becomes effective on December 5, 1997.

Issued in Kansas City, Missouri, on October 21, 1997.

Mary Ellen A. Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–28577 Filed 10–28–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–18–AD; Amendment 39–10180; AD 97–22–08]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft LTD Models PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, and PC–12 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Aircraft LTD (Pilatus) Models PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4 airplanes and all Pilatus Model PC–12 airplanes. This AD requires amending the Limitations Section of either the airplane flight manual (AFM) or the pilot's operating handbook (POH) to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight. This AFM amendment will include a statement of consequences if the limitation is not followed. This AD results from numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. The actions specified by this AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: December 5, 1997.

ADDRESSES: The AFM revisions referenced in 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 Regional Counsel, Attention: Rules Docket 97–CE–18–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

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

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Pilatus Models PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4 airplanes and PC–12 series airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 2, 1997 (62 FR 35700). The NPRM proposed to require amending the Limitations Section of the AFM or POH to prohibit the positioning of the power levers below the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. Amending the AFM or POH would be accomplished by inserting one of the following, as applicable:

—Temporary Revision To Pilatus/PC–6 B1 and B2 Series Airplanes Flight Manuals; Section 1; Certificate Limitations; Issued: November 29, 1996; and

—Temporary Revision To PC–12 Pilot's Operating Handbook; Pilatus Report No. 01973–001, dated November 20, 1996.

The NPRM is the result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight.

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.

The 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.

Compliance Time of This AD

The FAA has determined that the compliance time of this AD should be specified in calendar time instead of hours time-in-service. While the condition addressed by this AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The compliance time of ''30 days after the effective date of this AD'' will not inadvertently ground airplanes and would assure that all owners/operators of the affected airplanes accomplish this AD in a reasonable time period.

Cost Impact

The FAA estimates that 72 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to incorporate the required AFM amendment, and that the average labor rate is approximately $60 an hour. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish this AD, the only cost impact upon the public is the time it will take the affected airplane owner/operators to amend the AFM or POH.

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, 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 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–22–08 Pilatus Aircraft, Ltd.: Amendment 39–10180; Docket No. 97–CE–18–AD.

Applicability: The following model and serial number airplanes, certificated in any category:

—Model Pilatus Models PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4 airplanes, all serial numbers, that are equipped with a Pratt and Whitney PT6A turboprop engine; and

—Model Pilatus PC–12 airplanes, all serial numbers.

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 within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) or pilot's operating handbook (POH) by inserting the following revisions, as applicable:

(1) Temporary Revision To Pilatus/PC–6 B1 and B2 Series Airplanes Flight Manuals; Section 1; Certificate Limitations; Issued: November 29, 1996; or

(2) Temporary Revision To PC–12 Pilot's Operating Handbook; Pilatus Report No. 01973–001, dated November 20, 1996.

(b) Amending the AFM or POH, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(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) 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, 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.

(e) The AFM or POH revisions referenced in this AD may be obtained from Pilatus Aircraft Ltd., CH–6370 Stans, Switzerland. Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–10180) becomes effective on December 5, 1997.

Issued in Kansas City, Missouri, on October 21, 1997.

Mary Ellen A. Schutt,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–28578 Filed 10–28–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–29]

Modification of Class E Airspace; Delaware, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Delaware, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 10 and a GPS SIAP to Runway 28 have been developed for Delaware Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action increases the radius of the existing controlled airspace for the airport.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

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

SUPPLEMENTARY INFORMATION:

History

On Friday, July 25, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace for Delaware, OH (62 FR 39982). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, 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) modifies Class E airspace at Delaware, OH, to accommodate aircraft executing the GPS Runway 10 SIAP and the GPS Runway 28 SIAP at Delaware Municipal Airport by increasing the radius of the existing controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AGL OH E5 Delaware, OH [Revised]

Delaware Municipal Airport, OH
(lat. 40°16′46″ N, long. 83°06′22″ W)
Delaware NDB
(lat. 40°16′41″ N, long. 83°06′33″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Delaware Municipal Airport and within 2.6 miles either side of the 286° bearing from the Delaware NDB extending from the NDB to 8.3 miles northwest of the NDB.

* * * * *

Issued in Des Plaines, Illinois on October 7, 1997.

David B. Johnson,

Assistant Manager, Air Traffic Division.

[FR Doc. 97–28607 Filed 10–28–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–28]

Modification of Class E Airspace; Norwalk, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Norwalk, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 28 has been developed for Norwalk-Huron County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for the airport.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

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

SUPPLEMENTARY INFORMATION:

History

On Friday, July 25, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulation (14 CFR part 71) to modify Class E airspace for Norwalk-Huron County Airport, OH (62 FR 39980). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, 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) modifies Class E airspace at Norwalk, OH, to accommodate aircraft executing the GPS Runway 28 SIAP at Norwalk-Huron County Airport by increasing the radius of the existing controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adopting 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 part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points,

dated September 10, 1997, and effective September 16, 1997, is amended as follows.

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

* * * * *

AGL OH E5 Norwalk, OH [Revised]

Norwalk-Huron County Airport, OH
(lat. 42°14′41″N, long. 82°33′04″W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Norwalk-Huron County Airport and within 2.5 miles each side of the 338° bearing from the airport extending from the 6.4-mile radius to 8.8 miles northwest of the airport.

* * * * *

Issued in Des Plaines, Illinois on October 7, 1997.

David B. Johson,

Assistant Manager, Air Traffic Division.

[FR Doc. 97–28606 Filed 10–28–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–27]

Modification of Class E Airspace; Mason, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Mason, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 27 has been developed for Mason Jewett Field. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for the airport.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

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

SUPPLEMENTARY INFORMATION:

History

On Friday, July 25, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace for Mason, MI (62 FR 39981). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, 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) modifies Class E airspace at Mason, MI, to accommodate aircraft executing the GPS Runway 27 SIAP at Mason Jewett Field by increasing the radius of the existing controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AGL MI E5 Mason, MI [Revised]

Mason Jewett Field, MI
(lat. 42°33′57″N, long. 84°25′24″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Mason Jewett Field, excluding that airspace within the Eaton, MI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on October 7, 1997.

David B. Johnson,

Assistant Manager, Air Traffic Division.

[FR Doc. 97–28605 Filed 10–28–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–31]

Amendment to Class E Airspace; Point Pleasant, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace upward from 700 feet Above Ground Level (AGL) at Point Pleasant, WV. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 25 at Madison County Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the GPS SIAP to RWY 25 at Point Pleasant, WV.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist,

Airspace Branch, AEA–520, 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 22, 1997, the FAA proposed to amend 14 CFR Part 71 to revise the Class E airspace at Point Pleasant, WV (62 FR 44606). A GPS SIAP to RWY 25 developed for Mason County Airport, Point Pleasant, WV, requires the revision of the Class E airspace at the airport. The notice proposed to revise the controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR Part 71 amends the Class E airspace located at Point Pleasant, WV, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing a GPS SIAP to RWY 25.

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 ''significantly regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have 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.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AEA WV AEA 35 Point Pleasant, WV [Revised]

Mason County Airport, WV
(lat. 38°54′52″N., long. 82°05′55″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Mason County Airport and within 4 miles each side of the 059° bearing from the Mason County Airport extending from the 6.4-mile radius to 10 miles northeast of the airport, excluding the portions that coincide with the Gallipolis, OH, and Ravenswood, WV, Class E airspace areas.

* * * * *

Issued in Jamaica, New York on October 7, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–28602 Filed 10–28–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–32]

Amendment to Class E Airspace; Wrightstown, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Wrightstown, NJ. The development of Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) to Runway (RWY) 19 and RWY 01 at Flying W Airport, Lumberton, NJ, has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the GPS RWY 19 SIAP and the GPS RWY 01 SIAP to Flying W Airport at Lumberton, NJ.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, 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 22, 1997, the FAA proposed to amend 14 CFR Part 71 to amend the Class E airspace at Wrightstown, NJ (62 FR 44605). A GPS RWY 19 SIAP and a GPS RWY 01 SIAP developed for Flying W Airpoort, Lumberton, NJ, requires the amendment of the Class E airspace at Wrightstown, NJ. The proposal would amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR Part 71 amends Class E airspace at Wrightstown, NJ, to provide controlled

airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 19 SIAP and GPS RWY 01 SIAP to Flying W 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 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have 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.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AEA NJ AEA E5 Wrightstown, NJ [Revised]

Lakewood Airport, NJ
(lat. 40°04′00″ N., long. 74°10′40″ W.)
McGuire AFB, NJ
(lat. 40°00′56″ N., long. 74°35′37″ W.)
Trenton-Robbinsville Airport, NJ
(lat. 40°12′50″ N., long. 74°36′07″ W.)
Allaire Airport, NJ
(lat. 40°11′13″ N., long. 74°07′30″ W.)
Robert J. Miller Airpark, NJ
(lat. 39°55′39″ N., long. 74°17′33″ W.)
Flying W Airport, NJ
(lat. 39°56′00″ N., long. 74°48′24″ W.)
Lakehurst (Navy) TACAN
(lat. 40°02′13″ N., long. 74°21′12″ W.)
Colts Neck VOR/DME
(lat. 40°18′42″ N., long. 74°09′36″ W.)
Coyle VORTAC
(lat. 39°49′02″ N., long. 74°25′54″ W.)
Robbinsville VORTAC
(lat. 40°12′08″ N., long. 74°29′43″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Lakewood Airport and within a 10.5-mile radius of McGuire AFB and within a 11.3-mile radius of the Lakehurst (Navy) TACAN extending clockwise from the Lakehurst (Navy) TACAN 310° radial to the 148° radial and within 4.4 miles each side of the Coyle VORTAC 031° radial extending form the VORTAC to 11.3 miles northeast and within 2.6 miles southwest and 4.4 miles northeast of the Lakehurst (Navy) TACAN 148° radial extending from the TACAN to 12.2 miles southeast and within a 6.4-mile radius of Trenton-Robbinsville airport and within 5.7 miles north and 4 miles south of the Robbinsville VORTAC 278° and 098° radials extending form 4.8 miles west to 10 miles east of the VORTAC and within a 6.7-mile radius of Allaire Airport and within 1.8 miles each side of the Colts Neck VOR/DME 167° radial extending from the Allaire Airport 6.7-mile radius to the VOR/DME and within a 9.5-mile radius of Flying W Airport and within a 6.5-mile radius of Robert J. Miller Air Park and within 1.3 miles each side of the Coyle VORTAC 044° radial extending from the 6.5-mile radius of Robert J. Miller Air Park to the VORTAC, excluding the portions that coincide with the Berlin, NJ, Princeton, NJ, Vincetown, NJ, Old Bridge, NJ, Matawan, NJ, and North Philadelphia, PA, Class E airspace areas.

* * * * *

Issued in Jamaica, New York on October 7, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–28601 Filed 10–28–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–33]

Modification of Class E Airspace; Bloomington, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Bloomington, IL. An Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway 20 has been developed for the Central Illinois Regional Airport at Bloomington-Normal (formerly the Bloomington/Normal Airport). Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing Class E airspace.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2330 East Devon Avenue, Des Plaines, Illinois 60018, telephone (897) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, August 25, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace at Bloomington, IL (62 FR 44922). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, 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) modifies Class E airspace at Bloomington, IL, to accommodate aircraft executing the ILS Runway 20 SIAP at the Central Illinois Regional Airport at Bloomington-Normal (formerly the Bloomington/Normal Airport) by increasing the radius of the existing Class E airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AGL IL E5 Bloomington, IL [Revised]

Central Illinois Regional Airport at Bloomington-Normal, IL
(lat. 40°28′44″ N, long. 88°55′08″ W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the Central Illinois Regional Airport at Bloomington-Normal.

* * * * *

Issued in Des Plaines, Illinois on October 7, 1997.

David B. Johnson,

Assistant Manager, Air Traffic Division.

[FR Doc. 97–28611 Filed 10–28–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–32]

Removal of Class E Airspace; Minocqua-Woodruff, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E airspace at Minocqua-Woodruff, WI. This airspace surface area is being removed because the weather observation requirements for a controlled airspace surface area are no longer being met for the Lakeland/Noble F. Lee Memorial Field. The intended effect of this action is to provide an accurate description of the controlled airspace for Minocqua-Woodruff, WI.

EFFECTIVE DATES: 0901 UTC, January 1,1998.

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

SUPPLEMENTARY INFORMATION:

History

On Monday, August 25, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to remove the Class F airspace at Minocqua-Woodruff, WI (62 FR 44923). The proposal was to remove controlled airspace extending upward from the surface for Lakeland/Noble F. Lee Memorial Field.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas designated as a surface area for a airport are published in paragraph 6002 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be removed subsequently from the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class E airspace at Minocqua-Woodruff, WI, because the weather observation requirements for a controlled airspace surface area are no longer being met for Lakeland/Noble F. Lee Memorial Field. The area will be removed from the appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AGL WI E2 Minocqua-Woodruff, WI [Removed]

* * * * *

Issued in Des Plaines, Illinois on October 7, 1997.

David B. Johnson,

Assistant Manager, Air Traffic Division.

[FR Doc. 97–28610 Filed 10–28–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–30]

Modification of Class E Airspace; Rochester, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Rochester, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 29 has been developed for Fulton County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action will increase the radius of the existing Class E airspace.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

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

SUPPLEMENTARY INFORMATION:

History

On Monday, August 25, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace at Rochester, IN (62 FR 44921). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, 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) modifies Class E airspace at Rochester, IN, to accommodate aircraft executing the GPS Runway 29 SIAP at Fulton County Airport by increasing the radius of the existing Class E airspace for the airport. Controlled airspace extending upward form 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AGL IN E5 Rochester, IN [Revised]

Rochester, Fulton County Airport, IN
(lat. 41°03′57″ N, long. 86°10′58″ W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Fulton County Airport.

* * * * *

Issued in Des Plaines, Illinois on October 7, 1997.

David B. Johnson,

Assistant Manager, Air Traffic Division.

[FR Doc. 97–28608 Filed 10–28–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–34]

Establishment of Class E Airspace; Indian Head, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Indian Head, MD. The development of a Global Positioning System (GSP) Standards Instrument Approach Procedure (SIAP) to Runway (RWY) 36 and a VHF Omnidirectional Radio Range (VOR) A SIAP to Maryland Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the GPS RWY 36 SIAP and the VOR A SIAP to Maryland Airport at Indian Head, MD.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, 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 22, 1997, the FAA proposed to amend 14 CFR Part 71 to establish Class E airspace at Indian Head, MD (62 FR 44603). A GPS RWY 36 SIAP and a VOR A SIAP developed for Maryland Airport, Indian Head, MD, requires the establishment of the Class E airspace at the airport. The notice proposed to establish controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking

proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997 and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in the document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR Part 71 establishes Class E airspace at Indian Head, MD, to provide controlled airspace extending upward from 700 feet AGL for executing the GPS RWY 36 SIAP and VOR A SIAP to Maryland 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 ''significantly regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated 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.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace, Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AEA MD AEA E5 Indian Head, MD [New]

Maryland Airport, MD
(lat. 38°36′01″ N., long. 77°04′24″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Maryland Airport, excluding the portions that coincide with the Washington, DC, and Friendly, MD, Class E airspace areas.

* * * * *

Issued in Jamaica, New York on October 7, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–28604 Filed 10–28–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–33]

Amendment to Class E Airspace; Summersville, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Summersville, WV. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 22 at Summersville Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the GPS SIAP to RWY 22 at Summersville, WV.

EFFECTIVE DATE: 0901 UTC, January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, 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 22, 1997, the FAA proposed to amend 14 CFR Part 71 to revise the Class E airspace at Point Pleasant, WV (62 FR 44604). A GPS SIAP to RWY 22 developed for Summersville Airport, Summersville, WV, requires the revision of the Class E airspace at the airport. The notice proposed to revise the controlled airspace extending upward for 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal of the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in the document will be published subsequently in the Order.

The Rule

This amendment 14 CFR Part 71 amends the Class E airspace located at Summersville, WV, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing a GPS RWY 22 SIAP to Summersville 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 ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is a 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 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.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AEA WV AEA E5 Summersville, WV [Revised]

Summersville Airport, WV
(lat. 38°13′54″ N., long. 80°52′15″ W.)
Nicholas NDB
(lat. 38°10′30″ N., long. 80°55′12″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Summersville Airport and within 4 miles each side of the 215° bearing from the Nicholas NDB extending from the 6.3-mile radius to 9.6 miles southwest of the NDB and 4 miles each side of the 037° bearing from the Summersville Airport extending from the 6.3-mile radius to 11.5 miles northeast of the airport.

* * * * *

Issued in Jamaica, New York on October 7, 1997.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–28603 Filed 10–28–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–02]

Amendment of Class E Airspace; Alamosa, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: On October 20, 1997, the FAA published in the **Federal Register** a final rule which revised Class E airspace at Alamosa, CO. The final rule inadvertently listed November 19, 1997, as the effective date. The FAA intended the effective date to be November 6, 1997. This document corrects the effective date.

DATES: This document is effective on October 29, 1997.

The effective date of FR Doc. 97–27364 is changed from 0901 UTC, November 19, 1997, to 0901 UTC, November 6, 1997.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM–520.1, Federal Aviation Administration, Docket No. 97–ANM–02, 1601 Lind Avenue S.W., Renton, WA, 98055–4056; telephone: (425) 227–2536.

SUPPLEMENTARY INFORMATION: On October 20, 1997, the FAA published in the **Federal Register** a final rule which revised Class E airspace at Alamosa, CO (FR Doc. 97–27364; 62 FR 54379). The FAA intended the final rule to be effective November 6, 1997; however, due to an administrative error, the final rule was not published sufficiently in advance of the intended effective date to meet the 30-day notice general requirement of the Administrative Procedures Act (APA), 5 U.S.C. 553(a). Consequently, the effective date of the rule was altered to indicate a date 30 days after the date of publication.

The October 20, 1997, final rule revised Class E airspace at Alamosa, CO, in part by expanding that portion of the airspace area which extends upward from 1,200 feet above ground level (AGL); this revision will appear on, and therefore must coincide with, instrument flight rules (IFR) aeronautical charts scheduled to become effective November 6, 1997. Any delay in the effective date of the revisions to the Alamosa, CO, Class E airspace beyond November 6, 1997, will cause the affected IFR aeronautical charts to be in error during the period of the delay and may lead to pilot confusion and a hazard to air navigation.

In consideration of the foregoing, the FAA finds that good cause exists, pursuant to 5 U.S.C. 553(d), for making FR Doc. 97–27364 effective in less than 30 days from its date of publication in the **Federal Register**.

The Correction

In rule FR Doc. 97–27364 published on October 20, 1997 (62 FR 54379), make the following correction. On page 54379, in the second column, revise the effective date of the rule to 0901 UTC, November 6, 1997.

Dated: October 21, 1997.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–28609 Filed 10–28–97; 8:45 am]

BILLING CODE 4901–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 111

[T.D. 97–86]

Annual User Fee for Customs Broker Permit

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of due date for broker user fee.

SUMMARY: This document advises Customs brokers that for 1998 the annual user fee of $125 that is assessed for each permit held by an individual, partnership, association or corporate broker is due by January 9, 1998. This announcement is being published to comply with the Tax Reform Act of 1986.

DATES: Due date for fee: January 9, 1998.

FOR FURTHER INFORMATION CONTACT: Adline Tatum, Entry (202) 927–0380.

SUPPLEMENTARY INFORMATION:

Background

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) established that an annual user fee of $125 is to be assessed for each Customs broker permit held by an individual, partnership, association or corporation. This fee is set forth in the Customs Regulations in § 111.96 (19 CFR 111.96).

Section 111.96, Customs Regulations, provides that a user fee for brokers is payable for each calendar year and that the fee is payable by the due date which will be published in the **Federal Register** annually. The fee is to be paid at each Broker district where the broker is issued a permit to do business. Broker districts are defined in a General Notice that was published in the **Federal Register** (60 FR 49971) on September 27, 1995.

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99–514) provides that notices of the date on which a payment is due of the user fee for each broker permit shall be published by the Secretary of the Treasury in the **Federal Register** by no later than 60 days before such due date. This document notifies brokers that for 1998, the due date for

payment of the user fee is January 9, 1998. It is expected that the annual user fees for brokers for subsequent years will be due on or about the third of January of each year.

Dated: October 23, 1997.

Anne. K. Lombardi,

Acting Director, Trade Compliance.

[FR Doc. 97–28564 Filed 10–28–97; 8:45 am]

BILLING CODE 4820–02–P

POSTAL SERVICE

39 CFR Part 20

Acceptance Procedures for Global Package Link (GPL)

AGENCY: Postal Service.

ACTION: Interim rule with request for comments.

SUMMARY: The Postal Service is amending the rule on Global Package Link (GPL) service. New charges are being announced effective November 28, 1997. The new charges provide a discount for mailer-provided transportation of packages to a GPL processing facility and add, for mailers located more than 500 miles from a GPL processing facility, a surcharge for Postal-provided transportation. In addition, the current option for mailer processing is eliminated.

DATES: These regulations take effect as of November 28, 1997. Comments must be received on or before November 28, 1997.

ADDRESSES: Written comments should be mailed or delivered to International Business Unit, Manager, Mail Order, U.S. Postal Service, 475 L'Enfant Plaza SW, 370–IBU, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Robert E. Michelson, (202) 268–5731.

SUPPLEMENTARY INFORMATION:

I. Introduction

General Description

Global Package Link (GPL) is a service that provides fast, economical international delivery of packages containing merchandise. GPL is designed to make it easier and less costly for mail-order companies to export goods. The Postal Service provides GPL on a destination country-specific basis pursuant to the terms and conditions stipulated in subsection 620 of the International Mail Manual and the Individual Country Listings.

II. GPL Acceptance

Description

Current Procedures

Currently, if the plant from which the customer's GPL packages originate is within 500 miles of a GPL processing facility, the Postal Service will accept the packages at the mailer's plant and transport them by truck to the GPL facility at no additional charge. If the mailer's plant is located more than 500 miles from a GPL facility, the customer has two options. The customer may choose either to:

a. present the packages to the Postal Service for verification at the customer's plant, and then transport the packages to the GPL facility, or

b. process the packages using Postal-provided workstations, after which the Postal Service accepts the packages and transports them to a designated air-mail facility.

Proposed Procedures

The new provisions will differ from the current one in the following aspects:

1. If the mailer transports the packages to a GPL facility, the mailer will receive a $.20 per pound discount, regardless of the distance from the mailer's plant to a GPL facility.

2. If the mailer's plant is more than 500 miles from a GPL facility, and the customer does not drop ship, the Postal Service will provide transportation at an additional rate of $.40 per pound. If the mailer's plant is within 500 miles from a GPL facility, the Postal Service will continue to provide transportation without any additional charge.

3. The current option for mailers whose plants are more than 500 miles from a GPL processing facility, in which the customer processes the packages using a Postal-provided computer system, is eliminated.

Accordingly, the Postal Service adopts the following amendments of the International Mail Manual on an interim basis. Although 39 U.S. C. 409 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written data, views or arguments concerning this interim rule.

The Postal Service adopts the following amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign Relation, International Post Service.

PART 20—AMENDED

1. The authority for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Effective October 29, 1997 subchapter 620 of International Mail Manual Issue 19 is amended to read as follows:

Global Package Link (620)

623.4 Postage

* * * * *

623.44 Base Rates

[Renumber current ''Rate Reductions'' as 623.441 and add new section 623.442 as follows:]

623.442 Transportation Drop-Shipment Discount

A discount of 20 cents per pound applies to mail that is tranported by the mailer to a designated GPL facility. To compute the discount, multiply 20 cents by the number of pounds per country and per service level.

623.443 USPS Transportation Charge

If a mailer's plant is located more than 500 miles from a GPL facility, and the USPS tranports the mail, the mail is subject to an additional transportation charge of 40 cents per pound. To calculate the transportation charge, multiply 40 cents by the number of pounds per country per service level.

* * * * *

625.1 Acceptance

[Replace sections 625.1 and 625.2 and add new 625.3 as follows:]

625.1 Acceptance Location

A GPL mailing must be verified by USPS employees assigned to a detached mail unit (DMU) in the mailer's plant or at the origin post office serving the mailer's plant, according to a schedule agreed to by the Postal Service and the mailer. After verification, the mailing may be transported to a GPL facility by either the mailer or the Postal Service.

625.2 Transportation to GPL facility by the Mailer

The mailer will transport the packages as a drop-shipment to a GPL processing facility according to a schedule agreed to by the Postal Service and the customer. The mailer is eligible for a discount for drop shipment (see 623.442).

625.3 Transportation to GPL Facility by the USPS

For mailers who do not transport the mail as a drop-shipment, the Postal Service will transport the packages by truck to the GPL processing facility according to a schedule agreed to by the Postal Service and the customer. For mailers whose plants are located within 500 miles from a GPL facility, there will be no charge for the transportation. If the plant from which the GPL mailing originates is located more than 500 miles of a GPL processing facility the mailing is subject to a transportation charge (see 623.443).

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–28524 Filed 10–28–97; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 156

[OPP–250124; FRL–5753–2]

Flammability Labeling Requirements for Total Release Fogger Pesticides; Notification to the Secretary of Agriculture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture a final regulation under section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The rule requires specific precautionary labeling relating to the flammability of total release fogger pesticides. This action is required by FIFRA section 25(a)(2).

FOR FURTHER INFORMATION CONTACT: By mail: Jim Downing, Labeling Team, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–308–9071, e-mail: downing.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 25(a)(2) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any final regulation at least 30 days before signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the final regulation within 15 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the final regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 15 days after receiving the final regulation, the Administrator may sign the regulation for publication in the **Federal Register** anytime thereafter. As required by FIFRA section 25(a)(3), a copy of the final regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

List of Subjects in Part 156

Environmental protection, Labeling, Occupational safety and health, Pesticides and pests, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 136 *et seq.*

Dated: October 20, 1997.

Anne E. Lindsay,

Acting Director, Office of Pesticide Programs.

[FR Doc. 97–28654 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300565; FRL–5750–2]

RIN 2070–AB78

4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile in or on potatoes . The Ciba-Geigy Corporation submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170) requesting this tolerance.

DATES: This regulation is effective October 29, 1997. Objections and requests for hearings must be received by EPA on or before December 29, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300565], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300565], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300565]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9354, e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 5, 1997 (62 FR 5403) (FRL–5584–1), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP6F4694) for tolerance by the Ciba-Geigy Corporation, 410 Swing Road, Greensboro, NC 27401. This notice included a summary of the petition prepared by the Ciba-Geigy Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing a tolerance for the fungicide, 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile, in or on potatoes at 0.02 parts per million (ppm).

I. Risk Assessment and Statutory Findings

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

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

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

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

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

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

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

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

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

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in

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

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (non-nursing infants <1 year old) was not regionally based.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile on potatoes at 0.02 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile are discussed below.

1. A battery of acute toxicity studies placing technical fludioxonil in Toxicity Category III for eye irritation, Category IV for oral LD50, Category IV for inhalation LC50 and dermal irritation, and Category III for dermal LD50. 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile is a non-sensitizer.

2. A subchronic oral toxicity study in rats dosed orally with technical fludioxonil at levels of 0, 10, 100, 1,000, 7,000, and 20,000 ppm (0, 0.8, 6.6, 64, 428, and 1,283 mg/kg/day in males; 0, 1.0, 7.1, 70, 462, and 1,288 mg/kg/day in females) resulted in the Lowest Effect Level (LEL) of 428 mg/kg/day in males and 462 mg/kg/day in females, based on the increased incidence of microscopic pathology of the kidney and liver, and deceased body weight gain. The Noel is 64 mg/kg/day in males; 70 mg/kg/day in females.

3. A subchronic oral toxicity study in dogs administered doses of 0, 200, 2,000, and 15,000/10,000 ppm (15,000 ppm for 17 days and 10,000 ppm from day 18 until study termination) for 13 weeks with a LEL of 2,000 ppm in males and females, based on the observation of diarrhea at this dose level. These dose levels correspond to nominal doses of 0, 5, 50, or 375/250 mg/kg/day, as actual intake data were not provided. The NOEL is 5 mg/kg/day in males and females.

4. A subchronic oral toxicity study in mice administered doses of 0, 10, 100, 1,000, 3,000, or 7,000 ppm (0, 1.3, 13.9, 144, 445, or 1,052 mg/kg/day in males; 0, 1.9, 16.8, 178, 559, or 1,307 mg/kg/day in females) with a LEL of 1,052 mg/kg/day in males, and 1,307 mg/kg/day in females based on decreased body weight gain in female mice, changes in serum chemistry in male and female mice, observed increase in liver to body weight ratio, and the increased incidence of nephropathy and centrilobular hypertrophy of the liver in both sexes. The NOEL is 445 mg/kg/day in males and 559 mg/kg/day in females.

5. A dermal toxicity test in rats exposed as a repeated dermal dose under occlusive dressing 6 hrs/day, 5 days/week, for 4 weeks at 0, 40, 200, and 1,000 mg/kg/day. For dermal irritation, the LEL and NOEL are both greater than 1,000 mg/kg for males and females. The LEL for systemic toxicity for females is 1,000 mg/kg based on increased AST and adrenal weight, and 1,000 mg/kg for males based on increased creatinine and adrenal weight. The NOEL is 200 mg/kg/day for males and females.

6. A chronic oral toxicity study in dogs dosed for 52 weeks at 0, 100, 1,000, and 8,000 ppm in the diet (0, 3.1, 33.1, and 297.8 mg/kg/day in males; 3.3, 35.5, and 330.7 mg/kg/day in females. The LEL is 297.8 mg/kg/day for male dogs based on decreased body weight, hematology alterations (increase in platelets and fibrin), clinical chemistry alterations (increase in cholesterol and alkaline phosphatase) and increased liver weight. The LEL is 35.5 mg/kg/day for female dogs based on a marked decrease in body weight gain for weeks 1 - 13 and weeks 1 - 52 of the study. The NOEL is 33.1 mg/kg/day for male dogs and 3.3 mg/kg/day in female dogs.

7. A combined chronic toxicity/carcinogenicity study in rats fed 0, 10, 30, 100, 1,000 and 3,000 ppm for either 12 or 24 months (males: 0, 0.37, 1.1, 3.7, 37 and 113 mg/kg/day, respectively; females: 0, 0.44, 1.3, 4.4, 44 and 141 mg/kg/day respectively). The 3,000 ppm dose level is considered adequate for carcinogenicity testing, based on decreased body weight and body weight gain in both sexes, slight anemia in females at 12 months, and an increased incidence and severity of liver histopathology changes in both sexes. Rats from the control and 3,000 ppm groups were fed the test diets for 12 months and then allowed to recover for one month prior to sacrifice. There was no treatment-related effect on food or water consumption. Males dosed at 1,000 and 3,000 ppm, and females dosed at 3,000 ppm exhibited a number of effects including higher incidence of dark stool and urine, staining (mostly blue) around the pelvic region and abdomen, higher frequency of diarrhea (males only), and decrease body weight gain. Females dosed at 3,000 ppm had some evidence of slight anemia at the 12-month evaluation. At necropsy,

males at the 3,000 ppm dose level exhibited an increased incidence of enlarged livers, and kidneys with discolored foci or general discoloration and an increased severity of progressive nephropathy; kidneys with cysts were reported at both the 1,000 and 3,000 ppm dose levels. For females in the 1,000 and 3,000 ppm dose levels there was an increase incidence of general discoloration of the the kidneys. Males and females in the 3,000 ppm group had an increased incidence and more severe grade of histopathological changes in the liver. There was an increase incidence of hepatocellular tumors in both sexes of the 3,000 ppm group, however the increase in males was not statistically significant. The statistically significant finding in females was an increase in combined adenomas and carcinomas (0/70, 1/60, 0/60, 1/60, 2/60 and 5/70 in the 0, 10, 30, 100, 1,000 and 3,000 ppm groups, respectively). Males and females in the 3,000 ppm group had an increased incidence of basophilic foci in the liver; males also had an increase in hepatocellular hypertrophy. The LEL for males and females was 113 and 141 mg/kg/day, respectively (3,000 ppm) based on decreased body weight and weight gain, slight anemia in females at 12 months, and increased incidence and severity of histopathology changes in the liver. The NOEL for males and females was 37 and 44 mg/kg/day, respectively. 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile technical was not carcinogenic in male rats. There was a statistically significant increase in the incidence of combined adenomas and adenocarcinomas of the liver in female rats in the 3,000 ppm dosed group.

8. A carcinogenicity study in mice administered in the diet nominal dose levels at 0, 10, 100, 1,000, and 3,000 ppm (0, 1.1, 11.3, 112, and 360 mg/kg/day for male mice; 0, 1.4, 13.5, 133, and 417 mg/kg/day for female mice). Male mice at the 3,000 ppm level exhibited clinical toxicity in the form of an incidence of male mice which ''convulsed'' when handled. No significant effects on body weight, weight gain, food consumption, hematology, or microscopic non-neoplastic pathology was reported in either sex. Increased liver weight (9%) and spleen weight (34%) were observed in male mice at the 3,000 ppm dose level, which correlated with the macroscopic observations of enlarged spleen and raised foci of their liver. Female mice showed a statistically significant increase in liver weight at the 3,000 ppm dose level, and this is also supported by the macroscopic observation of enlarged liver at the 3,000 ppm dose level in female mice. Other macroscopic changes in female mice were an increased incidence of enlarged thymus, spleen, mediastinal lymph node, and liver, and an increased incidence of lymphoma in these organs. The LEL is 112 mg/kg/day for male mice, based on the increased incidence of clinical toxicity in male mice (specifically, the increased incidence of mice convulsing when handled), and 417 mg/kg/day for female mice, based on the increase in liver weight of female mice, and the increase in incidence of macroscopic pathology. The NOEL is 11.3 mg/kg/day and 133 mg/kg/day in male and female mice, respectively. There was evidence of carcinogenicity in female mice based on an increase incidence of lymphoas, which contributed to death. This effect was due to the early onset and high incidence of lymphoma at the 3,000 ppm dose relative to the control group. Total incidence of lymphoma was reported as 11/59, 10/59, 13/60, 12/60, and 18/60 for the 0, 10, 100, 1,000, and 3,000 ppm dose levels in female mice. This increase in total lymphoma was significant by a trend test, but not by pair wise comparison. Whether an adequate dose level was used in this study to assess the carcinogic potential of 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile is complicated by the observation of an increased lymphoma incidence at the 3,000 ppm dose level. This dose level produced some systemic effects, such as an increased incidence of male mice which 'convulsed' when handle and macroscopic pathology in both sexes. But this dose level produced no significant effects on body weight, weight gain, food consumption, hematology, or microscopic non-neoplastic pathology in either sex.

In a second carcinogenicity study in mice, 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile technical was administered in the diet at nominal dose levels of 0, 3, 30, 5,000, and 7,000 ppm (0, 0.33, 3.3, 590, and 851 mg/kg/day for male mice; 0, 0.41, 4.1, 715, and 1,008 mg/kg/day for female mice). In male and female mice, the 7,000 ppm dose level produced significant systemic effects in addition to significant nephropathy. The nephropathy in both sexes of mice dosed at 7,000 ppm contributed to death in a majority of the mice. Survival in female mice was below 25%, and exceeded the guideline criteria for survival in a mouse carcinogenicity study. Changes in liver weights were observed in both sexes at the 5,000 and 7,000 ppm dose levels, but could not be related to histological alterations in the liver. Therefore the LEL is 851 mg/kg/day in males, and 1,008 mg/kg/day in females. The NOEL is 590 mg/kg/day in males, and 715 mg/kg/day in females. The 7,000 ppm dose is adequate for testing carcinogenic potential in male mice, based on the significant systemic effects and nephropathy observed at this dose. For female mice, the 7,000 ppm dose level is considered excessive, based on the reduction in survival of the test animals. There was no evidence of increased incidence of tumors in this study for male or female mice.

9. A developmental toxicity study in rats administered doses of 0, 10, 100, and 1,000 mg/kg/day by oral gavage in 0.5% carboxymethylcellulose to pregnant female rats on gestation days 6 - 15 inclusive. Maternal Toxicity was evident at 1,000 mg/kg/day, with a 16% reduction in corrected body weight gain. Developmental Toxicity was evident at the 1,000 mg/kg/day dose level with increased fetal and litter incidence of dilated renal pelvis and dilated ureter. Based on these observations, the Maternal LEL is 1,000 mg/kg/day and the Maternal NOEL is 100 mg/kg/day. The Developmental Toxicity LEL is 1,000 mg/kg/day, and the Developmental toxicity NOEL is 100 mg/kg/day.

10. A developmental toxicity (teratology) study in rabbits dosed at 0, 10, 100, and 300 mg/kg/day in a 0.5% methylcellulose solution in distilled water by oral gavage from gestation days 6 through 18, inclusive. Maternal toxicity as less body weigh was noted in the mid and high dose groups during the dosing period (gestation days 6 through 18), for the overall dosing plus post dosing periods (gestation days 6 through 28), and for the entire gestation period; maternal toxicity as decreased corrected body weight gains was observed for the dosing plus post dosing periods. The high dose group consumed less food than the control group during the dosing period (gestation days 6 - 18), the post dosing period (gestation days 19 -28), the dosing plus post dosing period (gestation days 19 - 28), and for the overall gestation period. However, food efficiency was decreased in the mid and high dosed groups during the dosing plus post dosing periods, and for the entire gestation period. The Maternal Toxicity LEL is 100 mg/kg/day, and the Maternal Toxicity NOEL is 10 mg/kg/day based on decreased body weight gains and decreased food efficiency. No developmental toxicity was noted at the dose levels tested. The Developmental Toxicity LEL is greater than 300 mg/kg/day, and the

Developmental Toxicity NOEL is equal to or greater than 300 mg/kg/day.

11. A reproduction toxicity study in rats receiving 0, 30, 300, and 3,000 ppm (equivalent to 0, 2.19, 22.13, and 221.61 mg/kg/day for males, and 0, 2.45, 24.24, and 249.67 mg/kg/day for females) fludioxonil technical in the diet for 2 generations. The Parental Systemic Toxicity LEL is 221.61 mg/kg/day for males, and 249.67 mg/kg/day for females. The Parental Systemic Toxicity NOEL is 22.13 mg/kg/day for males, and 24.24 mg/kg/day for females based on clinical observations, reduced body weight and body weight gains, and reduced food consumption. Treatment related effects are noted in the high dose groups in both the F1 and F2 pups as reduced mean pup body weights starting at postnatal day 4 through 21; this was considered a developmental toxic effect rather than a true reproductive toxic effect , because the reduced mean pup body weights are an effect on the growth of the pup. The Reproductive/Developmental Toxicity LEL is 221.61 mg/kg/day for males, and 249.67 mg/kg/day for females. The Reproductive/Developmental Toxicity NOEL is 22.13 mg/kg/day for males, and 24.24 mg/kg/day for females based on reduced pup body weights.

12. Studies on gene mutation and other genotoxic effects: an Ames Salmonella Assay which provided evidence of cytotoxicity at 1,250 µg/plate and 5,000 µg/plate concentrations; an Unscheduled DNA Synthesis Assay with apparent cytotoxicity at 313 µg/ml; an In Vitro Chromosome Aberrations assay in Chinese hamster ovary (CHO) cells, with and without S9-activation which provided convincing evidence that technical fludioxonil is a clastogen, and a potent inducer of polyploidy in this cultured mammalian cell assay; an In Vitro Chromosome Aberrations assay in Chinese hamster bone marrow cells with the occurance of hyperploidy in one mid-dose female and trisomy in one high dose male; an In Vivo Micronucleus Assay using rat hepatocytes, no definitive conclusions were made, and this study should be repeated; A Dominant Lethal Assay in mice with no indication the test material induced dominant lethal mutations in male mouse germinal cells over the entire period of spermatogenesis; a Point Mutation Test in CHO cells in vitro, with and without S9-activation, with no increase in the number of thioguanine-resistant colonies, mutation frequency, or mutation factor with or without S9-activation; and a Mouse Micronucleus Assay in a mouse bone morrow micronucleus test which was negative.

B. Toxicological Endpoints

1. *Acute toxicity*. There is no concern for an acute dietary risk. The the available data do not indicate any evidence of significant toxicity from one day or single event exposure by oral exposure.

2. *Chronic toxicity*. EPA has established the RfD for 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile at 0.03 mg/kg/day. This RfD is based upon the 1-year toxicity study in dogs with a NOEL of 3.3 mg/kg/day in female dogs, and an uncertainty factor of 100 to account for both interspecies extrapolation and intraspecies variability.

3. *Carcinogenicity*. This chemical has been classified as a Group D - not classifiable as to Human Carcinogenicity. That is, the evidence is inadequate and cannot be interpreted as showing either the presence or absence of a carcinogenic effect. The Group D classification was also based on the increase in liver tumors in female rats that was statistically significant for combined adenoma/carcinoma only, the lack of a tumorigenic response in male rats or in either sex of the mouse, and the need for additional mutagenicity studies.The mutagenicity studies will be required as a Condition of Registration for products containing 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile, and consists of a repeat of the in vivo rat hepatocyte study with a primary interest in determining the mechanism (s) for inducing genetic damage and a repeat of the bone marrow micronucleus assay using lower doses.

C. Exposures and Risks

1. *From food and feed uses.* This is the first tolerance for residues of 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile, in or on a raw agricultural commodity. Risk assessments were conducted by EPA to assess dietary exposures and risks from 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile as follows:

Chronic exposure and risk. The RfD used for the chronic dietary analysis is 0.03 mg/kg/day. A tolerance of 0.02 ppm in/on potatoes was used. Tolerances in animal commodities or in potato granules/flakes are not required for this seed piece use on potatoes. 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile is currently registered for use as a seed treatment on corn and sorghum, and for use in greenhouses on nonfood crops. Since the residues were non-quantifiable, no exposure was assumed to result for the registered use on corn or sorghum, and these uses did not require tolerances. Using the tolerance level residue (0.02 ppm) and assuming that 100% of the crop is treated, the risk assessment resulted in use of less then 1% of the RfD for the general population and all 22 subgroups, including infants under 1 year old and children under 13 years of age.

2. *From drinking water.* Because of the requested and currently registered use patterns, including the treatment of potato seed pieces at a low use rate (approximately 0.06 lbs ai/A), seed treatment of field, sweet and popcorn, and sorghum, and ornamental plants grown in greenhouses or other enclosed structures, 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile is not expected to impact ground or surface waters. Thus the likelihood of residues of 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile in drinking water is considered negligible from the above mentioned use patterns. Therefore, it is concluded that a drinking water risk assessment is not required at this time, and there is no drinking water risk assessment to aggregate with the chronic dietary (food sources) risk assessment. The aggregate dietary risk is therefore the dietary risk which is less than 1% for the general population and all 22 subgroups.

Acute exposure and risk. There is no concern for an acute dietary exposure to fludioxonil from drinking water as stated above, and because the available data do not indicate any evidence of significant toxicity from a one day or single event exposure by the oral route. Therefore, an acute exposure risk assessment is not required for 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile at this time.

3. *From non-occupational non-dietary exposure.* 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile is currently not registered for use on residential non-food sites, therefore no non-occupational non-dietary exposure is expected.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for

understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile has a common mechanism of toxicity with other substances.

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

Chronic risk. Using the Theoretical Maximum Residue Contribution (TMRC) exposure assumptions described above, EPA has concluded that aggregate exposure to 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile from food will utilize less then 1% of the RfD for the U.S. population and the 22 subgroups, including infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure 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 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile residues.

E. Aggregate Cancer Risk for U.S. Population

This chemical has been classified as Group D - not classifiable as to Human Carcinogenicity. The available carcinogenicity studies in the rat and mouse shows some increase in the combined tumors only in the female rat above that in the concurrent controls. However, this statistical increase in liver tumors in female rats was only at the high dose. Some of this significant increase was due to the lack of any liver tumors in the concurrent control whereas the historical control from the same lab indicated a range of 1.4 to 15% for combined liver tumors. Therefore based on available information, a carcinogenic risk analysis is not appropriate. EPA believes that this pesticide does not pose a significant cancer risk.

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

1. *Safety factor for infants and children— In general.* In assessing the potential for additional sensitivity of infants and children to residues of 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. The toxicity database for fludioxonil includes as acceptable two-generation reproduction study in rats and an acceptable prenatal developmental toxicity studies in rats and rabbits. The data did not suggest any additional sensitivity to the embryo or neonate following in utero or early postnatal exposure to fludioxonil. The maternal NOEL, and the developmental (fetal and pup) Toxicity NOEL were both 100 mg/kg/day in the rat developmental study. In the rabbit developmental study, the maternal NOEL was 10 mg/kg/day. No developmental toxicity was noted at any dosing level. The developmental NOEL was set equal to or greater than 300 mg/kg/day, the highest dose tested. Results from the 2-generation reproduction study for rats indicated a developmental/reproduction NOEL of 22.13 mg/kg/day for males and 24.24 mg/kg/day for females. The developmental/reproductive NOEL is at least 600 fold higher then the RfD (0.03 mg/kg/day), and should be protective for infants and children; no additional safety factors are warrented.

2. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile from food will utilize less then 1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism in plants is adequately understood for this potato seed piece treatment use. The residue of regulatory concern is the parent compound only, 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile. Since it has been determined that secondary residues in livestock commodities are not likely to

result from this use, metabolism of 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile in animals is not relevent to this requested use on potato seed treatment.

B. Analytical Enforcement Methodology

The method accepted by EPA for enforcement of 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile in plants is Ciba-Geigy's Method AG-597B. A method, Ciba-Geigy's Method AG-616B (MRID#s 4360412 - 4360415), is also available for quantifying residues in meat and milk. These methods are available from the Docket under docket control number [OPP–300565] at the address stated above.

C. Magnitude of Residues

The submitted residue data indicate that residues of 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile were below the level of quantitation (LOQ), <0.01 ppm, in/on immature and mature potato tubers grown from seed pieces treated with 0.5% Dust formulation of 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile at 1.75 or 2.5 g ai/100 kg seed pieces (0.7X or 1X the labeled rate, respectively). Residues of 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile in/on immature and mature tubers treated at a 2X application rate ranged from less then 0.01 ppm to 0.04 ppm. Harvest times varied from 45 to 143 days after planting treated seed pieces. Residue data was also submitted at 6X and 10X the label application rate, with reported residues ranging <0.01 - 0.06 ppm and <0.01 - 0.09 ppm at the 6X rate for immature and mature tubers, respectively; and <0.01 - 0.48 ppm amd <0.01 - 0.06 ppm at the 10X rate for immature and mature tubers, respectively. Based on the submitted residue data, the requested tolerance of 0.02 ppm is adequate for this potato seed piece use. Potato processing studies were also submitted to determine whether concentration of residues occur in potato chips, granules, and wet peels and trimmings from potatoes grown from treated potato seed pieces. Based on the submitted processing studies, concentration of the pesticide chemical residues of 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile in the processed foods is not expected to be greater than the tolerance of 0.02 ppm requested and prescribed in this **Federal Register** document for the pesticide chemical residue in the raw agricultural commodity, potatoes. Therefore, the tolerance of 0.02 ppm prescribed for potatoes will also cover the residues of fludioxonil up to 0.02 ppm resulting in potato processed products from this seed piece use.

D. International Residue Limits

There are currently no CODEX, Canadian, or Mexican listings for 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile residues, therefore there are no harmonization issues for this action.

E. Rotational Crop Restrictions

The submitted confined rotation studies provided adequate results to conclude that a 30-day plantback interval is sufficient for all crops.

IV. Conclusion

Therefore, the tolerance is established for 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile in or on potatoes at 0.02 ppm.

V. Objections and Hearing Requests

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

Any person may, by December 29, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300565] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may 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 any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

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

VIII. 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, the Agency has 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 this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: October 10, 1997.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.516 is added to read as follows:

§ 180.516 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile ; tolerances for residues.

(a) *General.* A tolerance is established for residues of the herbicide, 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile, in or on the following food commodity:

Commodity	Parts per million
Potatoes	0.02

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

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

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97–28644 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300567; FRL–5750–8]

RIN 2070–AB78

Avermectin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for the combined residues of avermectin in or on basil. This action is in response to an emergency exemption request under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act permitting use of the pesticide on basil. This regulation establishes a maximum permissible level for residues of avermectin B_1 and its delta-8,9-isomer in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on September 30, 1998.

DATES: This regulation is effective October 29, 1997. Objections and requests for hearings must be received by EPA on or before December 29, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300567], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300567], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300567]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Daniel Rosenblatt, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone

number, and e-mail address: CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9375, e-mail: rosenblatt.dan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for the combined residues of the miticide avermectin B_1 and its delta-8,9-isomer, in or on basil at 0.05 parts per million (ppm). This tolerance will expire and is revoked on September 30, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) 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. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

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

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Avermectin on Basil and FFDCA Tolerances

Basil is a leafy herb that is produced for the fresh and dried markets. California submitted information to EPA that indicates that the leafminer (*Liriomyza sp*.) poses a significant threat to the profitable production of basil. Basil affected by leafminer can be rendered unmarketable because they feed on the plant's leaves and may also make them susceptible to disease. California determined that the conditions for a leafminer outbreak were favorable and invoked its authorities under 40 CFR 166.40 to declare a crisis situation. After considering the implications connected with the use of this pesticide under a crisis situation, EPA is establishing this tolerance for the use of avermectin on basil for control of leafminer in California.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of avermectin in or on basil. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on September 30, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on basil after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether avermectin meets EPA's registration requirements for use on basil or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of avermectin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than California to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for avermectin, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

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

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the

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

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

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

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

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

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

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

B. Aggregate Exposure

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

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (non-nursing infants <1 year old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of avermectin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of avermectin B_1 and its delta-8,9-isomer on basil at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by avermectin B_1 and its delta-8,9-isomer are discussed below.

1. *Acute toxicity.* For acute dietary risk assessment, EPA recommends use of a NOEL of 0.06 mg/kg/day from the developmental toxicity study in mice. The effects observed at the Lowest Effect Level (LEL) of 0.10 mg/kg/day involved cleft palate. For the purposes of this action, an MOE of 300 is considered necessary to be adequately protective for dietary (food only) exposure.

2. *Short - and intermediate - term toxicity.* For short- and intermediate-term MOE calculations, EPA recommends use of the developmental NOEL of 0.2 mg/kg/day from the oral developmental toxicity study in mice. At the LEL of 0.4 mg/kg/day, there was an increased incidence of cleft palate.

3. *Chronic toxicity.* EPA has established the RfD for avermectin at 0.0004 milligrams/kilogram/day (mg/kg/day). This RfD is based on a 2-generation rat reproductive toxicity study with a NOEL of 0.12 mg/kg/day and an uncertainty factor of 300. In addition to the uncertainty factor of 100 for inter- and intra-species variations, a Modifying Factor (MF) of 3 was used. The MF was used because of the severity of the effects (pup deaths) and the steep dose-response curve. At the LEL of 0.40 mg/kg/day, there was decreased pup body weight and viability during lactation as well as an increased incidence of retinal rosettes in F_{2b} weanlings.

4. *Carcinogenicity.* Avermectin has been classified by EPA as a Group E (''evidence of non-carcinogenicity for humans'') chemical. Therefore, a cancer risk assessment is not needed.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.449) for the combined residues of avermectin B_1 and its delta-8,9-isomer, in or on a variety of raw agricultural commodities, ranging from 0.005 ppm in cottonseed to 0.05 ppm in celery. Risk assessments were conducted by EPA to assess dietary exposures and risks from avermectin B_1 and its delta-8,9-isomer as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. In a separate and earlier registration action, the Agency required the development of more highly refined residue and exposure information to support the pesticide. In response, in October 1996, EPA received a Monte Carlo analysis for all uses of avermectin at that time. Since that analysis was generated before this section 18 action was submitted, EPA does not have information on acute exposures for basil. Further, the Agency is not currently updating or revising Monte Carlo analysis developed by registrants. Therefore, the acute exposure assessment for this action does not include data associated with the consumption of basil. In spite of the above exception, data available to EPA suggest a high-end exposure estimate of 0.000078 mg/kg/day for uses of avermectin. This results in a dietary (food only) MOE of 769 for females 13 years and older, the population subgroup of concern. In EPA's judgement, the addition of basil to acute exposure and risk calculations would not produce acute risks (food only) that exceed a level of concern.

ii. *Chronic exposure and risk.* As part of this action, EPA reviewed information that establishes chronic dietary exposure estimates for avermectin. This chronic dietary (food only) risk assessment used anticipated residue refinement for commodities with tolerances for avermectin, but did not incorporate any refinement for percent of crop treated (default of 100% was assumed). Therefore, the resulting exposure estimates should be viewed as partially refined; further refinement for percent of crop treated would result in lower dietary exposure estimates. The existing avermectin tolerances plus the proposed tolerances associated with the section 18 use of the chemical result in an Anticipated Residue Contribution that ranges from 5% of the RfD for the U.S. Population to 12% of the RfD for non-nursing infants less than a year old.

2. *From drinking water.* In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residues in food and all other non-occupational exposures. The primary non-food sources of exposure the Agency looks at include drinking water (whether from ground or surface water), and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Based on data available to EPA, avermectin is moderately persistent and not very mobile. It is not likely to be found extensively in ground water, but could be found in surface water. Under anaerobic conditions in the absence of light, avermectin does not degrade. No Health Advisories or Maximum Contaminant Levels for avermectin in drinking water have been established.

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause avermectin to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with avermectin in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Avermectin is currently registered for use on the following residential non-food sites: ornamental crops (herbaceous and woody), turf, households (indoor and outdoor), and

non-food areas of food handling establishments.

i. *Chronic exposure and risk.* Given the uses for avermectin, a chronic non-dietary exposure scenario would not be expected.

ii. *Short- and intermediate-term exposure and risk.* EPA assessed indoor residential risk characterization data to evaluate short- and intermediate-term exposure and risk. Based on the assumptions for exposure total oral, dermal, and respiratory estimated absorbed daily exposure could total .00023 mg/kg/day. This correlates to a total short- and intermediate-term indoor residential MOE of 870 for the U.S. population.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether avermectin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, avermectin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that avermectin has a common mechanism of toxicity with other substances.

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

1. *Acute risk.* The population subgroup of concern is females 13 years and older. The MOE for this subgroup from food exposures is 769. Despite the potential for exposures to avermectin from drinking water, EPA does not expect the acute aggregate risk to exceed levels of concern.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to avermectin from food will utilize 5% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants <1 year old ''discussed below''. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Based on the nature of the residential uses, a chronic scenario would not be expected. Despite the potential for exposure to avermectin in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to avermectin residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

As referenced above, for short- and intermediate-term exposures, EPA assessed information that addresses this topic in relation to human exposure associated with residential use through oral, dermal, and respiratory exposures. The anticipated MOE was 803 for the U.S. population. EPA considers this MOE to be adequately protective.

D. Aggregate Cancer Risk for U.S. Population

Avermectin has been classified as a Group E ''evidence of non-carcinogenicity for humans'' chemical by EPA. Therefore, a cancer risk assessment is not needed.

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

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of avermectin, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard 100-fold safety factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold safety factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard safety factor.

ii. *Developmental toxicity studies.* In the mouse developmental toxicity analysis, the maternal (systemic) NOEL was 0.05 mg/kg/day based on mortality

at the Lowest-observed effect level (LOEL) of 0.075 mg/kg/day. The developmental (fetal) NOEL was 0.2 mg/kg/day based on cleft palate at the LOEL of 0.4 mg/kg/day. The Delta-8,9-Isomer was also tested for developmental toxicity in the mouse. In the mouse developmental study for the isomer, the maternal (systemic) NOEL was 0.10 mg/kg/day, based on mortality at the LOEL of 0.20 mg/kg/day. The developmental (fetal) NOEL was 0.06 mg/kg/day, based on cleft palate at the LOEL of 0.10 mg/kg/day.

In the rat developmental study, the maternal (systemic) NOEL was greater than or equal to 1.6 mg/kg/day. The developmental (fetal) NOEL was 1.6 mg/kg/day. In the rabbit developmental study, the maternal (systemic) NOEL was 1.0 mg/kg/day, based on decreased body weight and decreased food and water consumption at the LOEL of 2.0 mg/kg/day. The developmental (fetal) NOEL was 1.0 mg/kg/day, based on clubbed foot, and delayed ossification of sternebrae, metacarpals, and phalanges at the LOEL of 2.0 mg/kg/day.

iii. *Reproductive toxicity study.* In the 2-generation rat reproductive toxicity study, the maternal (systemic) NOEL was 0.4 mg/kg/day highest dose tested (HDT). The developmental (pup) NOEL was 1.2 mg/kg/day, based on decreased viability indices, decreased pup body weight, and retinal fold in weanlings at the LOEL of 0.4 mg/kg/day. The reproductive (pup) NOEL was 0.4 mg/kg/day (HDT).

iv. *Pre- and post-natal sensitivity.* Both the delta-8,9-isomer of avermectin and avermectin per se exhibit cleft palate in CF1 mouse developmental studies. The NOEL for cleft plate for the delta-8,9-isomer is 0.06 mg/kg/day with the LOEL at 0.10 mg/kg/day. For avermectin per se, the NOEL for cleft palate is 0.2 mg/kg/day with the LOEL at 0.4 mg/kg/day. Therefore, pre-natal sensitivity to the regulated residue for avermectin is demonstrated when considering these developmental findings in the CF1 Mouse. An additional 3-fold uncertainty factor has been added to account for these developmental findings.

An acute dietary risk assessment is needed based on the results of the developmental study in mice with the delta-8,9-isomer. This risk assessment will evaluate acute dietary risk to females 13 years and older. For the purpose of the section 18, an MOE of 300 is considered necessary to be adequately protective for dietary (food only) exposure.

To evaluate the pre-natal risks, the acute dietary MOE calculations for females 13 years and older has been conducted using the lowest NOEL for all developmental studies for cleft palate (0.06 mg/kg/day).

The results of the rat reproduction study required that a Modifying Factor of 3 be added to the usual uncertainty factor of 100 used for the RfD. EPA used this Modifying Factor in developing this analysis. Typically, the Agency uses a modifying factor of 10 when no study is available and uses a modifying factor of 3 when a study exists which shows effects in the fetus before they appear in the parent.

2. *Acute risk.* The acute dietary MOE for females 13 years and older (accounts for both maternal and fetal exposure) is 769. This MOE calculation is based on the developmental NOEL in mice of 0.06 mg/kg/day. This estimate is based on Monte Carlo modeling incorporating anticipated residue and percent of crop treated refinement. In EPA's judgement, the large acute dietary MOE provides assurance that there is a reasonable certainty of no harm for females 13 years and older and the pre-natal development of infants.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to avermectin from food will utilize 12% of the RfD for non-nursing infants less than a year old and 8% of the RfD for children 1–6 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Based on the nature of the residential uses, a chronic scenario would not be expected. Despite the potential for exposure to avermectin in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to avermectin residues.

4. *Short- or intermediate-term risk.* The anticipated MOEs for short- and intermediate-term exposures for infants and children do not pose a level of concern. The calculated MOEs range from 716 for non-nursing infants to 787 for children 7–12 years old.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants and animals is adequately understood. As cited at 40 CFR 180.449, the regulable residues are avermectin B_1 and its delta-8,9-isomer.

B. Analytical Enforcement Methodology

Merck Method 10001, rev. 2, a high pressure liquid chromatography (HPLC)-fluorescence method, may be used to enforce the tolerance expression. This method has been submitted to FDA for publication in PAM Volume II.

C. Magnitude of Residues

Residues of avermectin B_1 and its delta 8,9-isomer are not expected to exceed 0.05 ppm on basil as a result of this section 18 use. Secondary residues are not expected in animal commodities as no feed items are associated with this use.

D. International Residue Limits

No Codex MRLs have been established for avermectin residues on basil.

VI. Conclusion

Therefore, the tolerance is established for combined residues of avermectin B_1 and its delta-8,9-isomer in basil at 0.05 ppm.

VII. Objections and Hearing Requests

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

Any person may, by December 29, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon

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

VIII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300567] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may 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 any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (1)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601*et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance acations published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. 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, the Agency has 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 this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: October 22, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

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

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

2. Section 180.449 is amended in paragraph (b) by alphabetically adding a commodity to the table to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
Basil	0.05 ppm	9/30/98
* * *	* * * *	

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[FR Doc. 97–28641 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300480A; FRL–5751–5]

Aminoethoxyvinylglycine; Pesticide Tolerances; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: In the **Federal Register** of May 7, 1997 (62 FR 24835) (FRL–5713–5), EPA established time-limited tolerances for residues of the plant regulator aminoethoxyvinylglycine in or on the food commodities apples and pears. The reference dose (RfD) was incorrectly stated. This document corrects the RfD. On page 24836, column three, third full paragraph, line 11, the RfD was incorrectly stated as ''0.0002''; the correct RfD is ''0.002.''

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 5-W57, CS #1, 2800 Crystal Drive, Arlington, VA 22202, 703–308–8263, e-mail: greenway.denise@epamail.epa.gov.

List of Subjects in Part 180

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

Dated: October 15, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–28651 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300570; FRL–5752–4]

RIN 2070–AB78

Tebuconazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of tebuconazole in or on sunflower seed and sunflower oil. This action is in response to an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on sunflowers. This regulation establishes a maximum permissible level for residues of tebuconazole in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on September 30, 1998.

DATES: This regulation is effective October 29, 1997. Objections and requests for hearings must be received by EPA on or before December 29, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300570], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300570], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300570]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Daniel Rosenblatt, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9375, e-mail: rosenblatt.dan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the fungicide tebuconazole, in or on sunflower seed and sunflower oil at 0.2 and 0.4 parts per million (ppm). These tolerances will expire and are revoked on September 30, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) 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. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL-5572-9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a

reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Tebuconazole on Sunflower Seeds and Sunflower Oil and FFDCA Tolerances

Agriculture officials in states where the sunflower is produced commercially have identified sunflower rust, caused by the pathogen *Puccinia helianthi*, as a severe threat to crop yields. Information on the anticipated yield loss if tebuconazole were not used indicates that losses would be quite significant. One state suggested that losses could be as high as 80% for specific locations. Earlier this year, the States of Kansas, Colorado, and North Dakota determined that conditions may be favorable for a sunflower rust outbreak. Consequently, these states invoked their authorities pursuant to 40 CFR 166.40 to declare a crisis situation. EPA considered the health and safety implications of these actions and permitted the crisis actions to go forward. Therefore, EPA has authorized under FIFRA section 18 the use of tebuconazole on sunflower seed and sunflower oil for control of rust (*Puccinia helianthi*) in Colorado, North Dakota, and Kansas.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of tebuconazole in or on sunflower seed and sunflower oil. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on emergency exemptions in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on September 30, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on sunflower seed and sunflower oil after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions EPA has not made any decisions about whether tebuconazole meets EPA's registration requirements for use on sunflower or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of tebuconazole by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Colorado, North Dakota and Kansas to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for tebuconazole, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

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

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

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

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

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

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all 3 sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

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

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

B. Aggregate Exposure

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

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

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of tebuconazole and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of tebuconazole on sunflower seed and sunflower oil at 0.2 and 0.4 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

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

1. *Acute toxicity.* For acute dietary risk assessment, OPP recommended use of the developmental NOEL of 10 mg/kg/day from the developmental toxicity study in mice. Effects observed at the lowest observed effect level (LOEL) of 30 mg/kg/day are an increased number of runts and fetuses with malformations of the skull, brain, and spinal cord. The

population subgroup of concern for this acute dietary risk assessment is females (13+ years old).

2. *Short - and intermediate - term toxicity.* [OPP has determined that short- and intermediate-term inhalation risk assessments and short-term dermal risk assessments are appropriate for non-occupational, non-dietary routes of exposure. OPP recommends that the NOEL of 1,000 mg/kg/day, taken from the dermal developmental toxicity study in mice, be used for the short-term dermal MOE calculations. This NOEL was the highest dose tested in the study. For short- and intermediate-term inhalation MOE calculations, OPP recommends using the NOEL of 0.0106 mg/L/day (1.75 mg/kg/day), based on liver toxicity and piloerection at the LOEL of 0.1558 mg/L/day (25.7 mg/kg/day) in the 3-week inhalation rat toxicity study.

3. *Chronic toxicity.* EPA has established the RfD for tebuconazole at 0.03 milligrams/kilogram/day (mg/kg/day). This RfD is based on the NOEL of 2.96 mg/kg/day from a 1-year dog feeding study. Adrenal effects (fatty change and hypertrophy) were observed at the LOEL of 4.39 mg/kg/day. An uncertainty factor (UF) of 100 was applied to account for both interspecies and intra species variability.

4. *Carcinogenicity.* OPP's Cancer Peer Review Committee (CPRC) has determined that tebuconazole is a Group C (possible human carcinogen) chemical, based on mouse liver tumors in both sexes (adenomas and carcinomas in males and carcinomas in females) at 280 mg/kg/day, the highest dose tested. OPP recommends using the RfD approach for quantification of human risk. Therefore, the RfD is deemed protective of all chronic human health effects, including cancer.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.474) for parent tebuconazole (*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol), in or on a variety of raw agricultural commodities The established levels range from 0.05 ppm in barley, oat and wheat grain to 4.0 ppm in cherries and peanut hulls. Risk assessments were conducted by EPA to assess dietary exposures and risks from tebuconazole as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. For the purpose of assessing potential acute dietary risks, tolerance level residues and 100% of crop treated to estimate the TMRC for major identifiable subgroups of consumers. An MOE of 889 was calculated for females 13+ years, the populations subgroup of concern. The high end exposure value was 0.01125 mg/kg/day.

ii. *Chronic exposure and risk.* For the purpose of assessing potential chronic dietary exposure from tebuconazole, EPA assumed tolerance level residues and 100% of crop treated to estimate the TMRC for major identifiable subgroups of consumers. The tolerances for tebuconazole result in a TMRC that is equivalent to the following range of RfD percentages: U.S. populations (48 states) 6% to non-nursing infants (<1 year old) 32%.

2. *From drinking water.* There are no groundwater data for tebuconazole. In addition, no maximum concentration levels or Health Advisories have been established for the pesticide.

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause tebuconazole to exceed the RfD even with the inclusion of the tolerances being granted in this document. The Agency has therefore concluded that the potential exposures associated with tebuconazole in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Tebuconazole is not currently registered for indoor or outdoor residential uses. Thus, no non-dietary, non-occupational exposure is expected.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether tebuconazole has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides

for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebuconazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tebuconazole has a common mechanism of toxicity with other substances.

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

1. *Acute risk.* EPA has concluded that for the population subgroup of concern, females 13+ years), acute aggregate exposure to tebuconazole from existing and proposed food uses will result in an MOE of 889. Despite the potential for exposure to tebuconazole in drinking water, EPA does not expect the aggregate exposure to exceed the level of concern for acute dietary exposure. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebuconazole residues.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to tebuconazole from food will utilize 6% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants less than 1 year old (discussed below). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to tebuconazole in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebuconazole residues.

D. Aggregate Cancer Risk for U.S. Population

Tebuconazole has been classified as a Group C (possible human carcinogen) chemical by EPA, with the recommendation that the RfD approach be used to assess cancer risk. A quantitative cancer risk was not performed because human health risk concerns due to long-term exposure to tebuconazole residues are adequately addressed by the aggregate chronic exposure analysis using the RfD.

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

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of tebuconazole, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard 100-fold safety factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard safety factor.

ii. *Developmental toxicity studies.* From the rat developmental study, the maternal NOEL was 30 mg/kg/day, based on increased liver weight at the LOEL of 60 mg/kg/day. The developmental NOEL was 30 mg/kg/day, based on delayed ossification and supernumerary ribs at the developmental LOEL of 60 mg/kg/day. In the rabbit developmental study, the maternal NOEL was 30 mg/kg/day, based on decreased weight gain and food consumption at the maternal LOEL of 100 mg/kg/day. The developmental NOEL was 30 mg/kg/day, based on increased resorptions due to post-implantation loss at the developmental LOEL of 100 mg/kg/day. The maternal NOEL in the mouse study was 10 mg/kg/day, with reduced hematocrit occurring at the maternal LOEL of 30 mg/kg/day in the oral development toxicity study. The developmental NOEL was 10 mg/kg/day, with effects at the LOEL of 30 mg/kg/day being an increased number of runts, and fetuses with malformations of the skull, brain and spinal cord.

iii. *Reproductive toxicity study.* In the 2-generation rat reproduction study, the parental NOEL was 15 mg/kg/day, based on decreased body weight and increased spleen weight at the LOEL of 50 mg/kg/day. The reproductive NOEL was 15 mg/kg/day, with decreased body weight of neonates being the effect at the LOEL of 50 mg/kg/day.

iv. *Pre- and post-natal sensitivity.* The pre- and post-natal toxicology data base for tebuconazole is complete with respect to current toxicological data requirements. The developmental toxicity studies in rats, rabbits, and mice had developmental findings occurring at the same dose levels (NOELs and LOELs) as maternal effects, indicating no extra pre-natal sensitivity.

The reproductive toxicity study in rats did not demonstrate any extra pre- or post-natal sensitivity to infants and children since the NOEL and LOEL of 15 and 50 mg/kg/day, respectively, were the same for both parental and pup toxicity. Additionally, the decreased body weight gain in parental animals was also observed in pups.

v. *Conclusion.* Based on the above, EPA concludes that reliable data support use of the standard 100-fold uncertainty factor and that an additional safety factor is not needed to protect infants and children.

2. *Acute risk.* The acute dietary (food only) MOE for females 13+ years (accounts for both maternal and fetal exposure) was calculated to be 889. This MOE calculation was based on the developmental NOEL in mice of 10 mg/kg/day. Maternal effects observed at the LOEL of 30 mg/kg/day included a reduced hematocrit. This assessment assumed 100% crop-treated with tolerance level residues on all treated crops consumed, resulting in a significant over-estimate of dietary exposure. No data were available for potential exposures of tebuconazole in drinking water. However, EPA does not expect that aggregate exposure (food plus water) would result in an unacceptable acute dietary MOE. EPA concludes that the large acute dietary MOE provides assurance that there is a reasonable certainty of no harm for both females 13+ years and the pre-natal development of infants.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to tebuconazole from food will utilize between 9% for children (7-12 years old) to 32% for non-nursing infants (less that 1 year old). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary

exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to tebuconazole in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebuconazole residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of tebuconazole residues in plants and animals is adequately understood. The residue of concern in plants is tebuconazole per se. In ruminants and poultry, the residue of concern is the parent compound and its 1-(4-chlorophenyl)-4,4-dimethyl-3-(1*H*-1,2,4-triazole-1-yl-methyl)-pentane-3,5-diol metabolite (HGW 2061).

B. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expressions. The gas chromatographic method entitled ''Gas Chromatographic Method for Determination of Residues of Tebuconazole in Crops, Processed Products, Soil and Water'' is adequate to enforce time-limited tolerances for tebuconazole per se residues in/on sunflower seed and oil to support compliance efforts. The gas chromatographic method entitled ''An Analytical Residue Method for the Determination of Tebuconazole and HWG 2061 Residues in Bovine and Poultry Tissues, Milk and Eggs'' is adequate to enforce the time-limited tolerances presently established for the combined residues of tebuconazole and HWG 2061 in animal commodities.

C. Magnitude of Residues

Residues of tebuconazole per se are not expected to exceed 0.2 ppm in sunflower seed as a result of this use. Sunflower hulls and forage do not require regulation as they are not considered livestock feed items.

D. International Residue Limits

There are no Canadian, Mexican, or Codex maximum residue limits for tebuconazole on sunflowers.

E. Rotational Crop Restrictions

Product labels for tebuconazole are to carry a plant back interval of 120 days after the last application for crops which are not on the label.

VI. Conclusion

Therefore, tolerances are established for residues of tebuconazole in sunflower seed and sunflower oil at 0.2 ppm and 0.4 ppm.

VII. Objections and Hearing Requests

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

Any person may, by December 29, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300570] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may 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 any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under FFDCA section 408(1)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the

Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (1)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. 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, the Agency has 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 this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: October 17, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

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

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

2. In § 180.474, paragraph (b)(1) is amended by alphabetically adding the following commodities to the table to read as follows:

§ 180.474 Tebuconazole; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* (1) * * *

Commodity	Parts per million	Expiration/Revocation Date
* * *	* *	* *
Sunflower oil	0.4	9/30/98
Sunflower seed	0.2	9/30/98
* * *	* *	* *

* * * * *

[FR Doc. 97–28656 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300555; FRL–5745–5]

RIN 2070–AB78

Lambda-cyhalothrin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of lambda-cyhalothrin and its epimer in or on barley grain, barley bran, barley hay and straw, canola seed, and sugarcane. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on barley, canola, and sugarcane in Louisiana and Montana. This regulation establishes maximum permissible levels for residues of lambda-cyhalothrin in the above-mentioned food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective October 29, 1997. Objections and requests for hearings must be received by EPA on or before December 29, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, OPP–300555, must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300555], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number OPP–300355. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Virginia Dietrich, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9359, e-mail: dietrich.virginia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for combined residues of the insecticide lambda-cyhalothrin and its epimer, in or on barley grain, barley bran, barley hay and straw, canola seed and sugarcane at 0.05, 0.2, 2.0, 0.10, and 0.03 part per million (ppm), respectively. These tolerances will expire and are revoked on August 30, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) 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. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

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

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Lambda-cyhalothrin on Barley, Canola, and Sugarcane and FFDCA Tolerances

Cutworms are serious pests of small grains in Montana. Infestations can result in severe damage from the voracious feeding by the larvae. Since the cancellation of endrin, barley production has remained unprotected with an effective registered chemical. Unusually high levels of moths caught during Montana fall cutworm surveys demonstrated the potential for infestation at levels that could result in significant economic losses. This spring, levels of cutworm infestation exceeded the threshold for treatment and the Montana Department of Agriculture declared a crisis exemption on May 16, 1997.

Feeding on canola by Diamondback moth larvae is expected to result in economically significant losses of 40% in canola grown in Montana unless adequately controlled. A rapid knock-down of the larvae is necessary to prevent significant yield loss which occurs within 2 or 3 days after the larvae begin feeding on the seed pod. The registered alternatives, endosulfan and methyl parathion, both take a week or longer to match the efficacy of lambda-cyhalothrin. Another alternative, ethyl parathion, while effective in controlling this pest, is unavailable to most canola growers in Montana because there are few commercial applicators with the required closed loading system.

Sugarcane yield loss from the sugarcane borer is estimated at 60% unless adequately controlled. Registered alternatives either are more toxic to aquatic environments or cause secondary outbreaks of aphids due to toxicity to non-target arthropods (parasites and predators). After having reviewed these submissions, EPA concurs that emergency conditions exist for these states. EPA has authorized under FIFRA section 18 the use of lambda-cyhalothrin on barley, canola, and sugarcane for control of cutworm in barley, Diamondback moth in canola, and Sugarcane borer in sugarcane in Montana and Louisiana.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of lambda-cyhalothrin in or on barley, canola, and sugarcane. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on August 30, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on barley, canola, and sugarcane after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether lambda-cyhalothrin meets EPA's registration requirements for use on barley, canola, and sugarcane or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for

registration of lambda-cyhalothrin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Montana and Louisiana to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for lambda-cyhalothrin, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

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

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

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

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

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

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

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

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

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In

evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (non-nursing infants less than 1 year old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of lambda-cyhalothrin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of lambda-cyhalothrin and its epimer on barley grain, barley bran, barley hay and straw, canola seed and sugarcane at 0.05, 0.2, 2, 0.10, and 0.03 ppm, respectively. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. *Acute toxicity*. EPA's Office of Pesticide Programs (OPP) is currently reassessing time-limited tolerances for residues of lambda-cyhalothrin in or on over a dozen commodities established for conditional registrations. These tolerances are due to expire November 15, 1997. On July 31, 1997, as part of this reassessment, the OPP's Hazard Identification Assessment Review Committee identified an acute toxicity endpoint and recommended use of the NOEL of 0.5 mg/kg/day for an acute dietary endpoint, based on gait abnormalities in dogs in a 1 year oral toxicity study. The following assessment for the tolerances in this document uses this recommended endpoint of concern as a basis to evaluate acute dietary risk to population subgroups.

2. *Short - and intermediate-term toxicity*. For short- and intermediate-term margin of exposure (MOE) calculations, EPA's Office of Pesticide Programs (OPP) selected use of the NOEL of 0.3 ug/l (0.05 milligrams/kilogram/day (mg/kg/day) from the 21-day inhalation toxicity study in rats. The LEL of 3.3 ug/l was based on decreased body weight gains and clinical signs of toxicity including paw flicking, tail erections, and tiptoe gait.

In the 21-day dermal toxicity study, the NOEL was >1000 mg/kg/day (limit dose) and therefore the Office of Pesticide Programs did not select an endpoint.

3. *Chronic toxicity*. EPA has established the RfD for lambda-cyhalothrin at 0.001 mg/kg/day. This RfD is based on a 1-year oral study in dogs with a NOEL of 0.1 mg/kg/day and an uncertainty factor (UF) of 100. The LEL of 0.5 mg/kg/day was based on clinical signs of neurotoxicity (convulsions, ataxia, muscle tremors) and a slight increase in liquid feces.

4. *Carcinogenicity*. Lambda-cyhalothrin has been classified by the Office of Pesticide Programs as a Group ''D'' chemical, ''not classifiable as to human carcinogenicity.''

B. Exposures and Risks

1. *From food and feed uses*. Tolerances have been established (40 CFR 180.438, 185.3765, and 186.3765) for the combined residues of lambda-cyhalothrin and its epimer, in or on a variety of raw agricultural commodities at levels ranging from 0.01 to 6.0 ppm. A food additive tolerance has been established under 40 CFR 185.1310 for residues on dried hops. Tolerances with the expiration date of November 15, 1997, have been established under 40 CFR 185.3765 for sunflower hulls, corn grain flour, and tomato pomace. Time-limited tolerances have been established for various animal products under 40 CFR 185.3765. Risk assessments were conducted by EPA to assess dietary exposures and risks from lambda-cyhalothrin as follows:

i. *Acute exposure and risk*. The registrant, Zeneca Ag Products, has submitted a ''Monte Carlo'' analysis assessing acute dietary risk for lambda-cyhalothrin to support extension of tolerances due to expire in November 1997. The results of the analysis are summarized below.

Table 1.—Acute Dietary Exposure and Risk Analysis Results

Population	Exposure (mg/kg/day) 99.9th percentile	MOE 99.9th percentile
U.S. Population	0.002108	237
Children 1 - 6 Years	0.003789	132
Children 7 - 12 Years	0.001893	264
Non-Nursing Infants	0.003281	152
Nursing Infants	0.000969	516
Women, 13+ Years	0.000831	601

The Monte Carlo analysis provided by the registrant has not undergone a thorough review in the Agency. However, given the emergency nature of the section 18 requests, the Agency will consider the results of the registrant's analysis to support the section 18 use of lambda-cyhalothrin on barley, canola, and sugarcane.

ii. *Chronic exposure and risk*. The existing lambda-cyhalothrin tolerances plus the proposed section 18 use resulted in an Anticipated Residue Contribution (ARC) that is equivalent to the following percentages of the RfD:

U.S Population—22%
Nursing Infants (<1 year old)—25%
Non-Nursing Infants (<1 year old)—71%
Children (1-6 years old)—50%
Children (7-12 years old)—33%
Hispanics—25%
Non-Hispanic Others—27%
Northeast Region—23%
Western Region—24%

The subgroups listed above are: (1) The U.S. population (48 states); (2) those for infants and children; and (3)

the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states). Further refinement using percent crop-treated data for all commodities would result in lower dietary exposure estimates.

2. *From drinking water.* Office of Pesticide Program studies indicate lambda-cyhalothrin is moderately persistent and mobile in surface water, but not ground water. There is no established Maximum Contaminant Level (MCL) for residues of lambda-cyhalothrin in drinking water. No health advisory levels for lambda-cyhalothrin in drinking water have been established. There is no entry for lambda-cyhalothrin in the ''Pesticides in Groundwater Database.''

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause lambda-cyhalothrin to exceed the RfD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with lambda-cyhalothrin in water, even at the higher levels the Agency is considering as a conservative upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

3. *From non-dietary exposure.* Lambda-cyhalothrin is currently registered for use on the following residential non-food sites: general pest control (crack/crevice/spot), termiticide, landscape, turf ornamentals, commercial ornamentals, golf course turf, and unoccupied agricultural premises.

The Agency lacks sufficient residential-related exposure data to complete a comprehensive residential risk assessment for many pesticides, including lambda-cyhalothrin. However, because: (1) Lambda-cyhalothrin has a low vapor pressure (2 x 10^{-10} torr); (2) no acute toxicity endpoints were identified by the Toxicity End-Point Selection Committee; (3) no short- or intermediate-term dermal toxicity endpoint was identified; (4) for occupationally exposed workers, high MOEs for inhalation exposure were calculated (ranging from 1,200 to 13,000); and (5) the low percentage of the RfD that is occupied for the general population by the pending and registered uses of this chemical; in the best scientific judgement of OPP, non-dietary, non-occupational uses of lambda-cyhalothrin should not pose a risk that exceeds OPP's level of concern.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanisms of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical-specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether lambda-cyhalothrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of this tolerance action, therefore, EPA has not assumed that lambda-cyhalothrin has a common mechanism of toxicity with other substances.

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

1. *Acute risk.* OPP has concluded that exposure from existing uses results in MOE estimates that are not likely to exceed the Agency's acceptable level (less than 100) for acute exposure. OPP also believes adding the proposed section 18 tolerances would still result in acceptable MOEs. Therefore, the Agency has concluded that these new temporary tolerances meet the reasonable certainty of no harm finding for acute risk. A discussion of the factors considered for this decision follows.

Emergency exemptions for three commodities, sugarcane, barley, and canola, were issued earlier this year. At that time, no acute exposure endpoint had been identified in the Agency's risk assessment for the emergency exemption. However, as a result of review of new data submitted to support the extension of temporary tolerances established for conditional registrations, an acute exposure endpoint for lambda-cyhalothrin was identified (see Unit IV.A.1. of this document). OPP therefore revisited the acute risk assessment for the emergency exemptions. A preliminary review of the new information using the Agency's best professional judgement supported the reasonable certainty of no harm finding. EPA's conclusions regarding this risk analysis may change following a more thorough review.

The basis for this risk assessment is an acute dietary exposure analysis using a ''Monte Carlo'' model which reflects the distribution of possible residues on the commodities considered in the analysis as well as percent of crop treated information. This model was applied to both food and feed commodities covered under existing temporary tolerances. Although this analysis did not consider the commodities treated under the emergency exemption, the Agency believes that these tolerances are adequately protective for the following two reasons. Direct consumption of lambda-cyhalothrin through these commodities (barley, sugarcane, and canola) is expected to be lower than tolerance levels since the commodities are consumed as the processed product and not as the raw agricultural commodity. Exposure from secondary residues, those consumed through eating products from animals fed these raw agricultural commodities, is nearly all accounted for because the current analysis includes wheat, corn, and rice as well as peanut oil, corn oil, cottonseed oil, and soybean oil. These items comprise a much greater portion of animals diets than do barley, canola, or sugarcane.

2. *Chronic risk*. Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to lambda-cyhalothrin from food will utilize 22 percent of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is Non-Nursing Infants (<1 year old) and is discussed later in this document under Determination of Safety for Infants and Children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to lambda-cyhalothrin in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to lambda-cyhalothrin residues.

3. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

D. Aggregate Cancer Risk for U.S. Population

Lambda-cyhalothrin has been classified by OPP as a Group ''D'' chemical, ''not classifiable as to human carcinogenicity.'' For this reason, this risk assessment was not considered appropriate and was not conducted.

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

1. *Safety factor for infants and children*— a. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of lambda-cyhalothrin, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional 10-fold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional 10-fold uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard safety factor.

b. *Developmental toxicity studies*—i. *Rats*. From the developmental toxicity study in rats, the maternal (systemic) NOEL was 10 mg/kg/day. The maternal LEL of 15 mg/kg/day was based on decreased body weight gain and decreased food consumption. The developmental (fetal) NOEL was >15 mg/kg/day at the highest dose tested (HDT).

2. *Rabbit*. From the developmental toxicity study in rabbits, the maternal (systemic) NOEL was 10 mg/kg/day. The maternal LEL of 30 mg/kg/day was based on decreased body weight gain. The developmental (fetal) NOEL was >30 mg/kg/day (HDT).

c. *Reproductive toxicity study—Rats*. From the 3-generation reproductive toxicity study in rats, both the parental (systemic) and reproductive (pup) NOELs were 1.5 mg/kg/day. Both the parental (systemic) and reproductive (pup) LELs were 5 mg/kg/day. They were based on a significant decrease in parental body weight (systemic) or a significant decrease in pup body weight (reproductive). The developmental NOEL was 5 mg/kg/day (HDT).

d. *Pre- and post-natal sensitivity*. The toxicology data base for lambda-cyhalothrin is complete with respect to current toxicological data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 3-generation reproductive toxicity study in rats.

e. *Conclusion*. Based on the above, EPA concludes that reliable data support the use of the standard 100-fold margin of uncertainty factor and that an additional uncertainty factor is not warranted at this time.

2. *Acute risk*. OPP has concluded that exposure from existing uses results in MOE estimates that are not likely to exceed the Agency's acceptable level (less than 100) for acute exposure. OPP also believes adding the proposed section 18 tolerances would still result in acceptable MOEs. Therefore, the Agency has concluded that these new temporary tolerances meet the reasonable certainty of no harm finding for acute risk. A discussion of the factors considered for this decision can be found in Unit IV.C.1. of this preamble.

3. *Chronic risk*. Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to lambda-cyhalothrin from food will utilize from 25% for nursing infants less than 1 year old, up to 71% for non-nursing infants less than 1 year old of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to lambda-cyhalothrin in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and

children from aggregate exposure to lambda-cyhalothrin residues.

V. Other Considerations

A. Metabolism in Plants and Animals

OPP has determined that the nature of the residue in plants and animals is adequately understood based on metabolism studies conducted on cotton, cabbage, soybeans, and wheat. The residue of concern is lambda-cyhalothrin and its epimer.

B. Analytical Enforcement Methodology

Adequate methods are available for the enforcement of the current tolerance expression. The analytical method (GC/ECD) for determination of lambda-cyhalothrin is ICI Method 81 which has been validated by the Agency and was found to be adequate for regulatory purposes.

The petitioner has determined recoveries of lambda-cyhalothrin and its metabolites PP890, and 3-PBAcid under FDA's multi-residue protocols.

C. Magnitude of Residues

Time-limited tolerances for combined residues of lambda-cyhalothrin and its epimer should be established as follows to support this section 18 exemption:

Barley, grain—0.05 ppm
Barley, bran—0.2 ppm
Barley, straw—2 ppm
Barley, hay—2 ppm
Canola seed—0.10 ppm
Sugarcane—0.03 ppm

Barley grain, straw, and hay are livestock feed items. The dietary burden resulting from potential lambda-cyhalothrin residues in/on barley feedstuffs is comparable to that resulting from other livestock feedstuffs which have lambda-cyhalothrin tolerances (such as corn forage at 1.0 ppm and corn grain at 0.05 ppm). Thus, secondary residues in animal commodities are not expected to exceed existing tolerances as a result of this section 18 use.

D. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits (MRLs) for residues of lambda-cyhalothrin in/on barley. Therefore, international harmonization is not an issue for this section 18 use.

E. Rotational Crop Restrictions

Studies submitted in support of lambda-cyhalothrin registration showed that significant residues (<0.01 ppm) will not be present in crops rotated 30 days after application of parent lambda-cyhalothrin. No additional rotational crop data are needed to support current registered application rates.

VI. Conclusion

Therefore, the tolerance is established for combined residues of lambda-cyhalothrin and its epimer in barley grain, barley bran, barley hay and straw, canola seed and sugarcane at 0.05, 0.2, 2, 0.10, and 0.03 ppm, respectively.

VII. Objections and Hearing Requests

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

Any person may, by December 29, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number OPP–300555 (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may 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 any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under FFDCA section 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. 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, the Agency has 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 this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: October 21, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.438, by adding paragraph (b) to read as follows:

§ 180.438 Lambda-cyhalothrin tolerance for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for combined residues of the insecticide lambda-cyhalothrin (a 1:1 mixture of (S)-α-cyano-3-phenoxybenzyl-(Z)-(1R,3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (R)-α-cyano-3-phenoxybenzyl-(Z)-(1S,3S)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and its epimer a 1:1 mixture of (S)-α-cyano-3-phenoxybenzyl-(Z)-(1S,3S)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclo-propanecarboxylate and (R)-α-cyano-3-phenoxybenzyl (Z)-(1R,3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclo-propanecarboxylate in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/Revocation Date
barley bran	0.2	8/30/98
barley grain	0.05	8/30/98
barley hay	2	8/30/98
barley straw	2	8/30/98
canola seed	0.1	8/30/98
sugarcane	0.03	8/30/98

* * * * *

[FR Doc. 97–28655 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300564; FRL–5749–2]

RIN 2070–AB78

Ferric Phosphate; Establishment of an Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of ferric phosphate, when used as a molluscicide in or on all food commodities. W. Neudorff GmbH KG submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act (FQPA) of 1996 requesting the exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of this molluscicide in or on all food commodities.

DATES: This regulation is effective on October 29, 1997. Objections and requests for hearings must be received by December 29, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300564], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300564], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental

Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300564]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Sheryl K. Reilly, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Office location, telephone number, and e-mail address: CS1 Rm. 5–W31, 2800 Crystal Drive, Arlington, VA, 703–308–8265, e-mail: reilly.sheryl@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: W. Neudorff GmbH KG, c/o Walter G. Telarek, PC, 1008 Riva Ridge Drive, Great Falls, VA, has requested in pesticide petition PP 7F4804 the establishment of an exemption from the requirement of a tolerance for residues of the molluscicide iron (ferric) phosphate. A notice of filing (FRL–5721–6) was published in the **Federal Register** (62 FR 32331–32336) on June 13, 1997, and the notice announced that the comment period would end on July 13, 1997; no comments were received.

This exemption from the requirement of a tolerance will permit the marketing of raw agricultural commodities when treated in accordance with EPA Reg No. 67702–3, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The data submitted in the petition and all other relevant material have been evaluated. The following is a summary of EPA's findings regarding this petition.

I. Product Identity

NEU 1165M Slug and Snail Bait (EPA file symbol No. 067702–G) is the first pesticide product containing the active ingredient ferric phosphate ($FePO_4$, CAS# 11045–86–0). The product contains the active ingredient at a concentration of 1% incorporated into a solid matrix, which is odorless, and has a white-to-buff color.

II. Risk Assessment and Statutory Findings

New section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(c)(2)(B) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue***.'' EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the scientific data and other relevant information in support of this action and considered its validity, completeness, reliability, and relationship to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

A battery of acute toxicity studies place NEU 1165M Slug and Snail Bait in the following Toxicity Categories: Acute Oral (Toxicity Category IV); Acute Dermal (Toxicity Category IV; Primary Eye Irritation (Toxicity Category III); and Primary Dermal Irritation (Toxicity Category IV). (MRIDs 440427–04,–05, –06, and –07)

Data waivers were requested for acute inhalation toxicity, dermal sensitization, genotoxicity, reproductive and developmental toxicity, subchronic (90–day) oral toxicity, and chronic toxicity. The waivers were accepted based on the long history of use of iron and iron salts by humans without any indication of deleterious effects, and on the following:

The toxicity of ferric phosphate is low; ferric phosphate occurs naturally as a mineral, and is added to food, such as bread, for nutritional fortification. Iron is an essential nutrient for humans and all other vertebrates; the average human diet contains 10–15 mg of iron a day. Ferric phosphate is also sometimes used as a fertilizer. In addition, iron is found in abundance in nature; the low water-solubility of ferric phosphate limits its absorption across the intestinal epithelium.

IV. Residue Chemistry

A waiver was requested and granted for magnitude of the residue anticipated at the time of harvest and method used to determine the residue data requirements based on ferric phosphate's (1) low toxicity, (2) natural occurrence, (3) abundance in the environment, (4) widespread use as human nutrient and dietary supplements and in infant formula, (5) status at FDA as ''generally recognized as safe'' (GRAS), and (6) data available in the open literature.

V. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures. The primary non-food sources of exposure the Agency considers include drinking water or groundwater, and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Dietary exposure.* Dietary exposure of ferric phosphate via food or water exists due to its use as a nutritional supplement and its ubiquitous presence in nature. Residues from use of the biochemical pesticide, ferric phosphate, will not significantly add to the current dietary exposures.

2. *Non-dietary, non-occupational exposure.* Increased non-dietary exposure of ferric phosphate via non-commercial greenhouse, home lawn and garden or ornamental use will be minimal. Exposure by the inhalation route would be non-existent because

ferric phosphate is not volatile and the formulation of the product is a solid matrix of non-respirable size. In summary, the potential aggregate exposure, derived from non-dietary and non-occupational exposure should be minimal.

VI. Cumulative Effects

Ferric phosphate has a very low toxicity to humans. Because of its low toxicity, low rate of application, and use patterns, the Agency believes that there is no reason to expect any cumulative effects from ferric phosphate and other substances.

VII. Endocrine Disruptors

The Agency has no information to suggest that ferric phosphate has any effect on the immune and endocrine systems. The Agency is not requiring information on the endocrine effects of this biochemical pesticide at this time; Congress has allowed 3 years after August 3, 1996, for the Agency to implement a screening program with respect to endocrine effects. Nevertheless, the above discussion on exposure from all sources combined with the low toxicity of ferric phosphate would indicate such testing would not be necessary.

VIII. Safety Determination for U.S. Population, Infants and Children

Based on the information discussed above, EPA concludes that there is reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of ferric phosphate. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed above, the toxicity of ferric phosphate to mammals is very low and under reasonably foreseeable circumstances it does not pose a risk.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database, unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty (safety) factors. In this instance, the Agency believes there is reliable data to support the conclusion that ferric phosphate is practically non-toxic to mammals, including infants and children, and, thus, there are no threshold effects, and EPA has not used a margin of exposure (safety) approach to assess the safety of ferric phosphate. As a result, the provision requiring an additional margin of exposure (safety) does not apply.

IX. Other Considerations

1. *Analytical method.* The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation; therefore, the Agency has concluded that an analytical method is not required for enforcement purposes for ferric phosphate residues.

2. *Codex maximum residue level.* There are no CODEX tolerances nor international tolerance exemptions for ferric phosphate at this time.

X. Conclusion

Based on the information discussed above, EPA establishes an exemption from the requirement of a tolerance pursuant to FFDCA section 408(j)(3) for ferric phosphate.

This exemption from the requirement of a tolerance will be revoked if any experience with or scientific data on this pesticide indicate that the tolerance is not safe.

XI. Objections and Hearing Requests

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

Any person adversely affected by this regulation may, on or before December 29, 1997, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

XII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300564] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may 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 any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which

will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

XIII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629), February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

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

XIV. 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, the Agency has 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 is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: October 21, 1997.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1191 is added to subpart D to read as follows:

§ 180.1191 Ferric phosphate; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the biochemical pesticide, ferric phosphate ($FePO_4$, CAS No. 11045–86–0) in or on all food commodities.

[FR Doc. 97–28657 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5914–3]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Bowers Landfill Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Bowers Landfill Superfund Site in Ohio from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA and the State of Ohio, because it has been determined that Responsible Parties have implemented all appropriate response actions required. Moreover, EPA and the State of Ohio have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: October 29, 1997.

FOR FURTHER INFORMATION CONTACT: David Wilson (312) 886–1476 (SR–6J), Remedial Project Manager or Gladys Beard at (312) 886–7253, Associate Remedial Project Manager, Superfund Division, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: Pickaway County Public Library, 165 E. Main Street, Circleville, OH 43113. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The contact for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Bowers Landfill Superfund Site located in Pickaway County, Ohio. A Notice of Intent to Delete for this site was published September 10, 1997 (62 FR 47619). The closing date for comments on the Notice of Intent to Delete was October 9, 1997. EPA received no comments and therefore no Responsiveness Summary was prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous

substances, Hazardous Waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 17, 1997.

David Ullrich,

Acting Regional Administrator, U.S. EPA, Region V.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Site ''Bowers Landfill, Circleville County, Ohio.''

[FR Doc. 97–28552 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5914–4]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Northern Engraving Corporation Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Northern Engraving Corporation Superfund Site in Wisconsin from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA and the State of Wisconsin, because it has been determined that Responsible Parties have implemented all appropriate response actions required. Moreover, EPA and the State of Wisconsin have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: October 29, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Whippo (312) 886–1476 (SR–6J), Remedial Project Manager or Gladys Beard at (312) 886–7253, Associate Remedial Project Manager, Superfund Division, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: Sparta Free Library, W. Main & Court Sts., Sparta, WI 54656. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The contact for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Northern Engraving Corporation Superfund Site located in Sparta, Wisconsin. A Notice of Intent to Delete for this site was published September 11, 1997 (62 FR 47784). The closing date for comments on the Notice of Intent to Delete was October 10, 1997. EPA received no comments and therefore no Responsiveness Summary was prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous Waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: October 17, 1997.

David Ullrich,

Acting Regional Administrator, U.S. EPA, Region V.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Site ''Northern Engraving Co., Sparta, Wisconsin.''

[FR Doc. 97–28551 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 489

[BPD–748–F]

RIN 0938–AG03

Medicare Program; Changes in Provider Agreement Regulations Related to Federal Employees Health Benefits

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule makes two changes to Medicare's provider agreement regulations concerning payment for inpatient hospital services furnished to retired enrollees of fee-for-service Federal Employees Health Benefits (FEHB) plans who do not have Medicare Part A coverage. The first change specifies that payment for inpatient hospital services furnished to retired Federal workers age 65 or older who are enrolled in a fee-for-service FEHB plan but are not covered under Medicare Part A is limited to a payment amount that approximates the Medicare diagnosis-related group payment rates established under Medicare's inpatient hospital prospective payment system.

The second change specifies that HCFA will consider termination or nonrenewal of a hospital's provider agreement with Medicare if a hospital knowingly and willfully fails to accept, on a repeated basis, the Medicare rate as payment in full for inpatient hospital services provided to a retired Federal worker who is enrolled in a fee-for-service FEHB plan and who does not have Medicare Part A coverage.

This final rule implements section 7002(f) of the Omnibus Budget Reconciliation Act of 1990.

EFFECTIVE DATE: These regulations are effective on November 28, 1997.

ADDRESSES: Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 37194, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Deposit Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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FOR FURTHER INFORMATION CONTACT: David Walczak, (410) 786–4475.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Personnel Management (OPM) administers the Federal Employees Health Benefits (FEHB) program. This program provides health insurance coverage to current Federal employees, retired Federal workers, and their eligible family members. While most retired Federal employees age 65 or older are eligible to receive hospital insurance benefits under Medicare Part A, some retired Federal workers are not covered. This group generally encompasses those Federal workers who retired from the Federal Government before January 1, 1983, and who did not have Medicare withholdings taken from their salary while employed with the Federal Government or did not acquire coverage in another way.

Existing Medicare provider agreement regulations at 42 CFR 489.21(a) specify that a provider must agree not to charge a beneficiary for services for which the beneficiary is entitled to have payment made under Medicare. Under this provision, the provider agrees to accept Medicare payment in full for services covered under Medicare and furnished by the provider. However, the regulations do not require that hospitals accept the Medicare hospital inpatient prospective payment system (PPS) rate as payment in full when issued by a fee-for-service FEHB plan for a FEHB enrollee not covered by Medicare Part A.

Section 7002(f) of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Pub. L. 101–508) requires that fee-for-service FEHB plans limit their inpatient payment for services furnished to retired FEHB enrollees age 65 and older who are not covered under Medicare Part A to rates that would have been paid by Medicare under section 1886 of the Social Security Act (the Act). Under sections 1886 (d) and (g) of the Act, Medicare payment for hospital inpatient operating and capital-related costs is made at a predetermined specific rate for each hospital discharge based on the assigned diagnosis-related group (DRG) for each patient. Thus, a hospital knows at the time of discharge what Medicare will pay for each discharge.

Section 7002(f) of OBRA '90 also requires that OPM notify the Secretary of Health and Human Services (the Secretary) of incidents when a hospital knowingly and willfully attempts to collect, on a repeated basis, more than the Medicare payment rates. The Secretary may consider such incidents as violations of the Medicare provider agreement and may terminate or refuse to renew the agreement. A Medicare provider agreement is an agreement between HCFA and providers specified in regulations to furnish services to Medicare beneficiaries and to comply with section 1866 of the Act, which establishes conditions that providers must meet in order to have an agreement to participate in the Medicare program. HCFA may terminate a provider agreement if any of the failings listed in regulations at § 489.53(a) are attributable to a provider.

On February 10, 1994, we published in the **Federal Register** (59 FR 6228) a proposed rule to revise regulations in Part 489 to implement section 7002(f) of OBRA '90. We proposed to:

- Amend § 489.21, which sets forth specific limitations on charges under Medicare provider agreements, to make the limitations on payment for inpatient hospital services applicable to services furnished to retired fee-for-service FEHB plan enrollees age 65 or older who are not covered under Medicare Part A hospital benefits.
- Specify, under a new § 489.21(I), that a provider may not attempt to collect more than the amount established for Medicare purposes for inpatient hospital services under section 1886 of the Act.
- Add a new § 489.53(a)(13) to specify that HCFA will consider termination or nonrenewal of a Medicare provider agreement with any hospital that knowingly and willfully fails to accept, on a repeated basis, the Medicare rate established under the inpatient hospital PPS system, minus any applicable health plan deductibles or copayments, as payment in full from a fee-for-service FEHB plan.

Our February 10, 1994 proposed rule paralleled the provisions of a July 20, 1993 OPM final rule (58 FR 38661) that defined a retired enrolled individual and set forth the circumstances under which the limit on hospital charges and FEHB benefit payments take effect.

II. Analysis of and Responses to Public Comments

We received four letters of comment on the February 10, 1994, proposed rule. A summary of these comments and our responses are discussed below.

Comment: Two commenters identified a number of problems with the administrative procedures designed to enforce the limit on inpatient charges and to monitor overcharges in fee-for-service plans. One commenter stated that the oversight process relies on the FEHB plan having a good system for cross-referencing actual charges against the limits placed on hospital inpatient charges. The same commenter also expressed concern over the lack of any provision for enrollee input into the compliance process, except when an enrollee notices that an overcharge has been billed and then notifies the FEHB plan or OPM. A second commenter noted that there is no incentive for monitoring overcharges in fee-for-service plans, since these plans base future premiums on prior claims experience. The same commenter pointed out that the fee-for-service plans usually pay coinsurances and copayment amounts based on charges submitted by providers, and that the plans will not pursue potential overcharges, especially when the hospital is a preferred provider for the plan.

Response: We believe that there are adequate procedures and controls in place among the FEHB plans, OPM, and HCFA to monitor overcharges in fee-for-service plans covering retired Federal

enrollees age 65 or older who do not have Medicare Part A hospital coverage.

OPM is responsible for administering the day-to-day operations of the FEHB program. OPM's regulations governing the FEHB program are described in 5 CFR part 890. Regulations describing the limits are in subpart I of part 890. The FEHB plans inform both the hospital and the enrollee of the limits on inpatient charges for covered Medicare inpatient hospital services provided to a retired Federal enrollee age 65 or older who does not have Medicare Part A benefits. The FEHB plans inform their enrollees through an explanation of benefits (EOB) statement, that describes what the plan pays for, the amount the enrollee must pay, the limits on inpatient hospital charges for Medicare-covered services, and the date each service was provided. The limits on hospital inpatient charges are also covered in the plans' benefit brochures. FEHB plans inform hospitals that a hospital cannot collect more than what Medicare would have paid if the FEHB enrollee had been covered by Medicare Part A. In other words, the fee-for-service FEHB plan pays the hospital an amount that approximates as closely as possible the Medicare payment rate, minus any enrollee deductibles or copayment amounts.

Since FEHB plans do not have a system in place for routinely checking for overcharges, any discrepancies are brought to the attention of a fee-for-service FEHB plan by an enrollee. According to OPM, overbilling of retired Federal enrollees of fee-for-service FEHB plans is not a problem. There have been no known instances of a hospital repeatedly overbilling. On the other hand, there have been a few instances where hospitals have disagreed with the Medicare prospective payment system rates that have been paid by the fee-for-service FEHB plans. Disputes over the determination of the equivalent DRG payment rate have been resolved on a case-by-case basis between the fee-for-service FEHB plans and hospital providers.

If there are instances of overbilling, fee-for-service FEHB plans must inform the hospital that it is violating the law. If the hospital does not comply with the law after being notified, the fee-for-service FEHB plans must notify OPM. If OPM determines that a hospital knowingly and willfully attempted to collect more than the Medicare payment rate for inpatient hospital services, OPM notifies HCFA to take appropriate action. HCFA is authorized to either terminate or nonrenew a hospital's provider agreement to participate in Medicare, in accordance with section 1866(b)(2) of the Act.

HCFA's authority to take enforcement action against a hospital by stopping its Medicare reimbursement serves as a powerful and effective incentive for a hospital to follow acceptable billing practices. There is also a strong incentive for fee-for-service FEHB plans to ensure that a hospital is charging within the acceptable limits. If enrollees are continually being overcharged, they likely will become dissatisfied with a plan's service, and may eventually switch health plans. We believe that if the health plans want to keep enrollees as customers, fee-for-service FEHB plans will make every effort to monitor, prevent, and correct a hospital's overbilling as much as possible.

Comment: One commenter stated that the language on HCFA termination of Medicare provider agreements in § 489.53(a)(13) is broad and permissive. The commenter pointed out that a provider may misinterpret the words. ''HCFA *may* terminate the agreement if the provider *knowingly and willfully* charges, *on a repeated basis* * * *'', and suggested replacing the word ''may'' with the word ''will.''

Response: Section 489.53(a) establishes HCFA's authority to terminate a provider's agreement and outlines the circumstances under which HCFA may proceed with the termination action. The phrase ''may terminate'' is used in the regulation rather than ''will terminate'' because it provides HCFA with the discretion to evaluate each situation carefully and to apply the termination provisions fairly. Thus, HCFA is not forced to arbitrarily terminate a provider's agreement if mitigating circumstances apply.

In addition, the phrases ''* * * knowingly and willfully * * *'', ''* * * on a repeated basis * * *'', and ''* * * may * * *'' are language taken directly from section 7002(f) of OBRA '90. Our regulations at § 489.53 are based on the language and intent of this statute. The important point is that when OPM notifies HCFA that a violation has occurred, HCFA will investigate and make every attempt to enforce the requirements of the statute and regulations.

Comment: One commenter believed that fee-for-service FEHB plans should inform their enrollees who are without Medicare Part A hospital benefits that their hospital bills have been reviewed, to assure that the inpatient charges do not exceed the Medicare approved payment amounts.

Response: OPM has taken several measures to inform enrollees of fee-for-service FEHB plans of the limits on inpatient hospital charges and fee-for-service FEHB plan payments. First, OPM published the 1991 Open Season Information and Instructions for Annuitants and included an explanation of the limits in a highlighted section entitled ''Attention All Enrollees''. In addition, an explanation of the limits has been included in all brochures of fee-for-service health plans of the FEHB program beginning in 1992 through the present.

As stated in a previous response, a fee-for-service FEHB plan informs both the hospital and the enrollee of the current Medicare approved payment limits. The FEHB plan notifies the enrollee what the enrollee is obligated to pay (the deductible or copayment amount) in the EOB statement. When a fee-for-service FEHB plan receives a hospital bill for an enrollee covered by section 7002(f) of OBRA '90, the FEHB plan pays the hospital an amount that approximates the Medicare DRG payment amount minus any enrollee deductible or copayment. Thus, a hospital bears the responsibility not to collect more than the Medicare DRG payment rate established under the inpatient hospital prospective payment system, minus any enrollee deductibles or copayments, as payment in full from a fee-for-service FEHB plan. HCFA may terminate or nonrenew a hospital's provider agreement with Medicare, if OPM reports that a hospital is refusing to accept an amount that approximates the Medicare rate as payment in full for inpatient hospital services provided to a retired Federal worker who is enrolled in a fee-for-service FEHB plan and who does not have Medicare Part A.

Comment: One commenter believed that it is sometimes difficult to identify the appropriate primary payer types for all patients. Thus, the commenter recommended that every retired Federal enrollee who is not covered under Medicare Part A be issued an identification card to be presented when the individual receives inpatient hospital services. The commenter also suggested that the card include a message on one side stating that the card carrier is a Medicare limited-reimbursement patient, and display an accompanying telephone number for benefit information.

Response: As noted above, OPM has operational authority over the administration of the FEHB program. HCFA does not have any responsibility in this area. We have forwarded this suggestion to OPM for its consideration.

However, OPM did comment to us that the cost of producing a different identification card for retirees over age 65 not covered by Medicare Part A

cannot be justified when FEHB plans inform hospitals each time the limits apply, and by now, hospitals know the category of individuals that are covered by the limits.

Comment: One commenter stated that the proposed rule did not address the Medicare payment limits established for providers that are excluded from PPS, such as psychiatric hospitals and units, rehabilitation hospitals and units, long-term care hospitals, children's hospitals, and cancer hospitals. Providers that are excluded from PPS are paid on a reasonable cost basis, subject to a hospital-specific target rate per discharge.

Response: Section 7002(f) of OBRA '90 specifies that a hospital may not charge more than the limitations on hospital charges established under section 1886 of the Act to fee-for-service FEHB plans for inpatient hospital services provided to retired Federal enrollees age 65 or older who do not have Medicare Part A hospital coverage. Section 1886 of the Act refers to Medicare payment to hospitals for inpatient services, which could be construed as including both the PPS rates and the payment limits for hospitals excluded from PPS. Both OPM and HCFA interpret that the intent of section 7002(f) of OBRA '90 applies only to hospitals that are paid under the PPS as specified in sections 1886(d) and (g) of the Act. On the other hand, hospitals and units that are excluded from PPS are paid on a reasonable cost basis, known as the TEFRA payment system, and are not intended to be covered under section 7002(f) of OBRA '90. There are a number of operational and administrative reasons why the limits on a fee-for-service FEHB plan's payment to a hospital for inpatient services provided to a retired Federal enrollee, age 65 or older, who is without Medicare Part A, are subject to Medicare's prospective payment system, rather than to Medicare's reasonable cost system of payment (TEFRA).

First, under PPS, payment for acute inpatient hospital stays under Medicare Part A are based on prospectively set rates. Under this system, Medicare payment is made at a predetermined, specific rate for each hospital discharge, according to a DRG payment rate. A PPS hospital generally knows at the time of discharge what Medicare will pay for each Medicare discharge. In contrast, Medicare payment to providers subject to the TEFRA target limit is based on total Medicare discharges times a hospital-specific cost limit per discharge. Thus, hospitals and units that are excluded from PPS do not know what their total Medicare payments will be until after their year-end cost reports have been settled.

Moreover, it is not feasible for fee-for-service FEHB plans to calculate Medicare payments rates for inpatient hospital services provided in PPS excluded hospitals and units. OPM and HCFA agree that the intent of section 7002(f) of OBRA '90 was not to have the fee-for-service FEHB plans perform year-end settlements of hospital cost reports to determine a hospital's TEFRA payments, which are hospital-specific as opposed to the patient-specific payments under PPS. Although it is feasible for a fee-for-service FEHB plan to compare prospective payments for a single beneficiary against a hospital's charges for that patient, it would not be feasible for a fee-for-service FEHB to compare the TEFRA limit to the charges for a specific patient that would in effect involve aggregating all individual patients' charges and then imposing the limits. Instead, HCFA and OPM agree that the intent of section 7002(f) of OBRA '90 is to establish Medicare payment limits on inpatient hospital charges in accordance with the payment rates established under sections 1886(d) and (g) of the Act.

We note that both OPM's interim final rule (published March 27, 1992, in the **Federal Register** at 57 FR 10609) and final rule (published July 20, 1993, in the **Federal Register** at 58 FR 38661) specify that limitations on inpatient hospital charges and FEHB program payments are based on Medicare's DRG equivalent payment amount (a rate that represents as closely as possible the amount that Medicare would have paid had a retired FEHB enrollee been covered under Medicare Part A). Again, because of the differences in the two payment systems (PPS and TEFRA) and the difficulty in comparing what Medicare would have paid for a particular patient in a TEFRA provider, both HCFA and OPM agree that section 7002(f) of OBRA '90 does not apply to inpatient hospital services provided in non-PPS hospitals and units.

Comment: One commenter stated that it has encountered a problem in receiving correct payment amounts for inpatient hospital services furnished to retired Federal workers age 65 and older who are enrolled in a fee-for-service FEHB plan and who do not have Medicare Part A benefits. The commenter expressed concern that payment rates for some hospitals have not been equal to Medicare payment rates for the same services, and that the payment rates used by OPM and the fee-for-service FEHB plans are not the most recent rates. The commenter recommended that the Medicare payment rates received by OPM and the fee-for-service FEHB plans be current and updated as of October 1 of each year when new DRG rates are known and technical corrections have been made. Two commenters also requested that the payment rates include all applicable adjustments to the DRG rate, such as the indirect medical education cost adjustment, payment for direct graduate medical education costs, outlier payments, inpatient capital costs, kidney acquisition costs, etc.

Response: OPM addressed a similar comment in its July 20, 1993 final rule (58 FR 38661). We agree with OPM's response, which stated that OPM and the FEHB plans intend to calculate the DRG equivalent amount as closely as possible to the amount that would have been paid by Medicare.

We have been working with OPM to provide the latest DRG payment rates. In fact, the data provided by HCFA to OPM for calculating the DRG equivalent payment amount include all applicable adjustments to the DRG rate, such as the indirect medical education cost adjustment, payment for direct graduate medical education costs, organ acquisition costs, capital costs, and outlier payments. Any dispute involving a payment made by a fee-for-service FEHB plan for inpatient hospital services provided to a retired Federal worker who is enrolled in the fee-for-service FEHB plan and who does not have Medicare Part A coverage should be resolved by the particular FEHB plan and the provider.

Medicare Grouper, Code Editor and Pricer software data provide current DRG payment data to OPM as of October 1 of each fiscal year. The Medicare fiscal intermediaries send HCFA a provider file every 3 months. The provider-specific file includes the data needed to calculate adjustments to the DRG rate, such as outlier payments, the indirect medical education cost adjustment, payment for direct graduate medical education costs, organ acquisition costs, and inpatient capital costs.

Because of a transition to a new capital payment system, capital cost data for 1992 were not available to the fee-for-service FEHB plans. The fee-for-service FEHB plans were advised by OPM to use ''pass-through'' information multiplied by the length of stay to determine an equivalent capital cost adjustment amount. Capital cost information has been available to the fee-for-service FEHB plans since the 1993 coverage year.

Comment: One commenter recommended that an appeal mechanism be put in place to resolve payment differences and ensure that

correct payments are made to providers. The same commenter suggested that a paid Medicare remittance for an identical DRG should be adequate documentation to ensure that a provider is being paid the correct amount, that is, the equivalent Medicare DRG payment amount.

Response: In its July 20, 1993 final rule, OPM stated that fee-for-service FEHB plans have an obligation to work with hospital providers to determine the correct payment amounts and to make any necessary adjustments. Any decision to implement an appeals mechanism would be at the discretion of OPM, since OPM administers the FEHB program. Therefore, whether or not a paid Medicare remittance for identical DRG constitutes acceptable documentation is a matter for OPM and the FEHB plans to decide.

III. Provisions of the Final Regulations

After further review of the regulation text set forth in the February 10, 1994 proposed rule, we believe that several changes are needed to improve clarity.

The proposed rule would have revised the introductory text of § 489.21 and adding a new paragraph (I). We have determined that the proposed language does not have the same context as the language in § 489.21, and § 489.21 does not have the same meaning as the intent of section 7002(f) of OBRA '90. The existing introductory paragraph in § 489.21 states that *providers agree not to charge* a beneficiary for any of the services listed in this section (which would have included the services listed in the proposed paragraph (I)). However, the intent of section 7002(f) of OBRA '90 is that a fee-for-service FEHB plan should not pay a provider for inpatient hospital services furnished to a retired FEHB enrollee age 65 or older who is without Medicare Part A hospital insurance, more than the amount that Medicare would have paid had the enrollee been covered under Part A, minus any enrollee deductibles or copayment. Therefore, we are withdrawing the proposed language change to the existing regulation text in § 489.21.

Instead, we are adding a new § 489.23, which will require a provider to accept, as payment in full, an amount that approximates the Medicare payment rate established under the inpatient hospital PPS for inpatient hospital services furnished to retired Federal workers age 65 or older who are enrolled in a fee-for-service FEHB plan and who do not have Medicare Part A benefits.

We also proposed to amend § 489.53 to specify that HCFA may terminate the Medicare provider agreement with any hospital that knowingly and willfully fails to accept, on a repeated basis, the Medicare payment rate established under PPS, minus any enrollee deductibles or copayments, as payment in full from a fee-for-service FEHB plan for inpatient services provided to retired Federal enrollees age 65 or older who do not have Medicare Part A benefits. In order to further clarify the proposed change, we are revising § 489.53(a)(13)(redesignated now as (a)(15)) to specify that the provision applies only to providers that furnish inpatient hospital services to retired Federal enrollees of fee-for-service FEHB plans who are 65 or older who do not have Medicare Part A benefits.

IV. Regulatory Impact Statement

HCFA has examined the impacts of this final rule as required by 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 effects; distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to analyze options for regulatory relief for small businesses. Most hospitals, and most other providers are small entities, either by nonprofit status or by having revenues of $5 million or less annually.

This final rule requires a provider that furnishes inpatient hospital services to retired Federal workers age 65 or older who are enrolled in a fee-for-service FEHB plan but who are not covered under Medicare Part A hospital benefits to accept as payment in full an amount that approximates the Medicare payment rates established under the prospective payment system.

In addition, HCFA may terminate the Medicare provider agreement with any provider that knowingly and willfully fails to accept, on a repeated basis, an amount that approximates the Medicare rate established under the inpatient hospital prospective payment system, minus any health plan deductible or copayment, as payment in full from a fee-for-service FEHB plan, for inpatient hospital services provided to a retired Federal enrollee of the fee-for-service FEHB plan who does not have Medicare Part A benefits.

Section 7002(f) of OBRA '90 became effective January 1, 1992, without rulemaking. Because hospitals will not be able to charge what they would normally charge private pay patients and other commercial insurers, it is estimated that there will be a substantial savings, per affected enrollee, to the FEHB program. Hospitals have been notified of their obligations through OPM administrative procedures. Savings will accrue directly through the OPM program, and compliance will be obtained and monitored by OPM.

HCFA is involved only because the Congress required that we establish a sanction mechanism in case any hospitals knowingly and willfully violate the requirement on a repeated basis. These sanction procedures would come into play only after an OPM determination of a violation and notification to HCFA. Hospitals that do not charge more than an amount that approximates the hospital payments established for Medicare purposes would not be affected by this rule. We do not believe that any hospitals will knowingly refuse to comply, or that any hospital will lose provider status. Therefore, this final rule will have negligible economic effects.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural hospital impact statement because we have determined, and we certify, that this final rule will not affect a significant number of small entities and will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this final regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR part 489 is amended as set forth below:

PART 489—PROVIDER AND SUPPLIER AGREEMENTS

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1864(m), 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa(m), 1395cc, and 1395hh).

2. A new § 489.23 is added to read as follows:

§ 489.23 Specific limitation on charges for services provided to certain enrollees of fee-for-service FEHB plans.

A provider that furnishes inpatient hospital services to a retired Federal worker age 65 or older who is enrolled in a fee-for-service FEHB plan and who is not covered under Medicare Part A, must accept, as payment in full, an amount that approximates as closely as possible the Medicare inpatient hospital prospective payment system (PPS) rate established under part 412. The payment to the provider is composed of a payment from the FEHB plan and a payment from the enrollee. This combined payment approximates the Medicare PPS rate. The payment from the FEHB plan approximates, as closely as possible, the Medicare PPS rate minus any applicable enrollee deductible, coinsurance, or copayment amount. The payment from the enrollee is equal to the applicable deductible, coinsurance, or copayment amount.

3. In § 489.53, the introductory text to paragraph (a) is republished and a new paragraph (a)(14) is added to read as follows:

§ 489.53 Termination by HCFA.

(a) *Basis for termination of agreement with any provider.* HCFA may terminate the agreement with any provider if HCFA finds that any of the following failings is attributable to that provider:

* * * * *

(14) The hospital knowingly and willfully fails to accept, on a repeated basis, an amount that approximates the Medicare rate established under the inpatient hospital prospective payment system, minus any enrollee deductibles or copayments, as payment in full from a fee-for-service FEHB plan for inpatient hospital services provided to a retired Federal enrollee of a fee-for-service FEHB plan, age 65 or older, who does not have Medicare Part A benefits.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: October 17, 1997.

Nancy-Ann Min DeParle,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 97–28594 Filed 10–28–97; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 96–61; FCC 97–366]

Petition for Rulemaking to Reclassify AT&T Corp. as Having Dominant Carrier Status

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Order on Reconsideration, Order Denying Petition for Rulemaking, and Second Order on Reconsideration in CC Docket No. 96–61 (Order) released October 9, 1997 finds no new evidence or arguments that demonstrate that a new examination of AT&T's regulatory status is warranted. The Order also finds no basis to impose on AT&T a service requirement not imposed on other carriers subject to the rate averaging and rate integration rules, and that the Commission properly included AT&T/Alascom within the scope of the reclassification of AT&T as non-dominant in the provision of interstate, domestic, interexchange services. Finally, the Order clarifies that, to the extent AT&T/Alascom has been found to be dominant in the provision of certain interstate common carrier services (which the Commission has previously defined as ''all interstate interexchange transport and switching services that are necessary for other interexchange carriers to provide services in Alaska up to the point of interconnection with each Alaska local exchange carrier.''), AT&T/Alascom's regulatory obligations with respect to those services remain unchanged.

EFFECTIVE DATE: November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Christopher Heimann, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580. For additional information concerning the information collections contained in this Order contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted October 8, 1997, and released October 9, 1997. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M St., N.W., Room 239, Washington, D.C. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc97–366.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

SYNOPSIS OF ORDER ON RECONSIDERATION

I. Introduction

1. On October 23, 1995, the Commission issued an order granting AT&T Corporation's (AT&T's) motion to be reclassified as a non-dominant carrier under Part 61 of the Commission's rules and regulations. On November 22, 1995, the State of Hawaii (Hawaii) and General Communications, Inc. (GCI) timely filed Petitions for Reconsideration of the Commission's *AT&T Reclassification Order.* For the reasons stated below, we deny the petitions of both Hawaii and GCI.

2. On January 23, 1996, more than two months past the statutory deadline, Total Telecommunications Services, Inc. (TTS) also filed a Petition For Reconsideration, and a Motion For Acceptance of Petition For Reconsideration. As discussed below, we deny TTS's motion and dismiss its petition as untimely, and therefore do not address the merits of its petition.

3. On December 23, 1996, GCI filed a Petition for Reconsideration or Clarification of the Commission's *Tariff Forbearance Order* (61 FR 59340 (November 22, 1996)). For the reasons discussed below, we grant GCI's petition for clarification of the *Tariff Forbearance Order.*

4. Finally, on December 31, 1996, the United Homeowners Association and the United Seniors Health Cooperative (UHA), filed a Petition for Rulemaking to Reclassify AT&T as Having Dominant Carrier Status. For the reasons discussed below, we deny UHA's petition.

II. Petitions for Reconsideration

A. Background

5. In the *AT&T Reclassification Order,* the Commission reclassified AT&T as a non-dominant carrier, based on the Commission's finding that AT&T no longer possessed individual market power in the interstate, domestic, interexchange market taken as a whole. The Commission acknowledged that there was evidence in the record that AT&T, MCI and Sprint had increased basic schedule rates in lock-step, but found that that evidence did not support a finding that AT&T retained the power unilaterally to raise residential prices above competitive levels. In addition, the Commission found that, to the extent that tacit price coordination with respect to basic schedule or residential rates in general was occurring, the problem was generic to the

interexchange industry and not specific to AT&T. The Commission concluded that concerns regarding such pricing would be better addressed by removing regulatory requirements that may have facilitated such conduct, such as the longer advance notice period for tariff changes then applicable only to AT&T, and by addressing the issues raised by these concerns in the context of a proceeding to examine the interstate, domestic, interexchange market as a whole. We recently reiterated our concern that ''not all segments of [the interstate, interexchange services] market appear to be subject to vigorous competition,'' and expressed concern about the ''relative lack of competition among carriers to serve low volume long distance customers.''

6. In assessing whether AT&T possessed individual market power, the Commission followed the relevant product and geographic market definitions adopted by the Commission in the *Competitive Carrier* proceeding. In that proceeding, the Commission found, for purposes of assessing the market power of interexchange carriers covered by that proceeding, that: ''(1) Interstate, domestic, interexchange telecommunications services comprise the relevant product market, and (2) the United States (including Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, and other U.S. off-shore points) comprises the relevant geographic market for this product, with no relevant submarkets.'' The Commission concluded that it should apply the foregoing market definitions in assessing AT&T's market power, because those definitions were applied in classifying all of AT&T's competitors as non-dominant carriers. The Commission further stated that examination of the substitutability of supply for interstate, domestic, interexchange services also indicated that use of those definitions to evaluate AT&T's market power was appropriate.

7. As a non-dominant interexchange carrier, AT&T is generally subject to the same regulations as its long-distance competitors. In the *AT&T Reclassification* proceeding, however, AT&T made certain voluntary commitments that it described as transitional provisions intended to address concerns expressed by various parties about possible adverse effects of reclassifying AT&T. These commitments concerned, among other things, service to and from the States of Alaska and Hawaii, and other regions subject to the Commission's rate integration policy, and geographic rate averaging. In the *AT&T Reclassification Order*, the Commission accepted AT&T's commitments and ordered AT&T to comply with those commitments.

8. On February 8, 1996, the Telecommunications Act of 1996 (1996 Act) was enacted. The 1996 Act seeks ''to provide for a pro-competitive, de-regulatory national policy framework'' designed to make available to ''all Americans'' advanced telecommunications and information technologies and services ''by opening all telecommunications markets to competition.'' Consistent with the 1996 Act's objective of ensuring that all Americans benefit from the liberalization of telecommunications markets, the 1996 Act required the Commission, within six months after the date of enactment, to:

> adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to subscribers in any other State.

On August 7, 1996, the Commission adopted a Report and Order implementing these statutory requirements.

9. On October 31, 1996, the Commission released the *Tariff Forbearance Order*. In that order, the Commission determined that the statutory criteria in section 10 of the Communications Act, as amended, were met to detariff completely interstate, domestic, interexchange services offered by nondominant interexchange carriers, and, therefore, that the Commission would no longer allow such carriers to file tariffs for such services pursuant to section 203 of the Communications Act.

B. Analysis

10. Petitioners raise three substantive arguments in seeking reconsideration or clarification of the Commission's Order granting AT&T's motion to be reclassified as a non-dominant carrier. First, Hawaii argues that the Commission should strengthen AT&T's voluntary commitments by requiring AT&T to serve on Hawaii and the State of Alaska (Alaska) copies of any submissions that address the Commission's geographic rate averaging and rate integration policies, in order to ensure that Hawaii and Alaska have a meaningful opportunity to participate in pre-effective review proceedings. Second, GCI maintains that the reclassification of AT&T does not apply to AT&T/Alascom, Inc. (AT&T/Alascom), because AT&T/Alascom is still dominant in the Alaska market. Third, GCI argues that it is not clear which of the obligations and conditions imposed on AT&T and Alascom by the *Market Structure Order* (59 FR 27496 (May 27, 1994)), the *Final Recommended Decision* (58 FR 63345 (December 1, 1993)), and the *Alascom Authorization Order* continue to apply now that AT&T has been reclassified as nondominant.

1. Whether the Commission Should Strengthen AT&T's Commitments

a. Positions of the Parties. 11. Hawaii requests that the Commission strengthen the commitments made by AT&T in the *AT&T Reclassification* proceeding by requiring AT&T to serve on Alaska and Hawaii copies of any pleadings, tariff revisions or other submissions to the Commission that purport to seek alteration or a specific interpretation of, or otherwise affect, the Commission's rate integration and geographic rate averaging policies, at the same time AT&T files such submissions with the Commission. Hawaii argues that the historical importance of the Commission's rate integration and geographic rate averaging policies to Hawaii and Alaska, as well as the alleged lack of reasonably priced telecommunications to Hawaii, warrant assurance that Hawaii and Alaska will have the opportunity to voice their concerns if AT&T proposes to depart from these policies. Hawaii acknowledges that AT&T informally committed to give Hawaii notice of tariff filings departing from geographic rate averaging, but maintains that in some situations more time would be needed to ensure that it has an opportunity to respond.

12. Alaska, CNMI, GTA, and Guam support Hawaii's request. Alaska argues that requiring AT&T to serve Alaska and Hawaii with copies of submissions affecting the Commission's rate integration and geographic averaging policies would not impose a significant burden on AT&T, but would ensure that the interests of citizens of Alaska and Hawaii are heard before any action affecting these policies goes into effect. CNMI, GTA and Guam contend that the Commission should require AT&T to serve on all interested parties, not just Alaska and Hawaii, copies of submissions that would alter the Commission's rate integration or geographic rate averaging policies. Similarly, the LEC Associations argue that AT&T should be required to serve copies of submissions that depart from the Commission's established geographic averaging policies in other states and in U.S. territories, because

geographic averaging is essential for maintaining universal service. They also urge the Commission to commence a proceeding to codify its geographic averaging polices.

13. AT&T responds that Hawaii's petition relates solely to AT&T's voluntary commitments concerning rate integration and geographic rate averaging, and that, since the commitments were not offered, or used, to support the Commission's finding that AT&T lacks market power in the overall interstate, domestic, interexchange market, the reclassification of AT&T is appropriate. AT&T argues that the Commission cannot modify voluntary commitments that were not the basis for its ruling, and cannot create or impose new rules on AT&T in this non-rulemaking proceeding. AT&T also contends that the relief sought by the parties supporting Hawaii's petition would impose significantly greater burdens on AT&T than are required under the Commission's tariff filing rules for dominant carriers. AT&T concludes that the requested relief should be rejected as unnecessary and overly burdensome, in light of the fact that all such filings are made on the public record at the Commission. AT&T also argues that the relief sought would exceed the Commission's authority by requiring AT&T to make public tariff filings not only with the Commission, but with Hawaii, Alaska, the Northern Mariana Islands, and other state jurisdictions and U.S. territories.

14. In reply, Hawaii argues that its petition is consistent with the Commission's stated commitment to rate integration and geographic averaging, and the Commission's decision to incorporate AT&T's commitments into the *AT&T Reclassification Order*. It adds that its request is also consistent with AT&T's pledge to ''work very closely on an informal basis with representatives of the State of Hawaii on matters affecting telecommunications there.'' Hawaii claims it is merely seeking assurance that AT&T will honor its pledge. Hawaii concludes that the relief it seeks would not burden AT&T or the Commission, but would ensure that citizens of Hawaii have a meaningful opportunity to participate in the pre-effective review of any filings that affect these policies.

b. *Discussion*. 15. As noted above, on August 7, 1996, the Commission adopted the *Geographic Averaging Order* (61 FR 42558 (August 16, 1996)), which implemented the geographic rate averaging and rate integration requirements of the 1996 Act. In that Order, we adopted a rule requiring that ''the rates charged by all providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas.'' The Commission stated that this rule ''codifies our existing geographic rate averaging policy.'' The LEC Associations'' request that the Commission initiate a proceeding to codify its geographic rate averaging policies is therefore moot. The Commission also adopted a rule ''requiring that 'a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.''' As required by the 1996 Act, the Commission found that the geographic rate averaging rule applies ''to all providers of interexchange telecommunications services, and to all interexchange 'telecommunications services,' as defined by the Act.'' Similarly, the Commission found that the rate integration rule applies ''to all domestic interstate interexchange telecommunications services as defined in the 1996 Act, and all providers of such services.''

16. In the *Geographic Averaging Order*, the Commission also determined that the rules adopted in that proceeding superseded the rate averaging and rate integration commitments AT&T voluntarily made in the *AT&T Reclassification* proceeding. We based this determination on the grounds that the rules we adopted in *Geographic Averaging Order* would require AT&T to provide interexchange service at geographically averaged and integrated rates, and that these requirements incorporated the Commission's rate averaging and rate integration policies then in effect. We therefore released AT&T from the commitment to comply with the Commission's earlier orders regarding rate integration and the commitment to file any tariff containing a geographically deaveraged rate on five business days' notice.

17. In light of Congress's codification of the Commission's rate averaging and rate integration policies in section 254(g) of the Communications Act, the Commission's rules implementing that section, and the other actions taken in the *Geographic Averaging Order*, we find that Hawaii's request that we impose a service requirement on AT&T has been superseded and is now moot because AT&T cannot deaverage its rates consistent with federal law. We also find no basis to impose on AT&T a service requirement not imposed on other carriers subject to the rate averaging and rate integration rules. Accordingly, for the foregoing reasons, we find that the relief sought by Hawaii is unnecessary in light of the Commission's implementation of the geographic rate averaging and rate integration requirements of the Communications Act, and of AT&T's specific voluntary commitments concerning service to Hawaii and Alaska. We therefore deny Hawaii's petition.

2. Whether Reclassification of AT&T Applies to AT&T/Alascom

a. *Position of the Parties*. 18. GCI asks the Commission either to clarify that the reclassification of AT&T does not apply to AT&T/Alascom, Inc., or to reconsider and reverse any finding that AT&T/Alascom is no longer dominant. GCI justifies its request on the grounds that AT&T did not seek to reclassify Alascom as non-dominant, and that the Commission did not address the reclassification of Alascom in the *AT&T Reclassification Order*. GCI argues that the Commission found Alascom dominant in the Alaska market in the *Competitive Carrier Fifth Report and Order* (49 FR 34824 (September 4, 1984)), and has never reversed that finding. It also contends that this finding could not be reversed, in light of AT&T/Alascom's legally enforced monopoly in the Alaska Bush. GCI argues that AT&T/Alascom is able to leverage its market power beyond the Bush because of Commission policies requiring other carriers serving Alaska to purchase Bush distribution services from AT&T/Alascom. GCI also argues that it is unclear how long AT&T/Alascom's market power in the Alaska Bush will persist. GCI adds that, even if the Alaska Bush were opened immediately, it would take significant time for the market to become workably competitive, because of the time necessary to construct a competing network.

19. Alaska and MCI likewise claim that the Commission's reclassification of AT&T does not affect AT&T/Alascom's classification as a dominant carrier. Alaska argues that, in reclassifying AT&T, the Commission noted that Alascom continues to be ''governed by dominant carrier rules where it has a facilities monopoly, namely the Bush areas,'' and therefore that the *AT&T Reclassification Order* does not affect the classification of AT&T Alascom, Inc. MCI argues that the Commission's reclassification of AT&T as non-dominant in the domestic market was based on market characteristics in the

''lower 48'' states, which are not representative of the Alaska market. It adds that a separate finding that AT&T/Alascom does not possess market power in Alaska is therefore required, but that such a determination is impossible to make and support at this time.

20. AT&T responds that there is no basis for excluding AT&T/Alascom from the ambit of the *AT&T Reclassification Order,* because the Commission expressly found that AT&T lacked market power in the domestic interexchange market as a whole, which AT&T claims is the only relevant market for this purpose. AT&T argues that the fact that AT&T (or AT&T/Alascom) may be the major supplier of specific services does not alter the analysis, and that the Commission has never definitively held that a carrier must lack the ability to control the price of every service in the relevant market before it can be classified as non-dominant. AT&T maintains that its voluntary commitments to continue rate integration for Alaska and to comply with the Commission's orders relating to Alaska necessarily apply to AT&T/Alascom, and that the commitments assume that AT&T/Alascom is included within the scope of the *AT&T Reclassification Order.*

21. AT&T further responds that the Commission found that, to the extent AT&T is able to control price at all, it is only with respect to specific service segments that are either *de minimis* in relation to the overall market, or exposed to increasing competition so as not to affect materially the overall market. AT&T argues that these conditions apply to the Alaska Bush, which generates less than five one-hundredths of one percent (0.0005) of total industry revenue, an amount that AT&T claims is *de minimis* and affords AT&T/Alascom no power in the overall relevant market. AT&T concludes there is therefore no basis to treat AT&T differently from its competitors, or to treat AT&T/Alascom differently from the rest of AT&T.

22. GCI counters that AT&T does not rebut GCI's claim that AT&T retains an absolute monopoly, and thus market power, in the Alaska market. GCI maintains that AT&T's suggestion that Alascom's market power in Alaska can be ignored as ''*de minimis*'' is contrary to prior Commission rulings and AT&T's own statements. Specifically, GCI contends that, in classifying Alascom as a dominant interexchange carrier, the Commission focused solely on Alascom's position in the Alaska market, and did not require Alascom to be dominant throughout the U.S. market as a whole. GCI adds that, as recently as August 1995, the Commission identified Alaska as a separate relevant interexchange market. Specifically, GCI maintains that, while the Commission spoke of a single national market, the Commission identified that market as distinct from the Alaska market occupied by Alascom and in which Alascom retained market power. GCI also claims that AT&T's own pleadings in the Alaska Joint Board Proceeding contemplate that AT&T could be classified as dominant in the lower 48 states, but non-dominant in Alaska, because of different market characteristics and circumstances. GCI concludes that the Commission classified Alascom as a dominant carrier based on its legally protected monopoly position in the Alaska market, which it alleges has never changed, and that AT&T's purchase of Alascom did nothing to reduce Alascom's market power in Alaska.

23. In its petition for reconsideration or clarification of the Commission's *Tariff Forbearance Order,* GCI requests the Commission either to clarify that the *Tariff Forbearance Order* did not detariff AT&T/Alascom's provision of ''common carrier'' services, (The Commission has defined Alascom's ''common carrier'' services as ''all interstate interexchange transport and switching services that are necessary for other interexchange carriers to provide services in Alaska up to the point of interconnection with each Alaska local exchange carrier.'') or to reconsider and reverse any finding that AT&T/Alascom is not required to file a tariff for such services. In support of its petition, GCI argues that AT&T, in the *AT&T Reclassification* proceeding, made certain voluntary commitments, including a commitment that AT&T/Alascom would provide ''common carrier'' services under tariff. In response to GCI's petition, AT&T states that it ''does not interpret the [*Tariff Forbearance Order*] to require the detariffing of Alascom's Common Carrier Services.'' The American Petroleum Institute (API) disagrees with GCI and argues that, to the extent AT&T/Alascom's services are interstate, domestic, interexchange services offered by a nondominant interexchange carrier, the *Tariff Forbearance Order* completely detariffed those services.

b. Discussion. 24. AT&T/Alascom offers certain interstate ''common carrier'' services. As noted above, in the *Market Structure Order,* the Commission defined Alascom's ''common carrier'' services as ''all interstate interexchange transport and switching services that are necessary for other interexchange carriers to provide services in Alaska up to the point of interconnection with each Alaska local exchange carrier.'' For purposes of our discussion here, we refer to AT&T/Alascom's ''common carrier'' services as those services were defined in the *Market Structure Order.* In the *Market Structure Order,* the Commission adopted the recommendation of the Federal-State Alaska Joint Board in the *Final Recommended Decision* that Alascom be required to provide such services to interexchange carriers under tariff on a nondiscriminatory basis at rates that reflect the cost of the services (*i.e.,* on dominant carrier basis). AT&T concedes that, to the extent that AT&T/Alascom's ''common carrier'' services are not interstate, domestic, interexchange telecommunications services as addressed in the *AT&T Reclassification Order,* the classification of those services is not affected by that Order. AT&T further concedes that the *Tariff Forbearance Order* does not require the detariffing of AT&T/Alascom's ''common carrier'' services. Indeed, the Commission noted in the *AT&T Reclassification Order,* and we clarify here, that, to the extent AT&T/Alascom has been found to be dominant in the provision of ''common carrier'' services, as defined above, AT&T/Alascom's regulatory obligations with respect to those services remain unchanged, and therefore AT&T/Alascom is required to file tariffs for such services on a dominant carrier basis.

25. In addition to the foregoing ''common carrier'' services offered to interexchange carriers, AT&T/Alascom provides interstate, domestic, interexchange services to end-user customers in Alaska. For the reasons set forth below, we reject GCI's petition for reconsideration and find no basis to exclude AT&T/Alascom's provision of these services from the scope of the *AT&T Reclassification Order.*

26. We reject the suggestion by GCI, MCI and Alaska, that, in order to reclassify AT&T/Alascom as a non-dominant carrier with respect to its provision of interstate, domestic, interexchange services, the Commission must assess AT&T/Alascom's market power in the Alaska market, rather than in the overall interstate, domestic, interexchange services market. The Commission's decision in the *Competitive Carrier Fifth Report and Order* to regulate Alascom as a dominant carrier did not, as GCI implies, disavow or modify the ''all interstate, domestic, interexchange services'' market definition adopted in the Competitive Carrier Fourth Report and Order (48 FR 52452 (November 18,

1983)) by ''focus[ing] solely on Alascom's position within the Alaska market.'' Rather, the Commission concluded that Alascom should be regulated as dominant, without reaching the issue of relevant market definitions, because it was concerned that the Commission's rate-integration policy for interstate MTS and WATS services to noncontiguous domestic points, which limited rate-integration payments only to Alascom, might limit the ability of other carriers to compete in serving Alaska.

27. In addition, we find that GCI mischaracterizes the *Alascom Authorization Order,* in arguing that the Commission there identified Alaska as a separate relevant interexchange market and therefore that we are required to analyze separately AT&T/Alascom's market power in Alaska, for purposes of classifying AT&T/Alascom as non-dominant in the interstate, domestic, interexchange market. While, in the *Alascom Authorization Order,* the Commission did identify two relevant product markets for purposes of evaluating the proposed merger of AT&T and Alascom, the markets it identified were: (1) ''interexchange telecommunications services within Alaska (the 'Alaska market'),'' which was the principal business of Alascom; and (2) ''*interstate* interexchange telecommunications ('the All Interexchange Market'),'' which AT&T provided, and which included Alascom's and Alaska Telecom's proposed undersea fiber cable services. In that Order, the Commission did not identify the provision of interstate, domestic, interexchange services to Alaska as a separate relevant product or geographic market. Indeed, the Commission specifically noted that its identification of interstate interexchange telecommunications (including Alascom's and Alaska Telecom's proposed undersea fiber cable services) as a relevant product market was ''consistent with the Commission's earlier findings of a single market for all interstate interexchange services.'' We note that GCI, in quoting the foregoing sentence, failed to include the word ''interstate,'' which qualified the term ''interexchange services.'' We believe that the Commission's reference to ''interstate interexchange services,'' and not to ''interexchange services'' generally, is central to the meaning of the Commission's statement and hence to a complete understanding of this statement's relevance in the present context. Thus, the Commission did not, in *the Alascom Authorization Order,* disavow or modify in any way, the ''all interstate, domestic, interexchange services'' market definition adopted in the *Competitive Carrier Fourth Report and Order.*

28. Accordingly, we reject GCI's argument that, based on the *Alascom Authorization Order* and the *Competitive Carrier Fifth Report and Order,* the Commission must analyze separately AT&T/Alascom's market power in Alaska for purposes of classifying AT&T/Alascom as non-dominant in the interstate, domestic, interexchange market. Rather, we affirm our determination in the *AT&T Reclassification Order* that, consistent with the conclusions reached in *Competitive Carrier Fifth Report and Order,* the appropriate relevant geographic market for purposes of assessing AT&T's market power was a '''single national relevant geographic market (including Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, and other U.S. offshore points).''' We conclude that, pursuant to Commission policy in effect at the time of the *AT&T Reclassification Order,* the Commission properly included AT&T/Alascom within the scope of the classification of AT&T as non-dominant in the provision of interstate, domestic, interexchange services.

29. Subsequent to GCI's filing of its Petition for Reconsideration, the Commission adopted the *LEC Interexchange Order* (62 FR 35974 (July 3, 1997)), which revises the Commission's approach to defining relevant geographic and product markets for purposes of determining whether a carrier should be regulated as dominant or non-dominant in the provision of interstate, domestic, interexchange services. Specifically, in the *LEC Interexchange Order,* we defined the relevant geographic market for interstate, domestic, interexchange services as ''all possible routes that allow for a connection from one particular location to another particular location (*i.e.,* a point-to-point market).'' We clarified, however, that we would

> treat, in general, interstate, long distance calling as a single national market unless there is credible evidence suggesting that there is or could be a lack of competition in a particular point-to-point market or group of point-to-point markets, and there is a showing that geographic rate averaging will not sufficiently mitigate the exercise of market power, we will refrain from employing the more burdensome approach of analyzing separately data from each point-to-point market.

30. Considering GCI's Petition for Reconsideration according to the market definition approach established in the recent *LEC Interexchange Order,* we conclude that, even assuming arguendo that GCI's petition presents credible evidence suggesting a lack of competition with respect to domestic, interstate, interexchange service in Alaska, GCI's petition fails to demonstrate that geographic rate averaging will not sufficiently mitigate the exercise of market power, if any, by AT&T/Alascom in Alaska.

31. In the *Geographic Averaging Order,* we found that the 1996 Act required the Commission to mandate rate integration among all states, territories and possessions, and held that ''this goal is best achieved by interpreting 'provider' to include parent companies that, through affiliates, provide service in more than one state.'' We stated that ''nothing in the record supports a finding that Congress intended to allow [interexchange carriers] to avoid rate integration by establishing subsidiaries that provide service in limited areas.'' Applying this general rule in a specific context, we held that GTE, for purposes of section 254(g), was required to integrate its rates for domestic, interstate, interexchange services across affiliates. We find that, pursuant to the rule established in the *Geographic Averaging* proceeding, AT&T, like GTE, is required to integrate and average its rates across affiliates, including AT&T/Alascom.

32. Because AT&T is required to integrate and average its rates geographically for interstate, domestic, interexchange services across all of its affiliates, including AT&T/Alascom, we believe that AT&T/Alascom could not raise and sustain prices for such services above the competitive level in Alaska, unless AT&T were able profitably to charge supracompetitive prices in the ''lower 48'' states. Nothing in the record of this reconsideration proceeding supports a reversal of our determination in the *AT&T Reclassification Order,* that ''AT&T neither possesses nor can unilaterally exercise market power within the interstate, domestic, interexchange market taken as a whole,'' which includes the ''lower 48'' states. Nor is there any evidence in the record on reconsideration to support a finding that geographic rate averaging, together with AT&T's lack of market power in the ''lower 48,'' will not mitigate the exercise of market power, if any, by AT&T/Alascom in Alaska. Therefore, we find no reason to analyze separately AT&T/Alascom's market power in Alaska. Accordingly, we find that AT&T/Alascom is appropriately classified, as established in the *AT&T Reclassification Order,* as non-dominant

in the provision of interstate, domestic, interexchange services.

3. Whether the Commission Should Clarify the Requirements of the Alaska Orders That Continue to Apply to AT&T and AT&T/Alascom

a. *Position of the Parties.* 33. GCI requests that the Commission clarify which requirements of the Commission's Alaska Orders continue to apply to AT&T and AT&T/Alascom. GCI argues that, while AT&T made a generalized promise to comply with outstanding Commission orders relating to Alaska in the *AT&T Reclassification* proceeding, it is impossible to determine which requirements of the Alaska Orders AT&T has specifically agreed to follow, and which it will try to contest or ignore.

34. GCI adds that, as a non-dominant carrier, AT&T may be able to discriminate and to deaverage its Alaska rates by providing Alaska services through two entities—AT&T and AT&T/Alascom. GCI argues that, although the *Final Recommended Decision* provided that AT&T would remain subject to Section 214 entry and exit certification requirements, non-dominant status removes the requirement that AT&T obtain Section 214 authority to serve the Alaska market. GCI further argues that, if AT&T provides separate service to Alaska pursuant to separate tariffs from those filed by AT&T/Alascom, AT&T will be able to discriminate between customers served by AT&T and customers served by AT&T/Alascom. GCI also claims that it will be impossible to determine whether AT&T is integrating Alaska rates into its domestic rate schedule, and that any difference in rates or offerings between AT&T and AT&T/Alascom would call into question which rate is appropriate for purposes of judging rate integration.

35. Finally, GCI argues that separate service by AT&T would disadvantage captive monopoly customers that buy service under the AT&T/Alascom common carrier services tariff, because, to the extent AT&T provides separate service to Alaska and does not use the carrier services of AT&T/Alascom, AT&T will reduce traffic on the AT&T/Alascom network and drive up rates for AT&T/Alascom's captive monopoly customers. GCI states that all carriers, including AT&T, are required to buy Alaska distribution services under the AT&T/Alascom carrier services tariff.

36. Alaska, supporting GCI's request for clarification, notes that AT&T committed to comply with the Commission's orders regarding rate integration and with *all* the obligations and conditions set forth in the Alaska Joint Board Proceeding and the *Alascom Authorization Order.* Alaska requests the Commission to clarify the *AT&T Reclassification Order* if there is any uncertainty on these points.

37. AT&T responds that GCI's request for clarification is inappropriate, because it seeks to inject into this proceeding issues already litigated in other dockets. AT&T adds that its voluntary commitments assume that both AT&T and its AT&T/Alascom affiliate will continue to adhere to the Commission's orders regarding the restructuring of the Alaska market. In addition, AT&T notes that the Commission defined Alascom's ''common carrier'' services as interstate interexchange transport and switching services necessary for other interexchange carriers to provide service in Alaska up to the point of interconnection with LECs. As previously noted, AT&T concedes that, to the extent AT&T/Alascom's ''common carrier'' services are not domestic interstate interexchange services as addressed in the *AT&T Reclassification Order,* the classification of those ''common carrier'' services is not affected by that Order, and, therefore, that, to the extent Alascom's ''common carrier'' services have been found to be dominant, AT&T/Alascom's regulatory obligations relating to those services remain unchanged.

b. *Discussion.* 38. We believe that there is no ambiguity concerning the requirements of the Alaska Orders that continue to apply to AT&T and AT&T/Alascom, but for the sake of clarity we note that the *AT&T Reclassification Order* contains a lengthy and detailed statement of both AT&T's and AT&T/Alascom's obligations with respect to Alaska. In addition, AT&T has committed to comply voluntarily with all the conditions and obligations set forth in the Alaska Orders, and has specifically acknowledged that AT&T's commitment applies to AT&T/Alascom. Moreover, as the Commission noted in the *AT&T Reclassification Order,* any failure by AT&T or AT&T/Alascom to comply with any of the conditions and obligations in the Alaska Orders may result in the imposition of forfeitures on AT&T or AT&T/Alascom, or a revocation of their Commission licenses. In addition, if GCI believes that either AT&T or AT&T/Alascom has failed to honor the commitment to comply with all of the conditions and obligations in the Alaska Orders, GCI may seek relief under Section 208 of the Communications Act.

39. We also reject GCI's claim that AT&T may be able to deaverage its Alaska rates by providing Alaska services through two entities. As an initial matter, we note that, contrary to GCI's suggestion, the reclassification of AT&T as a non-dominant carrier did not remove the requirement that AT&T obtain Section 214 authority to serve the Alaska market. As we stated in the *AT&T Reclassification Order,* AT&T may build or lease facilities to serve the Alaska market subject to dominant carrier authorization rules. Moreover, as discussed above, in the *Geographic Averaging Order,* we found that Congress did not intend to allow interexchange carriers to avoid the rate integration requirements of the 1996 Act by establishing subsidiaries that provide service in limited areas. As noted above, we find that, pursuant to the rule established in the *Geographic Averaging Order,* AT&T must integrate and average its rates across its affiliates. Accordingly, AT&T may not deaverage its Alaska rates by providing services to Alaska through two entities.

4. Other Matters

40. On January 23, 1996, well after the statutory deadline for filing petitions for reconsideration of the *AT&T Reclassification Order,* TTS filed a Petition for Reconsideration requesting that the Commission reclassify AT&T as dominant on the grounds that AT&T retains a dominant position in the interstate, domestic, interexchange market, and has abused, and is likely to continue to abuse, its dominant position in the market. On the same date, TTS filed a motion for acceptance of its late-filed petition for reconsideration. TTS states that it was unable to file its petition before the statutory deadline because AT&T's ''bad acts,'' on which TTS's petition is based, did not occur until November 22, 1995, the due date for filing petitions. TTS alleges that its petition was delayed further by its attempt to negotiate with AT&T to resolve their dispute, and by the blizzard in Washington, D.C., in January, 1996. TTS maintains that these facts establish substantial justification and good cause for the Commission to accept TTS's late-filed petition.

41. On April 15, 1997, TTS filed, in the record of the UHA Petition for Rulemaking proceeding, a Supplement to Petition for Reconsideration and a Motion to Accept Supplement to Petition for Reconsideration. TTS states that the information in its supplement was not available to TTS at the time it filed its petition for reconsideration and that the information is necessary in order for the Commission to have a complete record.

42. Section 405 of the Communications Act, provides, in

relevant part, that: ''[a] petition for reconsideration must be filed within thirty days from the day upon which public notice is given of the order, decision, report, or action complained of.'' Section 1.4(b) of the Commission's rules defines the date of public notice of the final Commission action. Section 1.4(b)(2) provides that, for ''non-rulemaking documents released by the Commission or staff, whether or not published in the **Federal Register**, the release date'' is date of public notice. Accordingly, public notice in this case was given on October 23, 1995, the date on which the *AT&T Reclassification Order* was released. Therefore, petitions to reconsider that decision were, as TTS concedes, due on or before November 22, 1995.

43. Because the period for filing petitions for reconsideration is prescribed by statute, the Commission may not, with one narrow exception articulated by the courts, waive or extend the filing period. The narrow exception to this statutory filing period allows the Commission to extend or waive the 30-day filing period only in an ''extraordinary case,'' such as where the late-filing is due to the Commission's failure to give a party timely notice of the action for which reconsideration is sought. In such circumstances, the petitioner must demonstrate that the delay in filing is attributable to Commission error in giving notice and that it acted promptly upon discovering the adoption of the Commission's decision.

44. TTS has not demonstrated that its delay in filing is attributable to Commission error in giving notice. Indeed, TTS does not dispute that the Commission gave appropriate notice by the release of the *AT&T Reconsideration Order* on October 23, 1995. As noted above, TTS states only that its petition was delayed because the alleged actions on which TTS's petition is based, did not occur until the due date for filing petitions for reconsideration, and that its petition was further delayed by its attempt to negotiate with AT&T as well as by the blizzard in Washington, D.C., in January, 1996. Accordingly, we find that TTS does not meet the narrow exception of an ''extraordinary case'' in which the Commission may extend or waive the statutory deadline for filing petitions for reconsideration. We, therefore, deny TTS's Motion for Acceptance of Petition for Reconsideration, and dismiss its petition as untimely. Because we dismiss TTS's petition for reconsideration, we also deny TTS's Motion to Accept Supplement to Petition for Reconsideration and dismiss TTS's Supplement to Petition for Reconsideration.

III. Petition for Rulemaking

45. On December 31, 1996, the United Homeowners Association and the United Seniors Health Cooperative (UHA) filed with the Commission a Petition for Rulemaking to Reclassify AT&T as Having Dominant Carrier Status. UHA requests that the Commission undertake a review and ''reinstate AT&T's dominant carrier status.'' We note that UHA refers generally to AT&T's status as a carrier of ''long distance service,'' rather than more specifically to AT&T's status as a provider of domestic, interstate, interexchange service. Because UHA consistently refers in its petition only to the Commission's October 23, 1995, decision, we are treating the petition as applying only to AT&T's regulatory status with respect to domestic, interstate, interexchange service, and not international services. In support of its petition, UHA argues that consumers are adversely affected by the classification of AT&T as a non-dominant interexchange carrier, as demonstrated by a rate increase AT&T instituted in November 1996. UHA argues that, ''without regulatory supervision, AT&T consumers will have no protection from unjust rates increases,'' and that classifying AT&T as dominant is necessary in order to monitor AT&T's rate increases until there is meaningful competition in the long-distance market. UHA also points to what it alleges is AT&T's 54.2 percent market share as evidence that AT&T has market power in the long distance market and therefore should be classified as dominant.

46. TTS submitted comments in support of UHA's petition. TTS cites to alleged discriminatory conduct by AT&T against TTS as evidence of AT&T's abuse of its market power and the need therefore to reclassify AT&T as a dominant carrier.

47. In opposition to UHA's petition, AT&T argues that the Petition for Rulemaking should be denied because UHA's arguments already were addressed and properly rejected in the orders classifying AT&T as non-dominant for domestic and international services. AT&T also maintains that UHA's allegations, even if true, are immaterial under the Commission's rules defining dominant carriers. AT&T notes that the Commission examined and found in the *AT&T Reclassification Order* that AT&T does not retain market power in the domestic, interstate, interexchange market. In addition, AT&T maintains that UHA is mistaken in arguing that a change in AT&T's regulatory classification would affect AT&T's ability to make the price changes referenced by UHA. AT&T claims that, even as a dominant carrier subject to price cap regulation, AT&T did not need Commission approval to raise rates within price cap limits. AT&T further argues that UHA's ''unsupported claims of 'tacit collusion' '' among various interexchange carriers does not support regulatory action aimed solely at AT&T, and that ''any attempt to paint the long distance industry as an oligopoly must fail.'' Finally, relying on the Commission's *AT&T Reclassification Order*, AT&T maintains that market share is not the sole determining factor of whether a firm possesses market power, and that the 54.2 percent market share figure referenced by UHA ''is even lower than the market share cited in the [*AT&T Reclassification Order*], and shows a further erosion of AT&T's market share since the Order was released.''

48. In reply to AT&T's Opposition, Pacific takes no position on whether AT&T should be reclassified as a dominant carrier. Pacific only responds to AT&T's argument that there is no evidence of tacit collusion among the big interexchange carriers. Pacific argues that the evidence of tacit collusion ''is not 'inconclusive' anymore,'' that AT&T has continued to raise prices after reclassification, and that new facilities-based entry by the Regional Bell Operating Companies is the best solution to rising prices.

49. We find that the arguments raised by UHA's petition were addressed and decided in the *AT&T Reclassification Order*. Neither UHA, Pacific nor TTS has presented any new evidence or arguments that demonstrate that a new examination of AT&T's regulatory status is warranted. We thus decline to initiate a proceeding at this time to classify AT&T as a dominant carrier. ''Petitions [for rulemaking] * * * which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.'' Accordingly, we deny without prejudice UHA's Petition for Rulemaking.

IV. Ordering Clauses

50. Accordingly, *it is ordered* That Hawaii's Petition for Reconsideration is hereby *denied*.

51. *It is further ordered* That GCI's Petition for Reconsideration or Clarification of the AT&T Reclassification Order is hereby *denied*.

52. *It is further ordered* That GCI's Petition for Clarification of the *Tariff Forbearance Order is granted.*

53. *It is further ordered* That TTS's Motion for Acceptance of Petition for Reconsideration is hereby *denied,* and TTS's Petition for Reconsideration is hereby *dismissed.*

54. *It is further ordered* That TTS's Motion to Accept Supplement to Petition for Reconsideration is hereby *denied,* and TTS's Supplement to Petition for Reconsideration is hereby *dismissed.*

55. *It is further ordered* That the United Homeowners Association and United Seniors Health Cooperative's Petition for Rulemaking is hereby *denied.*

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–28613 Filed 10–28–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 97–380]

Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Order, we adopt a filing window period that begins on the date that the Schools and Libraries Corporation and the Health Care Corporation begin to receive applications for support. We also conclude that the administrative corporations will determine the length of the window and resolve other administrative issues necessary to implement our decision to adopt a window filing period consistent with our guidance set forth below. Therefore, we amend our rules to implement this change. In addition, we delegate authority to the Chief, Common Carrier Bureau to resolve unanticipated technical and operational issues relating to the new universal service mechanisms that may arise in the future.

EFFECTIVE DATE: All policies and rules adopted herein shall be effective November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Valerie Yates, Legal Counsel, Common Carrier Bureau, (202) 418–1500, or Sheryl Todd, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order adopted on October 10, 1997 and released on October 14, 1997, including changes made in an erratum released October 15, 1997. The full text of the Third Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. Pursuant to the Telecommunications Act of 1996, the Commission released a Notice of Proposed Rulemaking and Order Establishing Joint Board, Federal-State Joint Board on Universal Service, CC Docket No. 96–45 on March 8, 1996 (61 FR 10499 (March 14, 1996)), a Recommended Decision on November 8, 1996 (61 FR 63778 (December 2, 1996)), a Public Notice on November 18, 1996 (61 FR 63778 (December 2, 1996)), and a Report and Order that was adopted on May 7, 1997 and released on May 8, 1997 (62 FR 32862 (June 17, 1997)) implementing rules for §§ 254 and 214(e) of the Act relating to universal service. Also pursuant to the Telecommunications Act of 1996, the Commission released a Report and Order in CC Docket 97–21 on July 18, 1997 (62 FR 41294 (August 1, 1997)). The Common Carrier Bureau released a Public Notice seeking comment on additional issues addressed in the Third Report and Order on September 10, 1997 (62 FR 48280 (September 15, 1997)).

Summary of the Third Report and Order

1. On March 8, 1996, as required by the Telecommunications Act of 1996 (1996 Act), the Commission released a Notice of Proposed Rulemaking and Order Establishing a Joint Board on Universal Service. As required by the RFA, the NPRM included an Initial Regulatory Flexibility Analysis (IRFA). At that time, the Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. On May 8, 1997 the Commission released a Report and Order that included a Final Regulatory Flexibility Analysis (FRFA). On September 10, 1997, the Common Carrier Bureau issued a Public Notice seeking comment on several issues with respect to the application process and the distribution of federal universal service support funds for schools, libraries, and rural health care providers. This FRFA supplements the FRFA that was included in the First Report and Order and incorporates the comments with respect to the proposal to adopt a filing window that were received in response to the Bureau's September 10 Public Notice. This present FRFA conforms to the RFA.

2. In the Universal Service Order, we concluded that the Administrator would commit funds to applicants on a first-come first-served basis. We now conclude, based on the nearly unanimous comments received in response to the September 10 Public Notice, that all applications filed during the window will be treated as if simultaneously received. For the reasons discussed below, we find that adopting such a window period will best serve the needs of applicants for universal service discounts, and will assist the administrative corporations in processing these requests in a timely manner.

3. In response to commenters' requests, we clarify that an applicant's ''place in line,'' or seniority, with respect to funds will be determined by the date on which an applicant submits a contract to the applicable administrative corporation. An applicant's submission of its initial request for services, which one of the administrative corporations will post on its website, does not determine the applicant's seniority for the purposes of allocating funding. We clarify that the Schools and Libraries Corporation, as administrator, will allocate funds reasonably and in accordance with the rules of priority set forth in § 54.507(g) of our rules.

4. In light of our decision to adopt a window filing period, we also conclude that the administrative corporations should determine the length of the window and resolve other administrative matters necessary to implement a window filing period. We conclude that this responsibility entails ''administering the support mechanisms for eligible schools and libraries and rural health care providers,'' a function already within the scope of the corporations' general duties. We find that the goals of the universal service mechanisms will best be served if the administrative corporations are responsible for implementing the window filing periods because they will be performing the day-to-day functions of the schools, libraries, and rural health care universal service mechanisms and thus are better able to determine an appropriate window periods in light of their needs and resources. We remain committed to the general principle that funds will be allocated to applicants on a first-come first-served basis. Consistent with this principle, we direct the corporations to adopt a reasonable window period that is of sufficient duration to effectuate the administrative purposes of the window, as set forth

above, but is short enough to ensure that funds are allocated without unnecessary delay and to encourage applicants to file requests for support without undue delay. In addition, to ensure that all applicants will be informed of the window periods with sufficient time to adjust their plans accordingly, we direct the administrative corporations to make a determination with respect to the initial window filing periods by October 31, 1997 and to publicize that decision promptly using appropriate media and other avenues that will notify the educational, library, and rural health care communities. In order to facilitate notification to the public, we direct the Bureau to issue a public notice announcing the administrative corporations' decisions.

5. We further find that unanticipated technical and operational issues may arise that will require prompt attention, but will not warrant Commission review. To the extent clarification of our rules are necessary, however, we delegate to the Chief, Common Carrier Bureau the authority to issue orders interpreting our rules as necessary to ensure that support for services provided to schools and libraries and rural health care providers operate to further our universal service goals. We find that this action is ''necessary to the proper functioning of the Commission and the prompt and orderly conduct of its business.'' 47 U.S.C. 155(c)(1). Any action taken pursuant to this delegation of authority ''shall have the same force and effect and shall be made, evidenced, and enforced in the same manner as actions of the Commission.'' 47 CFR 0.203; see also 47 U.S.C. 155(c)(3).

Final Federal Regulatory Flexibility Analysis

6. On March 8, 1996, as required by the Telecommunications Act of 1996 (1996 Act), the Commission released a Notice of Proposed Rulemaking and Order Establishing a Joint Board on Universal Service. As required by the RFA, the NPRM included an Initial Regulatory Flexibility Analysis (IRFA). At that time, the Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. On May 8, 1997 the Commission released a Report and Order that included a Final Regulatory Flexibility Analysis (FRFA). On September 10, 1997, the Common Carrier Bureau issued a Public Notice seeking comment on several issues with respect to the application process and the distribution of federal universal service support funds for schools, libraries, and rural health care providers. This FRFA supplements the FRFA that was included in the First Report and Order and incorporates the comments with respect to the proposal to adopt a filing window that were received in response to the Bureau's September 10 Public Notice. This present FRFA conforms to the RFA.

7. *Need for, and Objectives of, this Third Report and Order.* The Commission is required by sections 254(a)(2) and 410(c) of the Act, as amended by the 1996 Act, to promulgate these rules to implement promptly the universal service provisions of section 254. The goal of this *Third Report and Order* (Order) is to ease the burden on schools, libraries, and rural health care providers that will submit requests for funding to the universal service administrator by adopting a filing window. All applications filed during the window will be treated as if simultaneously received.

8. *Summary of Significant Issues Raised by Public Comments.* Commenters overwhelmingly recommended adoption of a filing window in order to ease the administrative burdens on schools, libraries, and rural health care providers, particularly smaller entities with fewer administrative resources. Some commenters urged the Commission to ensure that applicants in all states would receive some opportunity to receive funding.

9. *Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Report and Order will Apply.* The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). As noted, the RFA also applies to nonprofit organizations and to governmental organizations such as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000. As of 1992, the most recent figures available, there were 85,006 governmental entities in the United States.

10. For ''small business'' determinations in this context, the SBA has established a definition of small elementary and secondary schools and small libraries as those with under $5 million in annual revenues. Other entities of this sort may be considered small under the other two prongs of the RFA. The most reliable source of information regarding the total number of kindergarten through 12th grade (K–12) schools and libraries nationwide of which we are aware appears to be data collected by the United States Department of Education and the National Center for Educational Statistics. Based on that information, it appears that there are approximately 86,221 public and 26,093 private K–12 schools in the United States (SIC 8211). It further appears that there are approximately 15,904 libraries, including branches, in the United States (SIC 8231). Although it seems certain that not all of these schools and libraries would qualify as small entities under the SBA's determination, we are unable at this time to estimate with greater precision the number of small schools and libraries that would qualify as small entities under the definition. Consequently, we estimate that there are fewer than 86,221 public and 26,093 private schools and fewer than 15,904 libraries that may be affected by the decisions and rules adopted in this Order.

11. Neither the Commission nor the SBA has developed a definition of small, rural health care providers. Section 254(h)(5)(B) defines the term ''health care provider'' and sets forth the seven categories of health care providers eligible to receive universal service support. We estimate that there are: (1) 625 ''post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools,'' including 403 rural community colleges, 124 medical schools with rural programs, and 98 rural teaching hospitals; (2) 1,200 ''community health centers or health centers providing health care to migrants;'' (3) 3,093 ''local health departments or agencies'' including 1,271 local health departments and 1,822 local boards of health; (4) 2,000 ''community mental health centers;'' (5) 2,049 ''not-for-profit hospitals;'' and (6) 3,329 ''rural health clinics.'' We do not have sufficient information to make an estimate of the number of consortia of health care providers at this time. The total of these categorical numbers is 12,296. Consequently, we estimate that there are fewer than 12,296 health care providers potentially affected by the rules in this Order. For the purposes of ''small business'' analysis, we note that

according to the SBA definition, hospitals must have annual gross receipts of $5 million or less to qualify as a small business concern. There are approximately 3,856 hospital firms, of which 294 have gross annual receipts of $5 million or less. Although some of these small hospital firms may not qualify as rural health care providers, we are unable at this time to estimate with greater precision the number of small hospital firms which may be affected by this Order. Consequently, we estimate that there are fewer than 294 hospital firms affected by this Order.

12. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* This order will impose no additional reporting, recordkeeping or other compliance requirements on small entities.

13. *Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered.* As explained in the Order, based on the nearly unanimous comments received in response to the *September 10 Public Notice,* the Commission concludes that all applications filed during the window will be treated as if simultaneously received. We find that adopting such a window period will best serve the needs of applicants for universal service discounts, and will assist the administrative corporations in processing these requests in a timely manner. The Commission finds that the window will reduce pressure on applicants to submit their contracts at the earliest possible moment and, thus, will improve the accuracy and care with which these contracts are negotiated and the accompanying forms are completed. By providing additional time to complete contract negotiations after the four-week competitive bid waiting period, a window will allow schools to negotiate their contracts with greater care. Further, this window will reduce disparities between applicants with substantial administrative resources and applicants with fewer resources, such as small schools, libraries, and health care providers. We recognize, as noted by the commenters, that this window will not eliminate all disparities among applicants. The Commission adopted annual funding caps, $2.25 billion for schools and libraries and $400 million for health care providers, because it estimated that these monies would be sufficient for all applicants during the funding year. We emphasize that we have no reason to revise these estimates and have no reason to believe that either of the caps will be reached during the initial filing period, nor at any other point during the funding period. We are adopting a window primarily to allow applicants sufficient time to negotiate contracts properly and submit complete filings.

14. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. A copy of the Order and this FRFA will also be published in the **Federal Register** and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Libraries, Schools, Healthcare providers, Telecommunications, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

1. Part 54 of Title 47 of the Code of Federal Regulations (CFR) is amended as follows:

PART 54—UNIVERSAL SERVICE

2. Section 54.507 is amended by adding the last three sentences to paragraph (c) to read as follows:

§ 54.507 Cap.

* * * * *

(c) *Requests.* * * * The Schools and Libraries Corporation shall implement an initial filing period that treats all schools and libraries filing within that period as if they were simultaneously received. The initial filing period shall begin on the date that the Schools and Libraries Corporation begins to receive applications for support, and shall conclude on a date to be determined by the Schools and Libraries Corporation. The Schools and Libraries Corporation may implement such additional filing periods as it deems necessary.

* * * * *

3. Section 54.623 is amended by adding the last three sentences to paragraph (c) to read as follows:

§ 54.623 Cap.

* * * * *

(c) *Requests.* * * * The Rural Health Care Corporation shall implement an initial filing period that treats all health care providers filing within that period as if they were simultaneously received. The initial filing period shall begin on the date that the Rural Health Care Corporation begins to receive applications for support, and shall conclude on a date to be determined by the Rural Health Care Corporation. The Rural Health Care Corporation may implement such additional filing periods as it deems necessary.

* * * * *

[FR Doc. 97–28612 Filed 10–28–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket Nos. 96–262, 94–1, 91–213; FCC No. 97–368]

Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for waiver.

SUMMARY: On October 8, 1997, the Commission adopted a Memorandum Opinion and Order in this proceeding granting a petition for waiver filed by the National Exchange Carrier Association, Inc. (NECA). In its petition, NECA sought an order waiving § 69.105(b)(2)–(3) for NECA's pool, so as to allow NECA to reflect revised long term support formula amounts in its carrier common line (CCL) tariff rates effective January 1, 1998. The Commission granted the waiver on condition that NECA compute the CCL charge in the manner prescribed by the Commission.

EFFECTIVE DATE: November 28, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Lerner, Attorney, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order adopted October 8, 1997, and released October 9, 1997. The full text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common_Carrier/Orders/fcc.97368.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Paperwork Reduction Act

N/A. This Memorandum Opinion and Order does not require an information collection.

Synopsis of Memorandum Opinion and Order

1. The National Exchange Carrier Association, Inc. (NECA) asserts in its reconsideration petition that the Commission should revise on reconsideration the rule provisions governing calculation of NECA carrier common line (CCL) rates, without waiting for the conclusion of a separate proceeding on access charge reform for rate-of-return LECs. In the alternative, NECA requests that the Commission issue an order waiving § 69.105(b)(2)–(3) for NECA's pool, so as to allow NECA to reflect revised long term support (LTS) formula amounts in its CCL tariff rates effective January 1, 1998. No party opposed or supported NECA's petition for reconsideration or waiver of the rule. We have decided to waive the specified rule provisions at this time, and make appropriate rule revisions in the separate proceeding.

2. Section 69.105(b) currently sets the NECA CCL tariff at the average of price-cap LECs' CCL charges. Prior to January 1, 1998, LTS is a variable amount, based on the difference between the revenues earned from charging a nationwide average CCL rate and the NECA pool CCL revenue requirement. In the *Universal Service Order,* we substituted federal universal service support payments for previously-received recovery from the interstate access charge system through LTS. Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96–45, 62 FR 32862 (June 17, 1997) (*Universal Service Order*). The rule revisions in the *First Report and Order* removed LTS amounts from price cap LEC CCL calculations, but postponed making conforming revisions in § 69.105(b) to the CCL rate calculation for NECA tariff participants. Access Charge Reform, CC Docket No. 96–262, First Report and Order, 62 FR 31040 (June 6, 1997).

3. Section 1.3 of our rules empowers the Commission to grant waivers of its rules if good cause is shown. In this situation, NECA must demonstrate that special circumstances justify a departure from the general rule and that such a deviation will serve the public interest. *Northeast Cellular Telephone Co.* v. *FCC,* 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio* v. *FCC,* 418 F.2d 1153 (D.C. Cir. 1969). We conclude that NECA has demonstrated that continued application of § 69.105(b)(2)–(3) would be contrary to the public interest in these circumstances. As we stated in the *Universal Service Order,* the ''elimination of price-cap (incumbent LECs') LTS obligations will allow their CCL charges to fall, but there is no corresponding reason for a reduction in the NECA CCL tariff. Yet under our current rules, the NECA CCL charge would fall simply because of our regulatory changes to price-cap (incumbent LECs') LTS payment obligations. We must therefore establish a new method to set the NECA CCL tariff.''

4. Because changes in the recovery of LTS amounts and price-cap carrier CCL rate computations as adopted in the *First Report and Order* and *Universal Service Order* are scheduled to become effective on January 1, 1998, grant of the waiver will allow NECA to conform its rates to decisions reached in the *Universal Service Order* by reflecting revised LTS formula amounts in its CCL tariff rates effective January 1, 1998. We therefore waive § 69.105(b)(2)–(3) for the calculation of NECA's CCL pool rate that will become effective January 1, 1998, on the condition that NECA must compute the Carrier Common Line charge as follows:

(a) From the NECA pool aggregate Carrier Common Line revenue requirement amount, subtract: (1) Aggregate End User Common Line charges; (2) aggregate Special Access Surcharges; and (3) the portion of per-line support that NECA CCL pool participants receive, in the aggregate, pursuant to 47 CFR 54.303.

(b) The premium originating Carrier Common Line charge must be one cent per minute, except as described herein at paragraph (d), and

(c) The premium terminating Carrier Common Line charge must be computed by subtracting the projected revenues generated by the originating Carrier Common Line charges (both premium and non-premium) from the number calculated in paragraph (a), and dividing the remainder by the sum of the projected premium terminating minutes and a number equal to 0.45 multiplied by the projected non-premium terminating minutes, except as described herein at paragraph (d).

(d) If the calculations described in paragraph (c) result in a per minute charge on premium terminating minutes that is less than one cent, both the originating and terminating premium charges for the NECA CCL pool participants must be computed by dividing the number calculated pursuant to paragraph (a) by the sum of the premium minutes and a number equal to 0.45 multiplied by the non-premium minutes for the NECA CCL pool participants.

This NECA CCL charge calculation will reflect that now the CCL charge, rather than LTS, is a residual amount.

Accordingly, *it is ordered,* pursuant to 47 U.S.C. 154(i) and 47 CFR 1.3, that NECA's request for waiver of § 69.105(b)(2)–(3) of the Commissions rules, 47 CFR part 69.105(b)(2)–(3) is granted subject to the limitations and conditions described in this document.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–28544 Filed 10–28–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket Nos. 96–262, 94–1, 91–213; FCC 97–368]

Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: On December 23, 1996, the Commission adopted a Notice of Proposed Rulemaking in this docket, 62 FR 4670 (Jan. 31, 1997), seeking comment on how the interstate access charge regime should be revised in light of the local competition and Bell Operating Company entry provisions of the Telecommunications Act of 1996 and state actions to open local markets to competition, the effects of potential and actual competition on incumbent LEC pricing for interstate access, and the impact of the Act's mandate to preserve and enhance universal service. On May 7, 1997, the Commission adopted a First Report and Order, 62 FR 31040 (June 6, 1997), in which it adopted many of the rules it proposed. In this Second Order on Reconsideration, the Commission modifies some of the rules adopted in the First Report and Order. These rule revisions are intended to foster competition, move access charges over time to more economically efficient levels and rate structures, preserve universal service, and lower rates.

EFFECTIVE DATES: The following rules or amendments thereto, shall become effective January 1, 1998: 47 CFR 69.153(g), 69.4, 69.111(c)(1), 69.153(c)(1), 69.153(d)(1)(i), 69.153(d)(2)(i), and 69.155(c). The Commission has requested emergency approval of the information collection requirements to ensure that it may be

effective on January 1, 1998. Written comments by the public on the new and/or modified information collections are due November 13, 1997. Written comments must be submitted to the Office of Management and Budget (OMB) on the new and/or modified information collections on or before October xx, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Lerner, Attorney, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1530. For additional information concerning the information collections contained in this Report and Order contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order adopted October 8, 1997, and released October 9, 1997. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., N.W., Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common_Carrier/Orders/1997/fcc97368.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036. The rules adopted in this Second Order on Reconsideration are made in response to petitions for reconsideration to Access Charge Reform, CC Docket No. 96–262, Report and Order, 62 FR 31040 (June 6, 1997) (*First Report and Order),* and to correct clerical errors of the *First Report and Order.* This Second Order on Reconsideration contains new and/or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new and/or modified information collections contained in this proceeding. Please note that the Commission has requested emergency review and approval of this collection by November 13, 1997 under the provisions of 5 CFR 1320.13.

Final Regulatory Flexibility Analysis

In the *First Report and Order,* we conducted a Final Regulatory Flexibility Analysis as required by Section 603 of the Regulatory Flexibility Act, as amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996). The changes we adopt in this Order do not affect that analysis.

Paperwork Reduction Act

This Order contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Please note that the Commission has requested emergency review and approval of this collection by November 13, 1997 under the provisions of 5 CFR 1320.13. OMB notification of action is due November 13, 1997. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0760.

Title: Access Charge Reform Second Order on Reconsideration

Type of Review: Revised Collection

Respondents: Business and other for profit.

Number of Respondents: 14.

Estimated Time Per Response: 128,907 hours.

Total Annual Burden: 1,804,690 hours.

Estimated Costs Per Respondent: $4,504,388.

Total Annual Estimated Costs: $63,061,430.

Needs and Uses: 1. In the First Report and Order (Order), CC Docket No. 96–262, Access Charge Reform and the Second Order on Reconsideration, the FCC adopts, that, consistent with principles of cost-causation and economic efficiency, non-traffic sensitive (NTS) costs associated with local switching should be recovered on an NTS basis, through flat-rated, per month charges. The information collections are as follows:

a. *Showings Under the Market-Based Approach:* As competition develops in the market, the FCC will gradually relax and ultimately remove existing Part 69 federal access rate structure requirements and Part 61 price caps restrictions on rate level changes. Regulatory reform will take place in two phases. The first phase of regulatory reform will take place when an incumbent Local Exchange Carrier's (LEC) network has been opened to competition for interstate access services. The second phase of rate structure reforms will take place when an actual competitive presence has developed in the marketplace. Detariffing will take place when substantial competition has developed for the access charge elements. In our initial statement, we proposed that in order for LECs to meet this standard, they have to demonstrate that: (1) Unbundled network element prices are based on geographically deaveraged, forward-looking economic costs in a manner that reflects the way costs are incurred; (2) transport and termination charges are based on the additional cost of transporting and terminating another carrier's traffic; (3) wholesale prices for retail services are based on reasonably avoidable costs; (4) network elements and services are capable of being provisioned rapidly and consistent with a significant level of demand; (5) dialing parity is provided by the incumbent LEC to competitors; (6) number portability is provided by the incumbent LEC to competitors; (7) access to incumbent LEC rights-of-way is provided to competitors; and (8) open and non-discriminatory network standards and protocols are put into effect. We propose that the second phase of rate structure reforms would take place when an actual competitive presence has developed in the marketplace. LECs would have to show the following to indicate that actual competition has developed in the marketplace by: (1) Demonstrated presence of competition; (2) full implementation of competitively neutral universal service support mechanisms; and (3) credible and timely enforcement of pro-competitive rules. In the NPRM, we sought comment on four options for a prescriptive approach: reinitializing price cap indices (PCIs) to economic cost-based levels; reinitializing PCIs to levels targeted to yield no more than an 11.25 percent rate of return, or some other rate of return; adding a policy-based mechanism similar to the CPD to the X-Factor; or prescribing economic cost-based rates. We have decided above to rely primarily on a market-based approach, and impose prescriptive requirements only when market forces are inadequate to ensure just and reasonable rates for particular services or areas. We will determine the details of our market-based approach in a future Order. In that Order, we will also discuss in more detail what prescriptive

requirements we will use as a backstop to our market-based access charge reform. Because we are not adopting the prescriptive approach at this time, we are removing the collections associated with the prescriptive approach from our statement. If the collections are adopted at a later date, we will request that OMB reinstates them at that time. No change.

b. *Cost Study of Local Switching Costs:* The FCC does not establish a fixed percentage of local switching costs that incumbent LECs must reassign to the Common Line basket or newly created Trunk Cards and Ports service category as NTS costs. In light of the widely varying estimates in the record, we conclude that the portion of costs that is NTS costs likely varies among LEC switches. Accordingly, we require each price cap LEC to conduct a cost study to determine the geographically-averaged portion of local switching costs that is attributable to the line-side ports, as defined above, and to dedicated trunk side cards and ports. These amounts, including cost support, should be reflected in the access charge elements filed in the LEC's access tariff effective January 1, 1998. No Change.

c. *Cost Study of Interstate Access Service That Remain Subject to Price Cap Regulation:* The 1996 Act has created an unprecedented opportunity for competition to develop in local telephone markets. We recognize, however, that competition is unlikely to develop at the same rate in different locations, and that some services will be subject to increasing competition more rapidly than others. We also recognize, however, that there will be areas and services for which competition may not develop. We will adopt a prescriptive ''backstop'' to our market-based approach that will serve to ensure that all interstate access customers receive the benefits of more efficient prices, even in those places and for those services where competition does not develop quickly. To implement our backstop to market-based access charge reform, we require each incumbent price cap LEC to file a cost study no later than February 8, 2001, demonstrating the cost of providing those interstate access services that remain subject to price cap regulation because they do not face substantial competition. No Change.

The Order also adopts the following collection of information:

d. *Tariff Filings:* In the *First Report and Order,* the Commission requires the filing of various tariffs, with modifications. For example, the FCC directs incumbent LECs to establish separate rate elements for the multiplexing equipment on each side of the tandem switch. LECs must establish a flat-rated charge for the multiplexers on the SWC side of the tandem, imposed pro-rata on the purchasers of the dedicated trunks on the SWC side of the tandem. Multiplexing equipment on the EO side of the tandem shall be charged to users of common EO-to-tandem transport on a per-minute of use basis. These multiplexer rate elements must be included in the LEC access tariff filings to be effective January 1, 1998. In the *Second Order on Reconsideration,* the FCC clarifies that the TIC exemption for access customers using competitive transport providers only applies to that portion of the residual per-minute TIC that is related to transport facilities, and directs incumbent local exchange carriers to include, in their access tariff filing, the amount of per-minute transport interconnection charge (TIC) they anticipate will be allocated to facilities-based rate elements in the future.

e. *Third-Party Disclosure*: In the *Second Order on Reconsideration,* the Commission requires LECs to provide IXCs with customer-specific information about how many and what type of presubscribed interexchange carrier charges (PICCs) they are assessing for each of the IXC's presubscribed customers. One of the primary goals of our *First Report and Order* was to develop a cost-recovery mechanism that permits carriers to recover their costs in a manner that reflects the way in which those costs are incurred. Without access to information that indicates whether the LEC is assessing a primary or non-primary residential PICC, or about how many local business lines are presubscribed to a particular IXC, the IXC will be unable to develop rates that accurately reflect the underlying costs.

SYNOPSIS OF REPORT AND ORDER

I. Presubscribed Interexchange Carrier Charge

A. Implementation Issues

1. Background

1. In the *First Report and Order,* we adopted common line rate structure modifications that will permit price cap LECs to shift gradually from a cost-recovery mechanism that recovers a significant portion of non-traffic sensitive common line costs through per-minute CCL charges to one that recovers these costs through flat-rated charges. The cost-recovery mechanism we adopted retains the current $3.50 ceiling on the SLC for primary residential and single-line business lines and increases the SLC ceilings on other lines to permit LECs to recover a greater amount of the common line costs through flat-rated charges assessed on the end user. To the extent that SLC ceilings prevent price cap LECs from recovering their allowed common line revenues from end users, LECs will recover the shortfall, subject to a maximum charge, through a presubscribed interexchange carrier charge (PICC), a flat, per-line charge assessed on the end-user's presubscribed interexchange carrier.

2. The PICC, which over time will shift revenue recovery from the per-minute CCL charges to a flat-rated charge assessed on IXCs, was designed to allow price cap LECs to recover the difference between revenues collected through the SLCs and the total revenue permitted for the common line basket. In order to provide price cap LECs and IXCs with adequate time to adjust to the new rate structure, we adopted an approach that will gradually phase in the PICC over time. Specifically, effective January 1, 1998, we capped PICCs for primary residential and single-line business lines at $0.53 per month for the first year. Beginning January 1, 1999, the ceiling on the monthly PICC on primary residential and single-line business lines will be adjusted for inflation and will increase by $0.50 per year until it equals the monthly per-line common line revenues and residual interconnection charge revenues permitted under our price cap rules, less the maximum SLC charge allowed under our rules.

3. In addition, to the extent that the SLC ceilings on all lines and the PICC ceilings on primary residential and single-line business lines prevent recovery of the full common line revenues permitted by our price cap rules, the new rate structure we adopted for price cap LECs permits these carriers to recover the shortfall through PICCs assessed on non-primary residential and multi-line business lines. For the first year, the ceiling on the PICC will be $1.50 per month for non-primary residential lines and $2.75 per month for multi-line business lines.

4. Beginning January 1, 1999, the PICC ceilings for price cap non-primary residential and multi-line business lines will be adjusted for inflation and will increase by a maximum of $1.00 and $1.50 per year, respectively, until incumbent LECs can recover all of their permitted common line revenues through a combination of flat-rated SLCs and PICCs. As the PICC ceilings on primary residential and single-line business lines increase, the residual per-minute CCL charge will decrease until it is eliminated. After the residual per-minute CCL charge is eliminated and

the PICC ceilings for primary residential and single-line business lines increase, price cap LECs will reduce their PICCs on non-primary residential and multi-line business lines by a corresponding amount. Reductions will be targeted first to the PICCs on multi-line business lines until the PICCs for those lines are equal to the PICCs for non-primary residential lines. Thereafter, price cap LECs will apply the annual reductions to both classes of customers equally until the combined SLCs and PICCs for primary residential and single-line business lines recover the full average per-line common line revenues permitted under our price cap rules, and the additional PICCs on non-primary residential and multi-line business lines no longer recover common line revenues.

2. Sprint's Petition for Reconsideration

5. On July 11, 1997 Sprint filed a Petition for Expedited Reconsideration and Clarification in which it requests that the Commission reconsider certain implementation issues related to the PICCs adopted in the *First Report and Order.* Sprint argues that these issues need to be resolved prior to January 1, 1998, the effective date of the PICCs. Specifically, Sprint requests that the Commission require LECs to provide IXCs with customer-specific billing information that specifies the number and type(s) of PICCs LECs will be assessing for each of the IXCs' presubscribed customers. Sprint asserts that because LECs will be assessing IXCs different PICCs for primary and non-primary residential lines, IXCs may choose to develop different residential rates for these lines. Sprint argues that IXCs will therefore need the customer-specific PICC information in order to develop separate toll rates for calls originated on these lines.

6. In addition, Sprint contends that in a typical multi-line business configuration IXCs are unable to determine how many multi-line business lines are presubscribed to them. According to Sprint, unless the LECs provide customer-specific PICC information, IXCs are unable to know how many of these local lines exist or how many PICCs are being assessed for these lines. Sprint argues that IXCs need access to customer-by-customer PICC data so that they have the ability to pass through the PICCs directly to their customers if they so choose.

7. In its petition, Sprint seeks guidance from the Commission on how LECs should assess PICCs where a LATA encompasses territory in more than one state, and a customer has one IXC handling intraLATA interstate calls and another IXC handling interLATA interstate calls. Sprint suggests that the PICC should be assessed on the interLATA interstate carrier.

3. Discussion

8. We grant Sprint's request that LECs be required to provide IXCs with customer-specific information about the number and type(s) of PICCs they are assessing for each of the IXC's presubscribed customers. We agree with Sprint that this measure is necessary to provide IXCs the opportunity to develop a rate structure that recovers these costs in a cost-causative manner. One of the primary goals of our *First Report and Order* was to develop a cost-recovery mechanism that permits carriers to recover their costs in a manner that reflects the way in which those costs are incurred. If an IXC were to receive a bill for the aggregate amount of the PICCs assessed on its presubscribed lines and did not have access to information that indicates for which lines the LEC is assessing a primary or non-primary residential PICC, the IXC would be unable to develop residential rates that accurately reflect the underlying costs of providing service over those lines. Similarly, in a multi-line business configuration, without information about the number of local business lines that are presubscribed to a particular IXC and the amount of PICCs being charged for which lines, the IXC will not be able to recover the costs of serving its customers in an efficient manner. We therefore conclude that LECs must provide IXCs with information about how many and what type of PICCs they are charging IXCs for each customer.

9. We conclude that there is insufficient evidence in the record to support arguments that providing customer-specific PICC data to IXCs will be overly burdensome and that discrepancies can be resolved through normal billing reconciliation processes. In order to bill IXCs the proper amount, LECs will presumably have to create a database for purposes of determining how many lines are presubscribed to each IXC and what type of PICC is being assessed for each of those lines. We conclude that LECs must provide this information to the IXCs to enable them to develop rate structures that will recover these costs efficiently.

10. We also grant Sprint's request to clarify how LECs assess PICCs in situations where a customer for a particular line has one presubscribed carrier for interstate intraLATA calls and another for interstate interLATA calls. Dividing the PICC between two IXCs based on actual calling patterns would create an unnecessary administrative burden that would outweigh any minimal benefit. Moreover, LATA boundaries that cross state lines are the exception rather than the rule, and interstate calls within a LATA thus represent only a small portion of interstate traffic. We therefore conclude that in such cases, the PICC shall be assessed on the interstate interLATA carrier.

B. PICC Calculation

1. Background

11. In its petition for reconsideration, Sprint argues that the Commission's formula for calculating PICCs will not allow sufficient recovery of loop costs, because the formula relies on base period revenues divided by the projected number of loops in use for such annual period. Sprint contends that such a formula would force PICCs downward because revenues determined on a base period would not adequately reflect revenue growth commensurate with projected growth in loops. In turn, Sprint argues, under-recovery of loop costs through flat-rated PICCs will necessitate greater reliance on usage charges to recover non-traffic-sensitive costs, undermining the Commission's efforts to align access charges with the manner in which costs are incurred.

2. Discussion

12. We clarify in this Order that the rule describing the formula for calculating PICCs relies on projected revenues and projected loop counts. The use of projected revenues and projected loop counts is applicable to PICC calculations conducted under sections 69.153(c) and 69.153(d) of our rules. We note that the rule setting forth the method of calculating SLCs expressly incorporates projected revenues and projected loop numbers. Although the PICC rule does not expressly state that projected revenues are to be used in the formula, the rule has been designed to use projected revenues rather than revenues derived from a base period. Accordingly, there is no ''mismatch'' caused by dividing projected loops by base period revenues. We will, however, amend our rules to state explicitly that the projected revenues must be used to conduct the PICC calculation.

13. In our *First Report and Order,* we adopted section 69.153(c)(1) in which we directed incumbent LECs to calculate the maximum monthly PICC for primary residential subscriber lines and single-line business lines by using ''one twelfth of the sum of annual common line revenues and residual

interconnection charge revenues permitted under our price cap rules divided by the projected average number of local exchange service subscriber lines in use during such annual period, minus $3.50.'' On further consideration of section 69.153(c)(1), we recognize that, as written, this rule may not permit an incumbent LEC to recover its residual interconnection charge revenues from primary residential and single-line business lines when its maximum primary residential and single-line business SLC is less than $3.50. On our own motion, therefore, we take this opportunity to reconsider this issue and revise section 69.153(c)(1). We replace the phrase ''minus $3.50'' with the phrase ''minus the maximum subscriber line charge computed pursuant to section 69.152(d)(2).''

In the *First Report and Order,* we also adopted section 69.153(d)(2)(i), which instructs incumbent LECs how to calculate the maximum monthly PICC for multi-line business lines when the maximum charge for the non-primary residential PICC is at its cap. The rule was intended to provide that the calculation be performed by taking ''[o]ne twelfth of the annual common line, residual interconnection charge, and § 69.156(a) marketing expense revenues permitted,'' less the maximum amounts permitted to be recovered through the SLC, the other PICCs, and other marketing expense recovery mechanisms. In crafting the language of the rule, however, we identified the maximum amount permitted to be recovered from the non-primary residential PICC as section 69.153(d)(1)(i) instead of section 69.153(d)(1). We correct this error to take into account the fact that the cap on the non-primary residential PICC limits the amount that charge can recover.

C. Application of PICCs to Centrex Lines

1. Background

15. The *First Report and Order* requires that the PICC recover common line revenues not recovered from the SLC and other common line charges, and that the PICC be applied on the same basis as the SLC. Centrex arrangements are charged more SLCs than are similarly-sized PBX arrangements. Consequently, the *First Report and Order* requires that Centrex arrangements be assessed a greater number of PICCs than are similarly-sized PBX arrangements.

22. Petitions

16. USTA, ICA, and the County of Los Angeles (Los Angeles) assert that the number of PICCs that are assessed on Centrex arrangements should equal the number of PICCs assessed on similarly-sized PBX arrangements. They contend that the revenues recovered from Centrex arrangements by the PICC are unrelated to the costs of providing Centrex service. They argue that Centrex customers currently pay one SLC per line, which recovers the full interstate portion of common line costs used to provide Centrex service. They further contend that the disproportionate level of PICC Centrex charges unfairly subjects Centrex systems to anticompetitive and arbitrary charges, which is contrary to the clear intent of Congress that subsidies be explicit and cost-based.

17. ICA observes that the Commission's rules appear to apply to lines that are toll restricted, thereby penalizing customers that attempt to control costs and reduce the possibility of toll fraud. According to ICA, many Centrex customers require that a portion of their Centrex lines be toll restricted. ICA argues that toll-restricted Centrex lines should not be subject to any PICCs.

18. Petitioners propose that LECs be permitted to reflect trunk equivalency. They propose that the PICC on Centrex lines be assessed using a line-to-trunk equivalency ratio. Such ratios are already set forth in intrastate tariffs. In the absence of an intrastate tariff, the LECs could develop such a ratio, or there could be agreed upon industry relationships between the Centrex lines and trunks. USTA also suggests that LECs should be permitted to count Network Access Registers (NARs) for purposes of assessing the PICC on Centrex customers. USTA contends that NARs are equivalent to PBX trunks since one NAR provides one link to the switch. In an *ex parte* filing, USTA has indicated that in order to address the complexity and verification problems of using individual state tariffs or individual company ratios, the Commission should adopt a uniform line-to-trunk equivalency ratio of 9 to 1.

3. Discussion

19. We grant the petitions of USTA, ICA, and Los Angeles that the PICC be assessed on Centrex lines using a line-to-trunk equivalency ratio. For the reasons discussed below, we adopt USTA's proposal to use a uniform 9:1 ratio. In large part, the multi-line business PICC is not a cost-based charge, but a contribution, ''for a limited period, to the recovery of common line costs that incumbent LECs incur to serve single-line customers.'' It is therefore reasonable to consider non-cost factors in determining how to assess the PICC. We conclude that with respect to the PICC, Centrex customers should be treated similarly to PBX customers, because the two arrangements are functionally equivalent.

20. Petitioners state that Centrex and PBX arrangements are functionally equivalent, and opposing parties do not dispute this assertion. We do not wish to encourage a large customer to choose one of these arrangements, PBX, over another, Centrex, simply because, as a result of its IXC being charged substantially more PICCs, *i.e.,* non-cost-related charges, for Centrex service, the PBX service becomes cheaper.

21. In addition, many Centrex users are government, education, and health care facilities. We note that more than 25 percent (18,640) of Los Angeles's 67,000 Centrex lines, which do not include Los Angeles County public schools are used by health care facilities. Without using a line-to-trunk equivalency ratio, Los Angeles could be required to pay an additional $2.8 million annually in PICCs, if its presubscribed IXC passes these charges through. New York could see the implementation of the PICC increase its rates by over $2.4 million annually, if these charges are passed through by its IXC. Boston University, with its 10,000 Centrex lines, faces a potential increase of $330,000 per year in PICCs. By granting the petitions for relief, we ensure that all multi-line business customers shoulder a similar portion of the PICC contribution, irrespective of whether they use Centrex or PBX arrangements.

22. Centrex arrangements are charged SLCs on a per-line basis, even though this difference results in a higher rate than equivalent PBX arrangements have to pay. That differential is due to the additional common line costs that Centrex lines incur. Historically, the Commission has declined to apply a trunk equivalency ratio for Centrex services, under the rationale that ''[i]f Centrex uses more lines, then Centrex necessarily creates more line costs.'' Unlike the SLC, in most instances, the multi-line business PICC will not recover loop costs of multi-line businesses. Instead, it will contribute to the recovery of the cost of single-line business and residential loops, which have lower SLC and PICC caps. Centrex and PBX are functionally equivalent in most respects. Taking these factors into consideration, it would be inequitable to require Centrex users to cause its presubscribed IXC to bear a significantly larger PICC contribution than do similarly-sized PBX users.

23. Therefore, we will limit the PICC charges that may be assessed on IXCs serving Centrex customers on a line-to-trunk equivalency basis, except where the multi-line business SLC ceiling does not permit the recovery of all interstate-allocated loop costs from the end user. In those instances, a somewhat greater PICC—one that includes the difference between the per-line loop cost and the multi-line business SLC cap—will be assessed on Centrex lines. Thus, for example, if on January 1, 1998, in a particular region the loop cost is $9.40, and the maximum permitted multi-line business PICC is being assessed, *i.e.*, $2.75, each Centrex line would be assessed a $0.71 PICC, which is equal to one-ninth of $2.75 plus the difference between the $9.40 loop cost and the $9.00 SLC.

24. In determining the appropriate line-to-trunk equivalency ratio, we consider several factors. First, we observe that many states, but not all, already have trunk equivalency tables for their intrastate tariffs. USTA has indicated that although these tables are similar, they are not identical. For example, USTA states that a Centrex customer with 70 lines is equivalent to a PBX customer with 13 trunks, while Ameritech states that in Illinois, the equivalency tariff for 70 Centrex lines is 8 PBX trunks. Adopting the trunk equivalency ratios set out in intrastate tariffs would result in different equivalency ratios being used in different states and would not provide a trunk equivalency ratio for many states. Because the trunk equivalency ratio we adopt today is for an interstate charge, a national standard for trunk equivalency ratio is appropriate.

25. We also desire administrative ease in calculating trunk equivalency. Adoption of a single ratio would simplify the assessment of PICCs on Centrex lines by eliminating the use of multiple ratios from multiple tables or state tariffs. IXCs would have the benefit of knowing that they will be assessed a set fraction of the PICC for each Centrex line that is presubscribed to their service, even when Centrex customers have lines presubscribed to different IXCs. Therefore, we have elected to adopt a single trunk equivalency ratio for establishing PICC charges for all Centrex lines. USTA suggested a ratio of nine (9) Centrex lines to one (1) PBX trunk. It bases its recommendation on the average of the weighted average trunk equivalency ratios or relationship between NARs and Centrex lines that are employed in several jurisdictions. Applying a 9:1 ratio would result in a maximum PICC on Centrex lines of approximately $0.30 per line in 1998 for the overwhelming majority of Centrex lines. We note that the ratio under some state tariffs can approach 18 to 1 for certain Centrex customers. Reducing the PICC from up to $2.75 to less than $0.31 achieves the goal of spreading the PICC contribution more equitably among multi-line business customers. Using a more complicated approach to establish equivalency may only add a marginal benefit, increasing or reducing PICCs by less than $0.16, and does not outweigh the additional administrative costs. We adopt the 9:1 ratio proposed by USTA, finding it to be reasonable and administratively simple.

26. Time Warner is correct in observing that our treatment of Centrex arrangements differs from how we addressed ISDN service in the *First Report and Order.* There, we set the SLC for PRI ISDN to be up to five times the amount assessed multi-line business subscribers, because that figure reflects the ratio of non-traffic sensitive loop costs associated with PRI ISDN service to non-traffic sensitive costs associated with other multi-line business loops. We also elected to permit incumbent LECs to assess up to five PICCs on PRI ISDN service because ''prohibiting incumbent LECs from charging as many as five PICCs for PRI ISDN service could prevent them from recovering the common line costs associated with providing PRI ISDN service in cases where the common line costs exceed the SLC ceiling.''

27. In both our treatment of ISDN lines and Centrex lines, our goal is to establish an equitable sharing of the multi-line business PICC. Prior to the adoption of the *First Report and Order,* we had no rules relating to the PICC. We had no evidence to the contrary that the assessment of five PICCs for PRI ISDN was inappropriate, so we elected to be consistent as between SLC and PICC assessment. Previously, however, ISDN lines could be charged up to 24 SLCs. The adjustment from 24 SLCs to five SLCs and five PICCs does not create undue hardship on ISDN subscribers, and the *First Report and Order* should reduce their overall rates.

28. Time Warner also argues that imposing the PICC on Centrex on a per-line basis is part of the Commission's access charge transition to a more cost-causative rate structure. Although the multi-line PICC is part of our transition, this alone does not justify requiring Centrex customers to make a greater contribution toward recovery of the loop cost of residential customers than do PBX customers. Teleport's assertion that petitioners are exaggerating the impact of the PICC on Centrex users, because the amount of the charge is substantially less than the SLC, ignores the fact that the SLC recovers the additional costs imposed by Centrex customers, while the PICC does not.

29. We deny ICA's petition that we not assess PICCs on toll-restricted Centrex lines. Although the PICC is assessed upon IXCs for all lines that are presubscribed to an IXC, the PICC is not a charge based on toll usage or on the ability to place toll calls. The Commission anticipated that some lines might not be used for long distance when it adopted a rule allowing PICCs to be assessed directly upon end users for any line not presubscribed to an IXC. The fact that toll-restricted Centrex lines incur no long-distance charges is, therefore, irrelevant. Also, costs for these lines are assigned to the interstate jurisdiction by separations, regardless of whether the lines are toll-restricted.

II. Transport

A. TIC Exemption

1. Background

30. The Commission created the TIC originally as a residual charge to ensure that its adoption of the 1992 interim transport rate structure was revenue-neutral for the incumbent LECs. As such, the Commission required that the TIC be assessed on a per-minute basis on all interstate access customers that interconnect with the LEC switched access network. A portion of the TIC represented the 80 percent of the costs of the tandem switch remaining after the Commission set the tandem-switching rate to recover only 20 percent of the tandem-switching revenue requirement. The rest of the revenues collected from the TIC represented costs previously recovered through transport charges that could not, at that time, be associated definitively with specific facilities or services related to transport. The Commission stated in the *First Transport Order* that, in addition to tandem-switching costs, the TIC likely recovered: (a) Costs more appropriately recovered through other rate elements; (b) costs that more properly belong in the intrastate jurisdiction, but that the Part 36 jurisdictional separations rules allocate to the interstate jurisdiction; (c) costs of facilities that were then in place, but not needed for transport under the more efficient transport rate structure being adopted; and (d) costs of not-fully-depreciated copper plant that was nevertheless being replaced by less expensive fiber optic facilities. Transport Rate Structure and Pricing, Report and Order and Further Notice of Proposed Rulemaking, 57 FR 54717 (November 20, 1992) *(First Transport Order).* The Commission also cited

assertions by parties to that proceeding that the TIC also recovered (e) general support facilities (GSF) and central office equipment (COE) maintenance expenses and GSF investment that were overallocated to the transport category; and (f) additional costs that the Commission had not then identified.

31. In reviewing the Commission's interim transport rate structure, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) found that the just and reasonable rates required by Sections 201 and 202 of the Communications Act, 47 U.S.C. §§ 201–202, must ordinarily be cost-based, absent a clear explanation of the Commission's reasons for a departure from cost-based ratemaking. *Competitive Telecommunications Ass'n* v. *FCC,* 87 F.3d 522, 529 (D.C. Cir. 1996) *(''CompTel'').* The D.C. Circuit, therefore, directed the Commission to develop a cost-based alternative to the TIC, or to provide a reasoned explanation for its departure from the principles of cost-based ratemaking.

32. In the *First Report and Order,* we reformed the TIC and set forth a plan that will eliminate per-minute TIC charges over the next few years. We initially identified TIC amounts that could be associated with particular network facilities and directed incumbent LECs to reallocate these TIC amounts to access rate elements more closely corresponding to those network facilities. These LECs will perform the required reallocations in access tariffs filed to become effective January 1, 1998, with some exceptions. For example, the portion of tandem-switching costs that the Commission initially allocated to the TIC will be reallocated to the tandem-switching rate element in three approximately equal steps concluding January 1, 2000. In addition, the costs of the incumbent LECs' tandem-switched transport transmission facilities that are not recovered from tandem-switched transport users under the unitary rate structure will be recovered through the TIC until July 1, 1998.

33. For price cap LECs, the ''residual TIC,'' consisting of amounts that the LEC has not reallocated as described above, will be recovered through per-line PICCs, to the extent possible while remaining within the PICC caps. Residual TIC amounts that the price cap LEC cannot recover through PICCs will be recovered through a per-minute TIC on originating access, up to a cap, with any remainder recovered from per-minute charges assessed on terminating access.

In the *First Report and Order,* we recognized that the per-minute TIC, because it is assessed on all transport minutes carried on facilities that interconnect with the incumbent LEC's local switch, may give the incumbent LEC a competitive advantage in the transport market. We therefore provided a TIC exemption for switched minutes carried by competitive access providers (CAPs) that interconnect with the incumbent LEC switched access network at the end office, stating that, ''if the incumbent LEC's transport rates are kept artificially low and the difference is recovered through the TIC, competitors of the incumbent LEC pay some of the incumbent LEC's transport costs.'' This TIC exemption is scheduled to take effect on January 1, 1998.

2. Petitions for Reconsideration and Petitions for Stay

a. AT&T and Teleport. 35. On reconsideration, AT&T and Teleport request that we permit the per-minute residual TIC exemption for switched minutes carried by CAPs that interconnect with the incumbent LEC switched access network at the end office to take effect immediately, rather than on January 1, 1998. According to Teleport, the Commission, having recognized that the imposition of TIC charges on CAP-transported minutes is ''inconsistent with the pro-competitive goals of the 1996 Act,'' should not permit the practice to continue throughout the balance of calendar 1997.

b. RCN. 36. RCN argues that the TIC exemption contained in the *First Report and Order* preserves the incumbent LECs' competitive advantage because it exempts CAP-transported minutes only from the ''residual'' TIC. In making this argument, RCN interprets the term ''residual TIC'' to include only non-facilities-related TIC amounts. Under RCN's interpretation, the ''residual TIC'' would not include facilities-related TIC amounts that will remain in the TIC until they are reallocated as late as January, 2000.

c. U S West and NYNEX Petitions for Stay. 37. NYNEX and U S West separately have filed petitions requesting that the Commission stay the effectiveness, pending appeal, of 47 CFR 69.155(c), the rule we adopted in the *First Report and Order* prohibiting local exchange carriers from assessing the per-minute residual TIC on traffic that uses the LEC's local switching services, but that does not use the LEC's local transport services. NYNEX and U S West argue that such a stay is warranted because they are likely to prevail on the merits of their respective appeals and that the balance of equities favors a stay. NYNEX and U S West further argue that the rule should be stayed in its entirety, to allow them to recover the entire per-minute TIC, without regard for the transport provider. In the alternative, however, NYNEX requests a partial stay to allow it to so recover the non-facilities-related portion of the TIC.

38. Procedurally, NYNEX maintains that the Commission failed to offer an adequate opportunity for public comment on the residual TIC exemption, in that the Commission's *Notice,* Access Charge Reform, CC Docket No. 96–262, Notice of Proposed Rulemaking, 62 FR 6270 (January 31, 1997) *(Notice),* failed to provide adequate notice of the TIC exemption and that the Commission improperly relied on a CompTel/Teleport *ex parte* presentation made three weeks before the Order was adopted.

39. Substantively, NYNEX argues that the Commission's decision to prohibit assessment of the residual TIC on minutes that use CAP transport networks is inconsistent with the Commission's findings that a large portion of the TIC is not related to any specific transport or other facilities.

40. NYNEX also argues that the Commission has failed to explain why it is reasonable for the LEC to recover both service-related and non-service-related TIC amounts from PICCs, but neither component from the per-minute residual TIC.

41. NYNEX also argues that the use of price cap X-factor reductions to decrease the per-minute TIC will effectively reallocate the per-minute residual TIC to other rate elements as the per-minute TIC is reduced to the exclusion of all other rate elements. According to NYNEX, the residual TIC is completely excluded only to the extent that the X-factor targeting has not reallocated it to a permitted rate element. NYNEX argues that the Commission has not offered a justification for disallowing TIC recovery only during this transition period.

42. NYNEX argues that the CAP TIC exemption is arbitrary in that it will have a disproportionately harsh effect on NYNEX, and that this non-uniform impact will hinder the development of ''full and fair'' competition. Similarly, U S West argues that, by making it difficult or impossible for it to collect the per-minute TIC, the TIC exemption is contrary to the Commission's decision not to disallow any portion of the current TIC.

43. NYNEX also argues that the TIC exemption contradicts the Commission's conclusion that access

reform, in itself, should not produce overall rate reductions because the price cap LECs' per-minute TIC revenues are likely to be less than those calculated in the restructure. As a result, the price cap LECs will be unable to collect the full amount of revenues from per-minute residual TIC rates or PICCs that will be included in their January 1, 1998, tariff revisions.

44. NYNEX and U S West argue that an exemption for the service-related portion of the TIC is inconsistent with the Commission's continued reliance on subsidization of tandem-switching rates by direct-trunked transport customers until December 31, 1999.

45. U S West argues that, after January 1, 1998, the TIC will consist of implicit tandem switching and universal service support subsidies (including the higher costs of providing rural transport) and that the TIC exemption results in a collection system for this subsidy that is non-sustainable, discriminatory, and inequitable.

3. Discussion

46. We decline to modify the effective date of 47 CFR 69.155(c) as AT&T and Teleport request. Although some of the Commission's actions to reform the interstate access charge system took effect in access tariffs filed to become effective July 1, 1997, the majority of the Commission's rate structure changes take effect on January 1, 1998, or later. Because the TIC exemption at issue here is one part of our larger effort to reform the system of interstate access charges to preserve and promote competition, we believe that the rule should take effect on January 1, 1998, at the same time as many of our other rules relating to the transport rate structure. Incumbent LEC access tariffs filed to become effective on that date will reallocate many of the currently-identified facilities-related TIC amounts to other rate elements. In addition, on January 1, 1998, for the first time, the incumbent LECs will begin collecting remaining TIC amounts from PICCs assessed to IXCs on a flat-rate, per-line basis. Because a portion of the TIC, including some facilities-related TIC amounts, will be allocated to PICCs on January 1, 1998, we conclude that the extent of the exemption we adopt here will not be evident until these tariff revisions take effect. Thus, we conclude that the exemption should take effect only in concurrence with the implementation of the PICC.

47. We agree with RCN and MCI that we should clarify the extent of the TIC exemption described in the *First Report and Order.* In addition, in response to concerns raised in NYNEX's and U S West's petitions for stay, we reconsider on our own motion our adoption of the TIC exemption provided in the *First Report and Order.* 47 CFR 1.108. Under long-established Commission practice, the filing of a petition for reconsideration tolls the thirty day period our rules provide for *sua sponte* reconsideration. *E.g., Central Fla. Enters., Inc.* v. *FCC,* 598 F.2d 37, 48 n.51 (D.C. Cir. 1978), *cert. dismissed,* 441 U.S. 957 (1979), *and cert. denied* 460 U.S. 1084 (1983); *Radio Americana, Inc.* 44 F.C.C. 2506, 2510 (1961). Upon further consideration, we conclude that the TIC exemption provided in the *First Report and Order* could provide an unjustified windfall to competitive providers of local transport. Because the non-facilities-related portion of the residual TIC does not relate to the use of the incumbent LEC's interstate transport facilities, we need not exempt competitors from paying this portion of the TIC in order to prevent them from paying for the incumbent LEC's transport when that transport is not used. Therefore, incumbent LECs may continue, after January 1, 1998, to assess upon all local switching traffic that portion of their per-minute TIC charges that they do not anticipate will be reallocated in the future to facilities-based rate elements. This is the only portion of the per-minute TIC, however, that may be assessed upon traffic that uses the incumbent LEC's local switching services, but that does not use the incumbent LEC's local transport services. Under this rule, interexchange traffic that is switched at the incumbent LEC's local switch, but that is not transported on the incumbent LEC's local transport network, will be subject to the per-minute TIC, less the portion of the per-minute TIC attributable to incumbent LEC tandem-switching and tandem-switched transport transmission costs that have not yet been reallocated to facilities-based rate elements. In access tariff revisions filed to become effective January 1, 1998, incumbent LECs must show all such facilities-related amounts that they anticipate will be reallocated in the future, including appropriate documentation, and calculate separate per-minute TIC charges for those minutes that use the incumbent LEC's local transport facilities and those that do not.

48. In remanding the interim rate structure, the D.C. Circuit instructed the Commission to ''move expeditiously * * * to a cost-based alternative to the [TIC], or to provide a reasoned explanation of why a departure from cost-based ratemaking is necessary and desirable in this context.'' For our rate structure to be ''cost-based,'' costs must be recovered (1) only from the party that causes the costs to be incurred; and (2) in the manner in which the costs are incurred (*e.g.,* non-traffic-sensitive costs should be recovered on a non-traffic sensitive basis).

49. Our *First Report and Order* identified certain costs within the TIC that more properly should be recovered through other access rate elements. These costs include additional trunking costs left unrecovered by rates set assuming a uniform loading of 9000 minutes of use per month on shared trunks, rather than rates set using actual traffic levels, as well as misallocated costs of central office equipment maintenance. In addition, we identified costs related to multiplexing, SS7 signalling, and host/remote trunking that are currently recovered through the TIC. LECs must reallocate all of these costs to facilities-based rate elements in access tariffs filed to become effective January 1, 1998. In addition, one third of the 80 percent of the costs of the tandem switch currently assigned to the TIC will be reallocated to the tandem switching rate element on that date.

50. After January 1, 1998, the costs contained in the TIC that the Commission has identified as facilities-related will have two primary sources. The majority of the facilities-related TIC will consist of the portion of the incumbent LEC's tandem-switching costs not yet reallocated to the tandem-switching rate element. These costs will be reallocated to the tandem-switching rate element in two additional installments in tariffs filed to become effective on January 1, 1999, and January 1, 2000. In addition, from January 1, 1998, until July 1, 1998, the TIC will also recover the costs of tandem-switched transport transmission facilities that are not recovered by the incumbent LEC from tandem-switched transport customers electing the unitary rate structure. These TIC amounts are also facilities-related. In the *First Report and Order,* we directed incumbent LECs to remove costs from the TIC ''equal to the additional revenues realized from the new tandem-switched transport rates * * * implemented in accordance with the [final transport] rate structure.'' Because the three-part rate structure will not take effect until July 1, 1998, we require incumbent LECs to estimate in their tariffs filed to become effective January 1, 1998, the amount by which their tandem-switched transport transmission revenues will increase under the three-part rate structure. This amount, currently contained in the TIC, is facilities-related and therefore subject to the exemption described in this order.

51. Neither the tandem-switching costs nor the tandem-switched transport transmission costs contained in the TIC relate to facilities used by purchasers of competitive alternatives to the incumbent LEC's transport facilities. The D.C. Circuit remanded the interim transport rate structure to the Commission in part because that rate structure did not recover the costs of the tandem switch in a cost-causative manner. Our *First Report and Order*, in reallocating these costs, remedies this situation as expeditiously as possible while minimizing the potential for rate shock that otherwise might accompany such a shift. Because these costs are incurred on behalf of the incumbent LEC's own transport operation, however, it would be inconsistent with the principles of cost-causation to prolong the recovery of these costs from users of competing transport facilities.

52. Our approach to access reform relies first on increasing market-based pressures as competition develops to place downward pressure on access charge levels. We conclude that, for this approach to succeed, we should develop a rate structure that permits maximum competitive pressure on each incumbent LEC revenue stream, absent compelling public policy reasons to the contrary. It would impair the effectiveness of our market-based approach for us to insulate a significant portion of the costs of the incumbent LEC's transport facilities from competition by mandating recovery of these costs from incumbent LEC competitors.

53. We recognize that, during the two-year transition period, our rules will continue to prohibit the incumbent LEC from allocating the full, embedded cost of the tandem switch to the tandem-switching rate element. The effect of our three-step reallocation process will be to permit a continued subsidy of the incumbent LEC's tandem switch by users of the incumbent LEC's direct-trunked transport facilities and minimize any rate shock for tandem-switched transport customers. Because the incumbent LEC's competitors offering transport services will not be subject to this subsidy, they may enjoy a slight competitive advantage over the incumbent LEC.

54. We find, however, that the competitive benefits to be gained from recovering these costs only from the incumbent's customers and not from customers using competitive transport providers outweigh any potential dangers resulting from the small, temporary asymmetry caused by the TIC exemption we provide here. Even though the full costs of the incumbent LEC's tandem switch will not be borne by the users of the tandem switch until January, 2000, the effects of the TIC exemption will be reduced substantially before that time as the incumbent LEC collects an increasing proportion of the tandem-switching costs remaining in the TIC through PICCs. As discussed below, we continue to permit the incumbent LEC to assess the full PICC on each of its loops, without regard for the type or provider of the transport the IXC uses to transport the minutes generated by that loop from the end office to the IXC's facilities. As the portion of the incumbent LEC's tandem-switching costs that is recovered through the per-minute TIC decreases, any potential adverse effects of this small asymmetry will rapidly decrease. In contrast, if we were to mandate recovery of this portion of the incumbent LEC's tandem-switching costs from all customers using the incumbent LEC's local switching facilities, without regard for whether they make use of the incumbent LEC's transport facilities, we would insulate this revenue from much of the pressure we anticipate will develop as competitors enter the local service and access markets. The resulting delay in competitive entry would be harmful to consumers, who will benefit most from increased competition.

55. We revise the TIC exemption contained in our *First Report and Order*, however, to permit the incumbent LEC to impose the remaining non-transport costs assigned to the TIC on all minutes switched by the incumbent LEC at its end office, without regard for whether those minutes are carried on incumbent LEC or competitive transport facilities. In contrast to the portion of the incumbent LEC's tandem-switched transport costs that will remain in the TIC after January 1, 1998, we did not find in the *First Report and Order* that the remainder of the TIC could be associated definitively with particular interstate facilities on the record before us. Instead, we stated that a portion of these TIC amounts may result from the operation of the jurisdictional separations process, which allocates the costs of private line and switched services differently between the state and interstate jurisdictions, despite the fact that these two types of services use comparable facilities. As a result, we recognized in the *First Report and Order* the possibility that rates for direct-trunked transport and tandem-switched transport transmission facilities may not recover the full amount of the costs of switched facilities the separations process allocates to the interstate jurisdiction.

56. We have recently begun a broad re-examination of the jurisdictional separations process that may eventually correct this problem. In the meantime, however, we are unable to associate these TIC amounts with any particular interstate facilities. Instead, to the extent that this portion of the TIC may result in part from overallocation of costs to the interstate jurisdiction, thereby lowering intrastate rates, this portion of the TIC may be a form of implicit universal service support. As such, it would be inequitable to mandate recovery of this portion of the per-minute TIC only from the incumbent LEC's transport customers. Because these amounts do not appear to be any more closely related to the incumbent LEC's interstate transport facilities than they are to any other interstate facilities of the incumbent, it is appropriate for all of the incumbent LEC's access customers, and not just its transport customers, to pay a share of this portion of the per-minute TIC. In the *First Report and Order*, we stated our commitment to minimize the potential of the per-minute TIC artificially to suppress demand for interstate toll services. Because the non-facilities-related TIC is composed of amounts that have not been demonstrated to reflect usage-sensitive costs, it does have this undesirable effect. We have therefore required that it be eliminated expeditiously through targeting of the X-factor reductions to the interconnection charge service category and through conversion of the residual TIC to a flat-rated charge.

57. In addition, we stated in the *First Report and Order* that a portion of the costs remaining in the TIC may result from our use of special access rates to develop initial geographically-averaged direct-trunked transport and tandem-switched transport transmission rates. We agreed in the *First Report and Order* that, while the use of such rates appears to have been appropriate in urban areas, these rates may not fully recover the higher costs of transport in less densely populated rural areas. Because we are unable to quantify these cost differences, and because it is likely that the cost differential varies greatly across LECs and across study areas served by the same LEC, we did not mandate any immediate reallocation of costs from the TIC to rural transport rates. Instead, we expect that, as competition develops, the incumbent LECs will come under increasing pressure to deaverage transport rates under our existing deaveraging rules. We observe that, as with the costs discussed in the previous paragraph, recovery of rural transport

costs through the TIC supports a conclusion that at least a portion of the non-facilities-related TIC may be related to the provision of universal service.

58. We also here clarify that the ''residual TIC'' that the incumbent LEC should recover from PICCs includes all TIC amounts that have not been reassigned to other facilities-based rate elements, including the portion of the incumbent LEC's tandem switching costs that have not been reassigned to the tandem-switching rate element in tariffs filed to become effective on January 1, 1998, and January 1, 1999. We direct price cap LECs that will recover only a portion of their residual TIC from PICCs to allocate non-facilities-related TIC amounts and facilities-related TIC amounts between PICCs and per-minute charges on a *pro rata basis.* The incumbent LECs must reallocate the full amount of the costs of their tandem switch to the tandem switching rate element in installments on January 1, 1998, 1999, and 2000, whether they are then contained in per-minute charges or in PICCs.

59. Accordingly, we revise the TIC exemption contained in our *First Report and Order* to permit the incumbent LEC, in tariffs filed to become effective January 1, 1998, to impose that portion of the per-minute TIC that is not expected to be reassigned to particular facilities on a cost-causative basis on all transport minutes switched at its end office, without regard for whether those minutes are carried on incumbent LEC or competitive transport facilities. Per-minute TIC amounts that the LEC expects to reallocate to facilities-based rate elements, in contrast, may be assessed only on minutes transported on the incumbent LEC's own transport facilities.

60. TIC amounts that a price cap LEC will recover through PICC charges may be assessed to an IXC for a particular loop without regard for the type or provider of the transport the IXC uses to transport the minutes generated by that loop from the end office to the IXC's facilities. Although certain price cap LECs will recover a portion of the costs of their tandem-switching facilities during the transition through PICCs from IXCs that do not use the price cap LEC's transport facilities to transport all of the minutes generated on a particular loop, the administrative difficulties associated with calculating partial PICCs in this context outweigh the benefits to be gained from doing so. If an IXC were to use a combination of competitive- and incumbent LEC-provided transport facilities between an end office and its serving wire center, it would be needlessly complicated to determine the portion of the minutes generated on each loop that were carried on competitive transport links. Furthermore, unlike the per-minute TIC, the flat-rated PICC will not substantially alter the incremental cost of additional transport minutes transported over competitive transport facilities. Thus, even if an IXC pays a full PICC, this payment will not affect the IXC's decision whether to purchase additional transport minutes from the incumbent LEC or a competitive transport provider. As a flat-rated charge, the PICC will not artificially suppress demand for interstate toll telecommunications services.

61. In addition, the PICC is subject to competitive pressures, whether or not it recovers TIC amounts for traffic transported by the incumbent LEC's competitors. If the end user chooses an alternate provider of local service, the incumbent LEC will no longer recover any portion of the PICC for that loop. Thus, we conclude that the dangers associated with the recovery of the full PICC without regard for the transport provider are far more attenuated than the dangers that would be associated with recovery of facilities-related costs from per-minute TIC charges levied on competitive transport minutes.

62. We deny the petitions filed by U S West and NYNEX requesting a stay of the per-minute TIC exemption rule. In determining whether to stay the effectiveness of one of its rules or orders, the Commission uses the four-factor test established in *Virginia Petroleum Jobbers Ass'n* v. *FPC,* 259 F.2d 921, 925 (D.C. Cir. 1958), as modified in *Washington Metropolitan Area Transit Comm'n* v. *Holiday Tours, Inc.,* 559 F.2d 841, 843 (D.C. Cir. 1977). Under that test, petitioners must demonstrate that: (1) They are likely to succeed on the merits on review; (2) they would suffer irreparable injury absent a stay; (3) a stay would not substantially harm other interested parties; and (4) a stay would serve the public interest. We find that neither NYNEX nor U S West has satisfied any of the four factors for granting a stay. In light of the substantial relief we have granted above, however, we provide only a brief analysis here of the petitioners' arguments. The practical effect of our revisions to the TIC exemption, however, will be to provide a substantial portion of the relief sought in the stay petitions. In light of these revisions, we believe that the petitioners are unlikely to succeed on the merits on review, that they will not suffer irreparable injury absent a stay, that a stay would cause substantial harm to the incumbent LECs' competitors, and that the public interest is best served by the TIC exemption described here. With respect to the portion of the TIC related to the costs of the incumbent LEC's interstate transport facilities, we conclude that there are sound policy reasons underlying our decision to maintain this exemption and, consequently, we find against the petitioners here.

63. We conclude that NYNEX's objections to the sufficiency of our notice are without merit. The *Notice* in this proceeding provided adequate notice of the TIC exemption we ultimately adopted. Our *Notice* in this proceeding stated that ''to the extent that any portion of the TIC should properly be included in LEC transport rates, other than the TIC, the TIC provides the LECs with a competitive advantage for their interstate transport services because incumbent LEC transport rates are priced below cost while the LECs' competitors using expanded interconnection must pay a share of incumbent LEC transport costs through the TIC * * *. Our goal in this proceeding is to establish a mechanism to phase out the TIC in a manner that fosters competition and responds to the *[CompTel]* court's remand.'' We went on to state, in the section of the *Notice* entitled ''Possible Revisions to the TIC,'' that ''our goals are to move towards significantly more cost-based access rates and competition in the access and interexchange markets. The development of a competitive access market will be distorted by the assessment of the TIC as a surcharge on local switching. The TIC therefore will be unsustainable.'' We sought comment on the extent to which various approaches to reducing the TIC would ''achieve the goals of this proceeding'' and asked parties to ''address the relative merits of each [approach], or of other approaches that they may suggest.'' We conclude therefore that, beyond reasonable question, our *Notice* provided adequate notice of ''the terms or substance of the proposed rule or a description of the subjects and issues involved.''

64. In any event, courts require only that the rule, as adopted, constitute a ''logical outgrowth'' of the proposed rule. *E.g., National Mining Ass'n* v. *Mine Safety and Health Admin.,* 116 F.3d 520, 531 (D.C. Cir. 1997). To satisfy this standard, courts ask ''whether 'the purposes of notice and comment have been adequately served.' '' Factors to be considered include ''whether a new round of notice and comment would provide the first opportunity for interested parties to offer comments that could persuade the agency to modify its

rule;'' *American Water Works Ass'n* v. *EPA,* 40 F.3d 1266, 1274 (D.C. Cir. 1994), and whether ''the notice given affords 'exposure to diverse public comment,' 'fairness to affected parties,' and 'an opportunity to develop evidence in the record.' '' We conclude that the *Notice* language quoted above more than adequately meets this standard. The *Notice* in this proceeding discussed possible revisions to the TIC rate element for nine full pages, sought comment on four specific TIC-reduction options, and invited commenters to suggest alternate approaches. The *Notice* in this proceeding discussed expressly the anti-competitive problems associated with the payment of TIC charges by competitive providers of transport services, stated that the TIC would be ''unsustainable'' in that form, and sought comment on approaches to reform that would ''achieve the goals of this proceeding,'' among which was the adoption of a transport rate structure that would foster competition. In such circumstances, we conclude that commenters should have anticipated that the Commission might eventually adopt a TIC exemption for competitive transport providers, that our *Notice* afforded adequate notice of the Commission's eventual adoption of such an exemption, and that we provided an adequate opportunity for diverse public comment.

65. In response to the *Notice,* several commenters, in their initial comments, proposed TIC exemptions for competitive transport. WorldCom, for example, argued that, ''the Commission should restructure the TIC rate element * * * in a manner that maximizes competitive pressure on the charge. As local and full-service competition begin[s] to emerge, competitive carriers should be able to avoid the TIC to the extent that they win customers away from incumbent LECs. This will create competitive pressure for the LECs to reduce their TIC rate levels, without necessitating any prescriptive action by the Commission.'' The fact that several commenters raised this solution in their comments, and in subsequent *ex parte* filings, supports our conclusion that the *Notice* adequately raised this issue.

66. We also conclude that NYNEX's claims of irreparable harm are without merit. Although the TIC exemption may impact some incumbent LECs differently from others, the same can be said for virtually all of the rules we adopt, simply because of differences in the circumstances and business climate facing each LEC. Our focus in the context of a stay petition must be on individualized allegations of irreparable harm. We find that neither petitioner has met that standard with respect to the TIC exemption we provide in this Order. Mere financial or economic losses do not, in and of themselves, constitute irreparable harm. In addition, because this portion of the per-minute TIC is likely to be relatively small, in relation to the remainder of the TIC and other transport charges, the incumbent LECs are unlikely to suffer large-scale competitive losses as a result of the exemption, as modified here. In any event, we have long held that ''revenues and customers lost to competition which can be regained through competition are not irreparable.''

67. In contrast, continued subsidy of the incumbent LECs' tandem switching facilities by competitors is incompatible with the development of competition in the local market. Without an exemption permitting new entrants to cease subsidizing incumbent LEC transport facilities, the incumbent LEC's revenue stream from facilities-related, per-minute TIC charges would be insulated from competition. These new entrants, having already shouldered financial burdens in seeking to compete with the established monopoly incumbent LEC, should not be required in addition to subsidize the facilities of the incumbent LEC against whom they compete. Such a result would cause continued harm to these new entrants, and would further delay the public interest benefits of competition. Thus, we conclude that the petitioners have failed to satisfy either of the last two factors we must consider in evaluating their stay petitions. Accordingly, we deny the stay petitions.

B. Deaveraged Tandem-Switched Transport Transmission Rates

68. We also take this opportunity to amend the language of section 69.111(c)(1) to specify the manner in which minutes are to be determined through June 30, 1998, in calculating tandem-switched transport transmission rates when an incumbent LEC has deaveraged rates by density zone. Section 69.111(c)(2), which applies after July 1, 1998, includes such language. The *First Report and Order* did not intend to take away the ability of incumbent LECs to deaverage transport transmission rates if they have met the requisite qualifications. Finally, we amend the references to section 69.124 in section 69.111 to refer to section 69.123.

III. Rate-of-Return LECs

69. In the *First Report and Order,* we took steps to adopt, *inter alia,* a cost-based transport rate structure and to comply with the D.C. Circuit's *CompTel* remand. As acknowledged in the *First Report and Order,* the *CompTel* remand applied to rate-of-return LECs as well as price cap LECs.

70. Upon further consideration, we recognize that, absent clarification, some language in the *First Report and Order* may be ambiguous in delineating which of our decisions applied to all incumbent LECs, including rate-of-return LECs. For example, in Section III.C. of the *First Report and Order,* we directed ''all incumbent LECs to discontinue the unitary rate structure option for the transmission component of tandem-switched transport, effective July 1, 1998.'' In contrast to this language, we stated at paragraph 335 in the *First Report and Order* that we had restricted ''application of the rules we adopt in this proceeding to the incumbent price cap LECs, with [three] limited exceptions,'' for: (1) ''Universal service support to the interstate revenue requirement for all incumbent LECs in Section VI.D;'' (2) ''the changes to the TIC that we adopt[ed] in Section III.D * * * will also apply to rate-of-return incumbent LECs;'' and (3) ''in Section VI.A * * * our exclusion of unbundled network elements from Part 69 access charges applies to all incumbent LECs.''

71. We take this opportunity to clarify that, with two limited exceptions, the decisions made in Section III.C of the *First Report and Order* relating to the rate structure and rate levels for entrance facilities, direct-trunked transport, and tandem-switched transport apply to all incumbent LECs, including rate-of-return LECs. The two exceptions are that we did not create for rate-of-return LECs separate rate elements for dedicated ports at the tandem switch and for multiplexers at the tandem switch. Thus, for example, rate-of-return LECs must discontinue the unitary rate structure option for tandem-switched transport no later than July 1, 1998, when all incumbent LECs must use only the three-part rate structure for cost recovery. These transport modifications that are applicable to rate-of-return LECs are in addition to those decisions made in Sections III.D, VI.A, and VI.D that also apply to rate-of-return LECs.

IV. Ordering Clauses

72. Accordingly, *it is ordered,* pursuant to Sections 1–4, 201–205, 251, 254, 303, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151–154, 201–205, 251, 254, 303, and 405, and pursuant to section 1.108 of the Commission's rules, 47 CFR 1.108 that this Order on Reconsideration is adopted.

73. *It is further ordered* That section 69.153(g) of the Commission's rules, 47 CFR 69.153(g) is amended as set forth in the rule changes.

74. *It is further ordered* that sections 69.4, 69.111(c)(1), 69.153(c)(1), 69.153(d)(1)(i), 69.153(d)(2)(i), and 69.155(c) of the Commission's rules, 47 CFR 69.4, 69.111(c)(1), 69.153(c)(1), 69.153(d)(1)(i), 69.153(d)(2)(i), and 69.155(c) are amended as set forth in the rule changes.

75. *It is further ordered* That the information collections contained in these rules become effective January 1, 1998, following OMB approval, unless a notice is published in the **Federal Register** stating otherwise.

76. *It is further ordered* That, except as otherwise specified herein, the policies and rules adopted here shall be effective January 1, 1998.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

PART 69—ACCESS CHARGES

77. The authority citation for Part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

78. Section 69.4 is amended by removing paragraph (h)(6), and revising paragraph (a) to read as follows:

§ 69.4 Charges to be filed.

(a) The end user charges for access service filed with this Commission shall include charges for the End User Common Line element, and for line port costs in excess of basic, analog service.

* * * * *

79. Section 69.111 is amended by revising paragraph (c) to read as follows:

§ 69.111 Tandem-Switched Transport and Tandem Charge.

* * * * *

(c)(1) Until June 30, 1998:

(i) Except in study areas where the incumbent local exchange carrier has implemented density pricing zones as described in section 69.123, per-minute common transport charges described in paragraph (a)(1) of this section shall be presumed reasonable if the incumbent local exchange carrier bases the charges on a weighted per-minute equivalent of direct-trunked transport DS1 and DS3 rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links (or a surrogate based on the proportion of copper and fiber facilities in the interoffice network), calculated using the total actual voice-grade minutes of use, geographically averaged on a study-area-wide basis, that the incumbent local exchange carrier experiences based on the prior year's annual use. Tandem-switched transport transmission charges that are not presumed reasonable shall be suspended and investigated absent a substantial cause showing by the incumbent local exchange carrier.

(ii) In study areas where the incumbent local exchange carrier has implemented density pricing zones as described in section 69.123, per-minute common transport charges described in paragraph (a)(1) of this section shall be presumed reasonable if the incumbent local exchange carrier bases the charges on a weighted per-minute equivalent of direct-trunked transport DS1 and DS3 rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links (or a surrogate based on the proportion of copper and fiber facilities in the interoffice network), calculated using the total actual voice-grade minutes of use, averaged on a zone-wide basis, that the incumbent local exchange carrier experiences based on the prior year's annual use. Tandem-switched transport transmission charges that are not presumed reasonable shall be suspended and investigated absent a substantial cause showing by the incumbent local exchange carrier.

(2) Beginning July 1, 1998:

(i) Except in study areas where the incumbent local exchange carrier has implemented density pricing zones as described in section 69.123, per-minute common transport charges described in paragraph (a)(2)(i) of this section shall be presumed reasonable if the incumbent local exchange carrier bases the charges on a weighted per-minute equivalent of direct-trunked transport DS1 and DS3 rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links (or a surrogate based on the proportion of copper and fiber facilities in the interoffice network), calculated using the total actual voice-grade minutes of use, geographically averaged on a study-area-wide basis, that the incumbent local exchange carrier experiences based on the prior year's annual use. Tandem-switched transport transmission charges that are not presumed reasonable shall be suspended and investigated absent a substantial cause showing by the incumbent local exchange carrier.

(ii) In study areas where the incumbent local exchange carrier has implemented density pricing zones as described in section 69.123, per-minute common transport charges described in paragraph (a)(2)(i) of this section shall be presumed reasonable if the incumbent local exchange carrier bases the charges on a weighted per-minute equivalent of direct-trunked transport DS1 and DS3 rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links (or a surrogate based on the proportion of copper and fiber facilities in the interoffice network), calculated using the total actual voice-grade minutes of use, averaged on a zone-wide basis, that the incumbent local exchange carrier experiences based on the prior year's annual use. Tandem-switched transport transmission charges that are not presumed reasonable shall be suspended and investigated absent a substantial cause showing by the incumbent local exchange carrier.

* * * * *

80. Section 69.153 is amended by revising paragraphs (c)(1) and (d), and adding paragraph (g) to read as follows:

§ 69.153 Presubscribed interexchange carrier charge (PICC).

* * * * *

(c) The maximum monthly PICC for primary residential subscriber lines and single-line business subscriber lines shall be the lower of:

(1) One twelfth of the sum of projected annual common line revenues and residual interconnection charge revenues permitted under our price cap rules divided by the projected average number of local exchange service subscriber lines in use during such annual period, minus the maximum subscriber line charge calculated pursuant to § 69.152(d)(2); or

(2) * * *

(d) To the extent that a local exchange carrier cannot recover its full common line revenues, residual interconnection charge revenues, and those marketing expense revenues described in § 69.156(a) permitted under price cap regulation through the recovery mechanisms established in §§ 69.152, 69.153(c), and 69.156 (b) and (c), the local exchange carrier may assess a PICC on multi-line business subscriber lines and non-primary residential subscriber lines.

(1) The maximum monthly PICC for non-primary residential subscriber lines shall be the lower of:

(i) One twelfth of the projected annual common line, residual interconnection charge, and § 69.156(a) marketing expense revenues permitted under our price cap rules, less the maximum amounts permitted to be recovered through the recovery mechanisms under §§ 69.152, 69.153(c), and 69.156 (b) and (c), divided by the total number of

projected non-primary residential and multi-line business subscriber lines in use during such annual period; or

(ii) * * *

(2) If the maximum monthly PICC for non-primary residential subscriber lines is determined using paragraph (d)(1)(i) of this section, the maximum monthly PICC for multi-line business subscriber lines shall equal the maximum monthly PICC of non-primary residential subscriber lines. Otherwise, the maximum monthly PICC for multi-line business lines shall be the lower of:

(i) One twelfth of the projected annual common line, residual interconnection charge, and § 69.156(a) marketing expense revenues permitted under parts 61 and 69 of our rules, less the maximum amounts permitted to be recovered through the recovery mechanisms under §§ 69.152, 69.153(c) and (d)(1), and 69.156 (b) and (c), divided by the total number of projected multi-line business subscriber lines in use during such annual period; or

(ii) * * *

* * * * *

(g)(1) The maximum monthly PICC for Centrex lines shall be one-ninth of the maximum charge determined under paragraph (d)(2) of this section, except that if a Centrex customer has fewer than nine lines, the maximum monthly PICC for those lines shall be the maximum charge determined under paragraph (d)(2) of this section divided by the customer's number of Centrex lines.

(2) In the event the monthly loop costs for a multi-line business line, as defined in § 69.152(b)(1), exceed the maximum permitted End User Common Line charge, as set in § 69.152(b)(3), the maximum monthly PICC for a Centrex line determined under paragraph (g)(1) of this section shall be increased by the difference between the monthly loop costs defined in § 69.152(b)(1) and the maximum permitted End User Common Line charge set in § 69.152(b)(3). In no event, however, shall the PICC for a Centrex line exceed the maximum established under paragraph (d)(2) of this section.

81. Section 69.155 is amended by revising paragraph (c) to read as follows:

§ 69.155 Per-minute residual interconnection charge.

* * * * *

(c)(1) No portion of the charge assessed pursuant to paragraphs (a) or (b) of this section that recovers revenues that the local exchange carrier anticipates will be reassigned to other, facilities-based rate elements, including the tandem-switching rate element described in § 69.111(g), the three-part tandem switched transport rate structure described in § 69.111(a)(2), and port and multiplexer charges described in § 69.111(l), shall be assessed upon minutes utilizing the local exchange carrier's local switching facilities, but not the local exchange carrier's transport service.

(2) If a local exchange carrier cannot recover its full residual interconnection charge revenues through the PICC mechanism established in § 69.153, and will consequently recover a portion of its residual interconnection charge revenues through per-minute charges assessed pursuant to paragraphs (a) and (b) of this section, then the local exchange carrier must allocate its residual interconnection charge revenues subject to the exemption established in paragraph (c)(1) of this section between the PICC and the per-minute residual interconnection charge in the same proportion as other residual interconnection charge revenues are allocated between these two recovery mechanisms.

[FR Doc. 97–28548 Filed 10–28–97; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 62, No. 209
Wednesday, October 29, 1997

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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Proposed rule and request for comments.

SUMMARY: The NCUA Board requests comment on the issue of field of membership overlaps and the use of exclusionary clauses. Also, the NCUA Board proposes to update the requirements for obtaining a community charter. The proposal clarifies the documentation requirements necessary for a new, expanding or converting community charter. Most importantly, the credit union must document its plan to serve all segments of the community. The proposal also clarifies the authority of the NCUA Board to take supervisory and/or administrative action against a credit union that fails to follow its marketing plan and/or business plan to serve all segments of the community.

DATES: Comments on the proposed amendments to § 701.1 of NCUA's regulations and IRPS 94–1 (section B of the Supplementary Information) must be received by November 28, 1997. Comments on Section A of the Supplementary Information regarding the request for comments must be postmarked or received by December 29, 1997.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-Mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: J. Leonard Skiles, President, Asset Management and Assistance Center, 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759, or telephone (512) 795–0999; Stephen E. Austin, Director of Supervision, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia, or telephone (703) 518–6360; Lynn K. McLaughlin, Program Officer, at the above address and telephone number; Michael J. McKenna, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Overlaps and Exclusion Clauses

Overlaps in credit union fields of membership have increased in recent years due to a number of factors. The overlaps primarily are a result of more credit unions either being chartered as community credit unions, or existing occupational/associational based charters making application to convert to community charters. Also, many state regulators routinely permit overlaps of not only state chartered credit unions, but also federally chartered credit unions. As a result, issues relating to the competitive relationship between overlapped credit unions, particularly a community charter and any occupational/associational based credit union within the community charter's area of operations, are being reviewed. Data on the implications to both the credit unions and the members of federal credit unions directly competing with one another is limited but it is recognized that credit unions are an integral part of a dynamic and constantly changing financial marketplace. It is, therefore, important to identify all potential issues as they relate to the policy on overlaps. For example:

- From the perspective of the credit union member, what harm or benefit is derived from exclusionary clauses?
- Is overlap protection necessary for a credit union properly serving its members?
- What confusion, if any, is created for a credit union member when he or she is unable to join a community credit union because he/she is part of an excluded group?
- Do overlapping fields of membership increase or decrease services to the member?
- Should the NCUA Board consider safety and soundness concerns in the advent of credit unions with overlapping fields of membership?
- Will small credit unions and credit unions chartered to serve low-income areas be affected by overlapping fields of membership?
- Do overlapping fields of membership affect the ''cooperative spirit'' philosophy as articulated and practiced in the credit union movement?
- Should other factors, such as mutual consent, be taken into consideration in allowing or not allowing overlaps?
- Should federal credit unions gain tangible, quantifiable regulatory competitive protection from other federal credit unions, but not from state chartered credit unions?
- What are state policies and experience on overlaps?
- Do newly chartered, low-income, or any other types of credit union need overlap protection?
- Should the size of either the overlapped or overlapping credit union be taken into consideration in permitting or not permitting the overlap?

Issues relating to overlaps must be thoroughly analyzed in order to develop a revised policy on overlaps. Accordingly, the Board invites comments on the issues related to NCUA's overlap policy and the use of exclusion clauses.

B. Community Service Amendments

NCUA's community chartering policy is not affected by the injunction issued in the consolidated cases of *First National Bank and Trust Co., et al.* v. *NCUA* and the *American Bankers Association* v. *NCUA et al.*, which was partially stayed by the Court of Appeals on December 24, 1996. Current policy requires that a community charter must be based on ''a well-defined neighborhood, community, or rural district.'' Given the diversity of community characteristics throughout the country, NCUA's policy is to limit the community to a single, geographically well-defined area where residents have common interests or interact. NCUA recognizes four types of affinity on which a community charter can be based—persons who live in, worship in, go to school in, or work in the community. More than one community credit union may serve the same community area.

The Board believes it is important, for reasons discussed below, to provide

clarification to credit unions on what is necessary for the approval of a request to convert to a community charter. The Board wishes to ensure that credit unions requesting to convert have fully considered the challenges in serving an entire community. Community credit unions are frequently more susceptible to competition from other local financial institutions and do not have a sponsoring company or association. The lack of a payroll deduction makes it more difficult to develop a savings promotion program and in the collection of loans. A diverse membership base creates new challenges in developing an appropriate business plan and marketing strategy, especially if this diverse population is located in a rural community. This guidance also applies to newly established community credit unions as well as credit unions wishing to expand their community boundaries.

IRPS 94–1, as amended by IRPS 96–1, specifies certain requirements that must be satisfied before a community charter can be granted. Integral to the current approval process for a community charter is the requirement that a business plan and marketing strategy for serving the community must be submitted. The business plan requirements, primarily an analysis of the market area, a service market strategy, an organizational/management plan, and financial plan, remain the same. However, further guidance has been requested on what constitutes an acceptable business plan/marketing strategy for approval as a community charter. In particular, questions have arisen regarding the NCUA Board's expectations relative to a community charter. In response to these questions, the NCUA Board believes it is necessary to clarify certain aspects regarding how a credit union intends to serve a community as evidenced by its business plan/marketing strategy.

First, the Board is clarifying that all community charters must be prepared to serve all segments of the community. The credit union must be willing and able within a reasonable period to not only serve, but also to market, to a diverse membership base, which should generally reflect the make-up of the community. This may require community credit unions to develop special marketing programs or services and products for different segments of the community. This type of information needs to be addressed in either the business plan or the marketing plan. Most importantly, this amendment highlights the fundamental difference between a community charter and other types of charters. That is, a community charter must make reasonable and prudent efforts to market its services to all segments of the community. An overall marketing strategy that primarily targets one segment, or select segments, of the community to the exclusion of others will not be acceptable. Membership and loan penetration rates, among other factors, will be reviewed to assess how well the credit union is serving the entire community.

Second, the Board is also clarifying that a new community charter or a credit union converting to a community charter will be held accountable for its business plan/marketing strategy outlining how it will serve the entire community submitted to NCUA as part of the approval process. Of course, there may be safety and soundness concerns, as well as other reasons, why a credit union did not follow or could not meet its business plan or marketing strategy objectives. Such reasons would be factored into any review by NCUA before a decision is made to take any supervisory and or administrative action. For example, if a credit union established and then implemented a special marketing plan for a group in specific need of credit union service within the community, and, notwithstanding its best efforts to attract membership from and provide service to that group the penetration rate is lower than projected, then failure to meet the business plan would not be cause for supervisory action. The NCUA Board recognizes that local marketplace factors may influence the time tables and even the ability to meet the business plan, though reasonable due diligence to meet the plan is expected.

Third, the Board is clarifying that the requirements set forth in Chapter I of the Chartering Manual to obtain a community charter, except for any requirements to demonstrate community support, also apply to an existing credit union converting to a community charter. The Board is requesting comment on the deletion of the requirements in IRPS 94–1 to provide written evidence of community support such as letters of support, petitions, or surveys.

A converting credit union must provide information on the groups being served, including penetration rates of all segments of its field of membership, marketing efforts to service the current field of membership and any special programs the credit union may have sponsored to assist groups in need of credit union services, such as adding a low-income community to its field of membership or mentoring a low-income community.

Finally, the Board is proposing to eliminate the ability of a credit union converting to a community charter to continue to serve groups outside the new community boundaries. Continued service to occupational and associational groups outside the community is not consistent with the nature of a community charter. This proposal is consistent with NCUA's policy regarding new community charters. Credit unions could continue to serve members of record of groups outside the community boundaries.

C. Thirty-Day Comment Period

These proposed amendments are being issued with a thirty (30) day comment period since the amendments are simply clarifying the Board's policy on community charters and explicitly stating the Board's implicit enforcement authority. Because these are technical amendments the Board believes a 30 day comment period is appropriate. Requests for comment is being expedited due to ongoing work requirements of NCUA's Field of Membership Task Force and the number of pending community charter conversions.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The proposed amendments will not have a significant economic impact on a substantial number of small credit unions and therefore a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed amendments do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget (OMB). 60 FR 44978 (August 29, 1995).

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. This proposed amendment makes no significant changes with respect to state credit unions and therefore, will not materially affect state interests.

Congressional Review

NCUA has determined that this is not a major rule under 5 U.S.C. Chapter 8.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on October 22, 1997.

Hattie Ulan,

Acting Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 12 U.S.C. 1601, *et seq.*, 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.1 is revised to read as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 94–1, Chartering and Field of Membership Policy (IRPS 94–1), as amended by IRPS 96–1 and IRPS 97–1. Copies may be obtained by contacting NCUA at the address found in § 792.2(g)(1) of this chapter. The combined IRPS are incorporated into this section.

(Approved by the Office of Management and Budget under control number 3133–0015.)

Note: The text of the Interpretive Ruling and Policy Statement (IRPS 94–1) does not, and the following amendments will not, appear in the Code of Federal Regulations.

1. In IRPS 94–1, Chapter 1, Section IV.A.4.b is revised to read as follows:

IV.A.4.b.—Special Requirements for Community Credit Unions

Community credit unions are frequently more susceptible to competition from other local financial institutions and generally do not have substantial support from any single sponsoring company or association. Additionally, community credit unions must be prepared to serve all segments of the community. As a result, a community charter will often encounter financial and operational factors that differ from an occupational and associational charter serving select or defined groups. This results primarily from the fact that a community credit union will have a more diverse and possibly geographically dispersed membership base, which should generally reflect the make-up of the community. This diverse membership potential may require special marketing programs targeted to different segments of the community. For example, the lack of payroll deduction creates special challenges in the development of savings promotional programs and in the collection of loans. Accordingly, it is essential for the proposed community charter to develop a detailed and practical business plan for at least the first three years of operation that focuses on the accomplishment of the unique financial and operational factors of a community charter. The business plan shall contain, but not necessarily be limited to, the following:

- Analysis of market area—geographic, demographic, employment, income, housing, and economic data;
- Service/marketing strategy for all segments of the community—financial and other services to be provided, new member/share/loan promotion policies and procedures and income generation strategy;
- Organizational/management plan—qualification and planned training of officials/employees, operating facilities to include office space/equipment and supplies, accounting system, safeguarding of assets, insurance coverage, etc.; and
- Financial plan—sources and application of funds statements and pro forma balance sheet and income/expense statements and assumptions.

Community credit unions will be required to follow the marketing and/or business plan submitted with their application. In the event any community credit union fails to follow its marketing and/or business plan, supervisory and/or administrative actions may be taken against the credit union. If the business plan is not sufficiently detailed or does not satisfactorily address how the credit union will serve all segments of the community, the charter request may be conditionally approved by NCUA subject to the credit union's agreement of the imposed conditions.

A community credit union will be expected to regularly review its business plan as well as membership and loan penetration rates throughout the community to determine if the entire community is being adequately served. NCUA may require periodic service status reports on its service to the community and will review the credit union's service to the entire community during examinations.

2. In IRPS 94–1, Chapter 2, Section IV.B is revised to read as follows:

IV.B—Conversion to Community Charter

An existing occupational, associational, or multiple group federal credit union may apply to convert to a community charter. In order to support a case for a conversion to community charter, the applicant federal credit union must, in addition to the requirements for a community charter set forth in Chapter I (except for the requirement to demonstrate community support), develop a detailed business plan which may include, but not be limited to the following data:

- Current financial statements, including the income statement and a summary of loan delinquency;
- A map or maps showing both the existing and proposed boundaries for the field of membership, as well as existing and planned service facilities;
- A written description of the area of community service for the proposed community credit union;
- The most current population figures for the existing and proposed boundaries;
- The source of the population information (census data are considered the most authoritative); the greater the population of the proposed area, the greater justification necessary to support the existence of the ''community'' and interaction among its residents;
- Evidence that the proposed area is a ''community'' as defined in ''Community Common Bond'' in Chapter 1;
- Information concerning the availability of financial services to the residents of the new area;
- A list of credit unions with a home or branch office in the proposed area (If present credit union service to the residents of the new area is adequate, there may be no basis for the proposed conversion.);
- Information regarding the attitude of the current credit union sponsors and existing credit union members toward the proposed conversion (a letter from the board of directors of the credit union is sufficient evidence);
- Information on the groups presently being served, to include, but not necessarily limited to, income data on its membership, the penetration rate of the current field of membership, core group, and any low to moderate group, and any special programs the credit union sponsored to serve a low to moderate group; and

• The anticipated financial impact on the credit union in terms of need for additional employees and fixed assets.

* * * * *

[FR Doc. 97–28587 Filed 10–28–97; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–135–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposal would require an inspection to determine the serviceability of the fire extinguisher of the forward lavatory waste bin, and corrective actions, if necessary. This proposal also would require installation of a placard adjacent to the fire extinguisher in the forward lavatory waste bin. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a civil airworthiness authority. The actions specified by the proposed AD are intended to prevent leakage of the fire extinguishing agent, which could prevent proper distribution of the agent within the lavatory waste bin in the event of a fire.

DATES: Comments must be received by November 28, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–135–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden . This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ‘‘Comments to Docket Number 97–NM–135–AD. The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–135–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that it has received reports indicating that, during maintenance, the capillary tube of a fire extinguisher of a forward lavatory waste bin was bent and fractured, which resulted in leakage of the fire extinguishing agent. This condition, if not corrected, could prevent appropriate distribution of the fire extinguishing agent within the lavatory waste bin in the event of a fire.

Explanation of Relevant Service Information

Saab has issued Service Bulletin SAAB 340–25–235, dated December 11, 1996, which describes procedures for performing an inspection to determine the serviceability of the fire extinguisher of the forward lavatory waste bin, and corrective actions, if necessary. The service bulletin also describes procedures for installation of a placard adjacent to the fire extinguisher to provide instructions for installation of the fire extinguisher. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive (SAD) 1–106, dated December 12, 1996, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA’s Conclusions

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

Explanation of Requirements of Proposed Rule

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

Cost Impact

The FAA estimates that 141 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $16,920, or $120 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

SAAB Aircraft AB: Docket 97–NM–135–AD.

Applicability: Model SAAB SF340A series airplanes having serial numbers –121, and –125 through –159 inclusive; and Model SAAB 340B series airplanes having serial numbers –160 through –360 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 (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 leakage of the fire extinguishing agent, which could prevent proper distribution of the agent within the lavatory waste bin in the event of a fire, accomplish the following:

(a) Within 3 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD in accordance with Saab Service Bulletin SAAB 340–25–235, dated December 11, 1996.

(1) Perform an inspection to determine the serviceability of the fire extinguisher in the forward lavatory waste bin, in accordance with the service bulletin. If any discrepancy is found, prior to further flight, accomplish the repair or replacement of the fire extinguisher, as specified in the service bulletin.

(2) Install a placard adjacent to the fire extinguisher in the forward lavatory waste bin 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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–106, dated December 12, 1996.

Issued in Renton, Washington, on October 23, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–28616 Filed 10–28–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Chapter VII

[Docket No. 971014244–7244–01]

Request for Comments on the Definition of ''Specially Designed''

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of inquiry; request for comments.

SUMMARY: The Bureau of Export Administration (BXA) is reviewing the use of the term ''specially designed'' as it pertains to items controlled on the Commerce Control List (CCL) in the Export Administration Regulations (EAR). BXA is considering developing a definition or definitions of that term that will meet the export control objectives of the regulations while increasing the utility of the regulations to the public.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 17, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527) and August 13, 1997 (62 FR 43629).

DATES: Comments must be received by December 29, 1997.

ADDRESSES: Written comments (three copies) should be sent to Hillary Hess, Regulatory Policy Division (Room 2096), Office of Exporter Services, Bureau of Export Administration, Department of Commerce, PO Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Jerald Beiter, Office of the Assistant Secretary for Export Administration, Bureau of Export Administration, Department of Commerce, telephone: (202) 482–6105.

SUPPLEMENTARY INFORMATION: A number of U.S. exporters and others have requested that BXA provide a definition of the term ''specially designed'' in order to assist them in classifying certain items according to the Commerce Control List. In responding to this request, BXA intends to examine the use of the term in multilateral control regimes, use of the term by other countries in their export control regimes, the opinions of other government agencies, and the opinions of members of the public. Our goal is to

fulfill the export control purposes behind the regulations, to adhere to multilateral regime practices, and to make the regulations easier for the public to use. BXA is particularly interested in the comments of those who have experience classifying items on the Commerce Control List. Comments should be as specific as possible.

It may not be possible to write a single definition that is accurate for all purposes, but BXA will make its best effort to respond to the concerns raised by the public comments.

BXA will consider requests for confidential treatment. The information for which confidential treatment is requested should be submitted to BXA separately from any non-confidential information submitted. The top of each page should be marked with the term ''Confidential Information.'' If the submission fails to meet the standards for confidential treatment, BXA will return it. A non-confidential summary must accompany such submissions of confidential information. The summary will be made available for public inspection.

Information accepted by BXA as confidential will be protected from public disclosure to the extent permitted by law. Communications between agencies of the United States Government or with foreign governments will not be made available for public inspection.

All other information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BXA requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record concerning these comments will be maintained in the Freedom of Information Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, DC. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of Title 15 of the Code of Federal Regulations.

Information about inspection and copying of records at this facility may be obtained from Margaret Cornejo, BXA Freedom of Information Officer, at the above address or by calling (202) 482–2593.

Dated: October 20, 1997.

William V. Skidmore,

Acting Assistant Secretary for Export Administration.

[FR Doc. 97–28649 Filed 10–28–97; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 773, 778 and 843

RIN 1029–AB94

Ownership and Control—Redesign

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Advanced notice of proposed rulemaking; notice of public meetings.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) will hold, upon request, meetings to solicit comments, concerns, and new ideas regarding the drafting of new ownership and control, permit information and improvidently issued permits regulations.

OSM also invites written comments regarding the drafting of these regulations. A concept/issue paper has been prepared to assist those interested in commenting or preparing for the meetings. The paper is a compilation of concepts and issues currently under consideration; however, OSM is not limited to those listed and encourages new concepts or ideas for consideration.

DATES: *Written comments* OSM will accept written comments until 5:00 p.m., Eastern Time on December 15, 1997.

Public meetings: OSM will meet with interested persons upon request to solicit comments on the drafting of the new regulations until December 15, 1997. In order to make proper arrangements for meetings, request for meetings should be made prior to December 1, 1997.

ADDRESSES: *Written comments and requests for concept/issue paper:* Hand deliver or mail to Earl Bandy, Office of Surface Mining Reclamation and Enforcement, AVS Office, 2679 Regency Road, Lexington, Kentucky 40503; telephone (800) 643–9748; E-mail:ebandy@osmre.gov.

Telefax: Copies of the concept/issue paper may be obtained from FAX ON DEMAND by calling 202–219–1703 and following the instructions on the recorded announcement.

Public meetings: Upon request OSM staff will be available to meet with interested persons, individually or in groups, during the comment period in the following locations: Lexington, Kentucky; Washington, D.C.; Knoxville, Tennessee; Pittsburgh, Pennsylvania; Alton, Illinois; and Denver, Colorado. Any individual who requires special accommodation to attend a meeting should also contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT:

Earl Bandy, Office of Surface Mining Reclamation and Enforcement, 2679 Regency Road, Lexington, Kentucky 40503; Telephone (606) 233–2796 or (800) 643–9748. E-mail: ebandy@osmre.gov.

SUPPLEMENTARY INFORMATION: On April 21, 1997 (62 FR 19450), OSM issued interim final regulations regarding 30 CFR Parts 773, 778 and 843—Ownership and Control; Permit Application Process; Improvidently Issued Permits. This action was taken in response to a decision by the U.S. Court of Appeals for the District of Columbia Circuit invalidating the previous rules as being inconsistent with Section 510(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). In issuing these interim final regulations, OSM invoked the ''good cause'' exemption of the Administrative Procedure Act (APA) at 5 U.S.C. 553(b)(3)(B). This provision allows an agency to issue a rule without prior notice or opportunity for public comment ''when the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' OSM invoked the APA ''good cause'' exemption for the reasons described in the preamble to the interim final regulations (62 FR 19451–19452). In doing so, OSM stated that the rules were intended to be interim and that it would seek public comment on any resulting proposed regulatory changes.

In order to fulfill this commitment, OSM is seeking to involve the public in advance of developing a proposed rule. OSM will follow standard procedures by seeking comments and holding public hearings on the proposed rules when they are published in the **Federal Register**.

Dated: October 21, 1997.

Mary Josie Blanchard,

Assistant Director, Program Support.

[FR Doc. 97–28486 Filed 10–28–97; 8:45 am]

BILLING CODE 4310–05–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 52 and 64

[CC Docket No. 92–237; FCC 97–386]

Administration of the North American Numbering Plan, Carrier Identification Codes (CICs)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On October 22, 1997, the Commission released a Second Further Notice of Proposed Rulemaking (Second FNPRM) addressing carrier identification codes (CICs). The Second FNPRM is intended to obtain comment on issues related to conversion of local exchange carrier (LEC) switches to provide equal access and to accept four-digit CIcs. The Commission concurrently released a Order on Reconsideration and an Order on Application for Review in the same docket.

DATES: Comments must be filed on or before December 8, 1997, and reply comments must be filed on or before January 12, 1998.

ADDRESSES: Federal Communications Commission, Secretary, Room 222, 1919 M Street, N.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Elizabeth Nightingale, Attorney, Network Services Division, Common Carrier Bureau, (202) 418–2352.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Second Further Notice of Proposed Rulemaking in the matter of Administration of the North American Numbering Plan, Carrier Identification Codes (CICs), CC Docket No. 92–237, adopted October 20, 1997, and released October 22, 1997. The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, Room 239, 1919 M St., N.W., Washington D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, phone (202) 857–3800.

Initial Regulatory Flexibility Act Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected economic impact on small entities by the policies and proposals in this Second FNPRM. The Commission solicited written public comments on the IRFA, which must be filed by the deadlines for the submission of comments in this proceeding.

Need for and Objectives of Proposed Rules

Inquiries by Commission staff regarding the status of LEC conversion to accept four-digit CICs reveal that some independent incumbent LECs in rural and isolated areas do not provide equal access. The Commission recognizes that a requirement that all LEC end office switches be upgraded to accept four-digit CICs by January 1, 1998, may have the unintended effect of requiring those LECs that have never received a bona fide request for equal access, or that are not subject to a specific timetable for providing equal access, nonetheless to upgrade their end offices to offer equal access by January 1, 1998. The Commission notes that such a requirement would modify the Commission's equal access implementation schedule for non-GTE independent telephone companies. The Commission tentatively concludes that requiring LECs whose end offices are equipped with SPC switches to upgrade their facilities to enable them to offer equal access, even if they have not received a request for equal access, and LECs whose end offices are equipped with non-SPC switches to convert their facilities to provide equal access, is not inconsistent with the Commission's general goal, expressed in the Independent Telephone Company Equal Access Report and Order (50 FR 15547, published April 19, 1985), that equal access occur as soon as practicable, regardless of whether a request has been made for equal access, and regardless of the type of switch with which an end office is equipped.

Legal Basis

Authority for actions proposed in this Second FNPRM may be found in: Sections 1, 4(i) and (j), 201–205, 218 and 251(e)(1) of the Communications Act of 1934 as amended, 47 U.S.C. Sections 151, 154(i), 154(j), 201–205, 218 and 251(e)(1).

Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

The proposal made by the Commission in this Second FNPRM will apply to local exchange carriers. The IRFA seeks comment on whether other entities should be included in our final regulatory flexibility analysis. We estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the proposal in this Second FNPRM.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposal in the Second FNPRM, if adopted, would require that LECs with SPC switches that have not received a bona fide request for equal access should upgrade their facilities to provide equal access and to accept four-digit CICs within three years of the effective date of an *Order* adopted in this proceeding. The proposal also would require that LECs whose end offices are equipped with non-SPC switches should provide equal access and convert their switches to accept four-digit CICs when they next replace their switching facilities.

Steps Taken to Minimize Economic Impact on Small Entities and Significant Alternatives Considered

In the Second FNPRM, the Commission seeks to gather relevant information from all interested parties, including small business entities, about the effect of requiring equal access conversion, even by those LECs that have not received a request for it, or whose end offices are not equipped with SPC switches. The Second FNPRM asks that commenters opposed to our tentative conclusion suggest alternatives. In addition, in the IRFA, the Commission tentatively concludes that the proposals in the Second FNPRM would impose minimum burdens on small entities, especially given that: (1) the Commission, in the Independent Telephone Company Equal Access Report and Order, adopted over twelve years ago, expressed a general desire that equal access occur as soon as practicable, regardless of whether a request has been made for equal access, and regardless of the type of switch with which an end office is equipped, and stated that where generic software is available, the telephone company should endeavor to make the necessary conversions in less than three years; and (2) the responses to inquiries by Commission staff indicate that the four-digit CIC software generally is included in equal access software packages developed since 1995. The IRFA seeks comment on this tentative conclusion.

Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Analysis of Proceeding

1. The Commission's inquiries regarding the status of LEC conversion to accept four-digit CICs reveal that some independent incumbent LECs in rural and isolated areas do not provide

equal access. Some of those LECs' end offices are equipped with SPC switches, but the LECs have never received a bona fide request to provide equal access. In other instances, the LECs' end offices are not equipped with SPC switches and, therefore, the LECs are not required to convert to equal access according to a specific timetable, even if a LEC received a reasonable request for equal access. The Commission acknowledged, therefore, that a requirement that all LEC end office switches be upgraded to accept four-digit CICs by January 1, 1998, may have the unintended effect of requiring those LECs that have never received a bona fide request for equal access or that are not subject to a specific timetable for providing equal access nonetheless to upgrade their end offices to offer equal access by January 1, 1998. Such a requirement would modify the Commission's equal access implementation schedule for non-GTE independent telephone companies, set by the 1985 Independent Telephone Company Equal Access Report and Order. More than twelve years have passed since the adoption of the Independent Telephone Company Equal Access Report and Order. The Second FNPRM therefore tentatively concludes that all LEC end offices, including those LECs whose end offices are equipped with SPC switches, but have not received a bona fide request for equal access and those LECs whose end offices are equipped with non-SPC switches, should nevertheless be required to provide equal access. This requirement also would apply to LECs who may have received a waiver of the Commission's equal access rules, to the extent those waivers remain in place. The Second FNPRM tentatively concludes that LECs with SPC switches that have not received a bona fide request for equal access should be required to upgrade their facilities to provide equal access and to accept four-digit CICs within three years of the effective date of an Order adopted in this proceeding. The Second FNPRM further tentatively concludes that LECs whose end offices are equipped with non-SPC switches should be required to provide equal access and to convert their switches to accept four-digit CICs when they next replace their switching facilities. The Second FNPRM tentatively concludes that requiring LECs whose end offices are equipped with SPC switches to upgrade their facilities to enable them to offer equal access, even if they have not received a request for equal access, and LECs whose end offices are equipped with non-SPC switches to convert their facilities to provide equal access, is not inconsistent with the Commission's general goal, expressed in the Independent Telephone Company Equal Access Report and Order, that equal access occur as soon as practicable, regardless of whether a request has been made for equal access, and regardless of the type of switch with which an end office is equipped. Moreover, the Commission stated, in the Independent Telephone Company Equal Access Report and Order, that where generic software is available, the telephone company should endeavor to make the necessary conversions in less than three years. The Second FNPRM notes that the responses to inquiries by Commission staff indicate that the four-digit CIC software generally is included in equal access software packages developed since 1995. The Commission indicated that commenters that oppose the tentative conclusion should discuss why a twelve year period of time in which to convert to provide equal access has been insufficient and should propose specific alternatives to the Commission's proposal.

Ordering Clauses

2. *It is further ordered*, pursuant to Sections 1, 4(i) and (j), 201–205, 218 and 251(e)(1) of the Communications Act as amended, 47 U.S.C. Sections 151, 154(i), 154(j), 201–205, 218 and 251(e)(1), that the Second Further Notice of Proposed Rulemaking is hereby ADOPTED.

3. *It is further ordered* that the Commission's Office of Managing Director *shall send* a copy of the Second Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 52

Local exchange carrier, Numbering, Telecommunications.

47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–28678 Filed 10–28–97; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA–97–2362; Notice 1]

RIN 2137—AD05

Pipeline Safety: Incorporation by Reference of Industry Standard on Leak Detection

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to adopt as a referenced document an industry publication for pipeline leak detection, API 1130, ''Computational Pipeline Monitoring,'' published by the American Petroleum Institute (API). This proposal would require that an operator of a hazardous liquid pipeline use API 1130 in conjunction with other information, in designing, evaluating, operating, maintaining, and testing its software-based leak detection system. The use of this document will significantly advance the acceptance of leak detection technology on hazardous liquid pipelines. However, RSPA is not proposing to require operators to install such systems.

DATES: Interested persons are invited to submit written comments in duplicate by December 29, 1997. Late-filed comments will be considered to the extent practicable. Interested persons should submit as part of their written comments all the material that is relevant to any statement of fact or argument.

ADDRESSES: Comments should be sent to the Docket Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify the docket number (RSPA–97–2362) and the RSPA Rulemaking Number (2137–AD05). Commenters should submit an original and one copy. Commenters wishing to receive confirmation of receipt of their comments must include a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the Docket Facility, located on the plaza level of the Nassif Building in Room 401. The Docket Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lloyd W. Ulrich, telephone:(202) 366–4556, FAX: (202) 366–4566, e-mail:

lloyd.ulrich@rspa.dot.gov regarding the subject matter of this notice, or Dockets Unit, (202) 366–5046, for copies of this notice or other material in the docket.

SUPPLEMENTARY INFORMATION:

I. Background

A. Congressional Mandate and Advance Notice of Proposed Rulemaking

Congress, in section 212 of the Pipeline Safety Act of 1992 (codified at 49 U.S.C. 60102(j)), required the Secretary of Transportation, by October 24, 1994, to survey and assess the effectiveness of emergency flow restricting devices (EFRDs) and other procedures, systems, and equipment used to detect and locate hazardous liquid pipeline ruptures and minimize product releases from hazardous liquid pipeline facilities. Congress further mandated that the Secretary issue regulations two years after completing the survey and assessment (no later than October 24, 1996). These regulations would prescribe the circumstances under which operators of hazardous liquid pipelines would use EFRDs or other procedures, systems, and equipment used to detect and locate pipeline ruptures and minimize product release from pipeline facilities [1]. The Secretary delegated this authority to the Research and Special Programs Administration (RSPA).

To conduct the required survey, RSPA issued an advance notice of proposed rulemaking (ANPRM) (59 FR 2802, Jan. 19, 1994) to solicit information from the public. The ANPRM contained questions directed mostly to operators of hazardous liquid pipelines about operational data and costs related to EFRDs and about the performance of leak detection systems as another means to detect and locate hazardous liquid pipeline ruptures and minimize product release. The ANPRM also sought information to help determine which critical locations should be protected from pipeline releases.

Nineteen comments were submitted in response to the ANPRM. Sixteen comments were from hazardous liquid pipeline operators, two were from leak detection vendors, and one was from the API. Commenters were generally against requiring leak detection equipment and EFRDs. Ten of the sixteen hazardous liquid operators responded with usable data.

[1] Proposed regulations on the circumstances where operators would be required to use EFRDs and other equipment have been postponed until a definition for areas unusually sensitive to environmental damage, or USAs, is established, as discussed later in this notice.

B. Volpe Report

In response to a recommendation in an earlier Departmental report [2] dealing with pipeline EFRDs and leak detection, the Volpe National Transportation Systems Center (Volpe Center) released a report entitled ''Remote Control Spill Reduction Technology: A Survey and Analysis of Applications for Liquid Pipeline Systems'' (September 29, 1996). The study looked at the pipeline industry overall and its application of SCADA [3] and leak detection systems. The report looked at several leak detection performance measures including response time, false alarms, sensitivity, and leak location accuracy.

The report contained conclusions on leak detection systems relevant to this present rulemaking. One was that because of the pipeline industry's diversity, each system used for leak detection must be custom configured for a particular pipeline system. Another conclusion was that SCADA and leak detection systems were dependent on the sophistication of the host computer and how rapidly the host computer can gather remote field data. The report found that operators have made major investments in SCADA systems, but have invested much less in software-based leak detection systems.

Another conclusion was the dispatcher who operates the pipeline system was key to SCADA and leak detection systems operating successfully. Most operators interviewed for the study believed that dispatcher training and the dispatcher's ability to interpret the data provided by the SCADA system were critical in reducing the number of incidents and the volume of pipeline spills.

Finally, the report concluded that a SCADA system or a leak detection system can be configured for most pipeline systems, but that the high cost/benefit and the evolving technology of such systems has slowed industry's adopting computer-based leak detection systems.

[2] A March 1991 Departmental report entitled ''Emergency Flow Restricting Devices Study (A Study Mandated by Pub. L. 100–561)'' recommended that the Department conduct a research study on whether SCADA systems, including well-designed leak detection subsystems, should be required on hazardous liquid pipelines to enhance the safe operation of the pipelines. RSPA contracted with the Volpe National Transportation Systems Center (Volpe Center) to conduct the study.

[3] SCADA is an acronym for Supervisory Control and Data Acquisition. SCADA systems utilize computer technology to continuously gather data (e.g., pressure, temperature, and delivery flow rates) from remote locations on the pipeline. Dispatchers use SCADA systems to assist in day-to-day operating decisions on the pipeline. SCADA systems can also provide input for real-time models of the pipeline operation. Such models compare current operating conditions with calculated data values. A deviation may indicate the possibility of a leak.

C. Public Workshop

RSPA wanted to accomplish the Congressional mandate consistent with the President's policy (E.O. 12866) that regulations provide for public safety and environmental protection at the least cost to society. Toward this end, and because RSPA received limited data in response to the ANPRM's questionnaire, RSPA held a public workshop on October 19, 1995, to obtain more data on EFRDs and leak detection systems. Two formal presentations on leak detection were made at the workshop. One was by Dr. Sherry Smith Borener from the Volpe Center, who presented the preliminary results of the report discussed above, and the other was by the American Petroleum Institute (API).

The Volpe Center report's finding that each leak detection system is unique to the pipeline on which it is installed was confirmed at the workshop. Industry expressed its desire to improve its leak detection capability, its concern about releases to the environment, and its dedication to automation. Also evident was that the hazardous liquid pipeline industry is driven by cost control.

Discussions at the workshop included operational and economic problems with leak detection systems. Participants said that many dynamic factors, such as changes in product characteristics and hydraulic transient conditions, can change a pipeline system's operating characteristics and affect leak detection capability. Other less frequent changes, such as the physical parameters of the pipeline can also impact leak detection performance. Further, participants said that leak detection systems increase a pipeline's overall maintenance, such as equipment calibration checks and preventive maintenance, which affects an operator's cost. Also, when equipment is down, leak sensitivity may be impaired. Participants also said that a pipeline's transient conditions adversely affect leak detection system performance.

Also discussed were operational and economic benefits. Among these benefits were that a leak detection system improves a pipeline's everyday operation because the system allows the operator to collect more usable operating data about the pipeline system, including data from remote locations. Participants also said that a leak detection system allows for faster leak detection, resulting in reduced commodity loss, lower short-term cleanup costs from releases, and lower

long-term remediation costs. Participants noted that a leak's location is secondary to confirming that a leak has occurred.

Discussions at the workshop brought out that a leak detection system can result in a more rapid response to a leak. Participants said that the simplest system can indicate large leaks, while detecting smaller leaks depends on many factors including the dispatcher's competency. Participants confirmed the Volpe study's conclusion that dispatcher training is of paramount importance.

D. Definition for Areas Unusually Sensitive to Environmental Damage

Congress required that in prescribing standards, RSPA identify the ''circumstances'' where EFRDs and other equipment must be installed. RSPA's current policy is to base regulations on risk assessment. RSPA believes that a primary high risk circumstance would be where a pipeline is located in an environmentally sensitive area. RSPA has been conducting public workshops since 1995 to enable government and industry to better understand the problems involved in identifying a subset of such areas, areas unusually sensitive to environmental damage, or USAs. RSPA expects to publish a NPRM proposing a definition for USAs in the Spring of 1998.

Because of the ongoing regulatory effort to define USAs, RSPA has decided to wait before issuing a NPRM proposing where leak detection systems should be required.

E. Development of API 1130

In April 1994, the API formed a task force to develop a document on computational pipeline monitoring (CPM). The task force produced API 1130, entitled ''Computational Pipeline Monitoring'' addressing the use of software-based leak detection equipment. API 1130 defines computational pipeline monitoring as ''an algorithmic monitoring tool that allows the pipeline controller to respond to a pipeline operating anomaly which may be indicative of a commodity release.'' As stated in the document,

> The purpose of this publication is to assist the pipeline operator in the selection, implementation, testing, and operation of a CPM system. When used in conjunction with other API publications, this publication will prove useful to identify the complexities, limitations and other implications of detecting anomalies on liquid pipelines using CPM systems.

To gather data for a leak detection rulemaking, RSPA and Volpe Center staff have monitored the task force's work. Minutes of task force meetings, as well as copies of final drafts of the document, are available in Docket No. PS–133.

II. Statement of the Problem and Proposed Solution

Pipeline safety regulations do not require hazardous liquid pipeline operators to meet any leak detection system performance standards. As mentioned before, a lack of a USA definition has delayed RSPA proposing the circumstances where EFRDs and other equipment must be installed on hazardous liquid pipeline systems. However, RSPA believes it should not delay addressing the safety and environmental advantages of using software-based leak detection technology to reduce releases from pipeline ruptures. RSPA proposes to remedy this by requiring operators to use API 1130 in operating, maintaining, and testing their existing software-based leak detection systems and in designing and installing new software-based leak detection systems or replacing components of existing systems. RSPA is taking this action for several reasons.

(1) RSPA monitored the development of API 1130 and its development is well documented in Docket No. PS–133. The API task force members who developed API 1130 are experts in the pipeline industry, well versed in leak detection systems.

(2) Due to its comprehensiveness, API 1130 advances safety by providing for more rapid detection of ruptures and response to those ruptures, thus limiting releases of hazardous liquids.

(3) Adopting API 1130 complies with the spirit of the President's initiative to reduce and simplify regulations by adopting industry developed standards. Its adoption should not create controversy since the pipeline industry, the primary user, developed the publication.

III. Role of the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC)

The proposal to adopt API 1130 as a referenced document in 49 CFR part 195 was brought before the THLPSSC at its meeting on November 6, 1996. The THLPSSC is a 15 member Congressionally mandated advisory committee (49 U.S.C. 60115) responsible for reviewing proposed pipeline safety standards for technical feasibility, reasonableness, and practicability. The THLPSSC Chairperson appointed a three person subcommittee to work with RSPA to provide technical expertise on the feasibility of adopting API 1130 as a referenced standard in part 195. The subcommittee met with RSPA and submitted to the THLPSSC Chairperson the following recommendations, which THLPSSC accepted:

> (1) API 1130 in its entirety should be referenced in 49 CFR part 195 regulations.
>
> (2) The operations, maintenance, and testing portions of API 1130 should be applicable to all existing and newly installed Computational Pipeline Monitoring (CPM) systems, and API 1130 in its entirety should be applicable to all newly installed CPM systems or replacement sections of existing CPM systems.
>
> (3) Compliance with API 1130 should be within 12 months of incorporation of this document into the part 195 regulations.
>
> (4) If and when API 1130 is referenced in the part 195 regulations, the reference only applies to single phase liquid pipelines (see Section 1.3 of API 1130, which limits the document's application to single phase liquid pipelines).
>
> (5) The preamble to the draft and final Part 195 rules should state that the reference to API 1130 is a first step in meeting the mandate of section 60102(j) of the federal pipeline safety law (49 U.S.C. 601), and is not intended to delay issuance of additional requirements or actions under this section of the law.

RSPA agrees with these recommendations and has drafted this NPRM to comply with them.

IV. Discussion of the Proposed Rule

This proposed rule would require an operator of a hazardous liquid pipeline to comply with API 1130 in designing, operating, maintaining, and testing the operator's software-based leak detection system. Although the proposed rule does not require an operator to install a software-based leak detection system, whenever such a leak detection system is installed or a component replaced, API 1130 would have to be followed. Likewise, each existing software-based leak detection system would have to comply with the operating, maintenance, testing, and training provisions of API 1130.

To be consistent with the scope limitations of Section 1.3 in API 1130, the proposed regulation limits API 1130 applicability to single phase, liquid pipelines. Pipelines transporting both gas and liquid, called dual phase pipelines, are prevalent in offshore operations where the gas and liquid stream is transported by pipeline to onshore facilities where it is more economical to separate the gas and liquid for further transport. Designing a leak detection system for such a pipeline is extremely complex because of the different physical and chemical characteristics of gas and liquid.

1. *Proposed additions to § 195.2 Definitions:* The term ''computational pipeline monitoring'' which has not been used in 49 CFR part 195, would be added to the list of definitions in § 195.2. The proposed definition is identical to API 1130's definition except that the term ''monitoring tool'' is modified to ''software-based monitoring tool.'' RSPA is also replacing the term ''controller'' with ''dispatcher'' as dispatcher is the term presently used in the pipeline safety regulations.

2. *Proposed addition to § 195.3 Matters incorporated by reference:* RSPA will propose that API 1130 be added as one of the referenced API publications under § 195.3(c)(2).

3. *Proposed new section § 195.134 CPM leak detection systems:* RSPA will propose a new section in Subpart C—Design Requirements, to require that whenever an operator installs a CPM leak detection system, that the operator design it according to the design requirements of API 1130. The proposed new section also requires that each component replaced on an existing system be designed in accordance to the design requirements of API 1130. This conforms to the THLPSSC recommendation that both newly installed CPM systems and replacement sections of existing CPM systems follow API 1130.

4. *Proposed new section § 195.444 CPM leak detection systems:* RSPA proposes a new section in Subpart F-Operation and Maintenance, to require each operator who has a CPM leak detection system to follow API 1130 in the operation, maintenance, and testing of the system.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant action under section 3(f) of Executive Order 12866 and is not considered significant under the Department of Transportation Policies and Procedures (44 FR 11034, Feb. 26, 1979). This proposal is to adopt an industry document, API 1130. Adopting API 1130 should result in leak detection systems that allow for faster leak detection, resulting in reduced commodity loss, lower short-term cleanup costs from releases, and lower long-term remediation costs. The Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) recommended that we adopt the document into part 195. This proposal does not require an operator to adopt a computational pipeline monitoring system (CPM) if the operator does not already have one. It only requires that if an operator has such a system that the operator follow this document. This document represents good industry practices. Conversations with officials of the API confirm that the vast majority of the industry that uses CPM already has adopted these practices.

Because RSPA is not mandating the use of CPM and is simply adopting the practices already instituted and developed by industry, RSPA believes that the cost of this regulation will be minimal. Therefore, RSPA believes that a regulatory evaluation of this proposal is not necessary.

Nonetheless, RSPA does not have good data on any potential costs that this proposal would have on industry. RSPA is soliciting information on costs, if any, of referencing API 1130. Please send cost information to the Department of Transportation Docket Office listed in the **ADDRESSES** section of this preamble.

B. Regulatory Flexibility Act

As discussed above RSPA is not requiring that operators install CPM but simply requiring that where hazardous liquid operators have such a system that they meet the standards industry developed. As stated above, most operators with such systems already comply with these requirements. Therefore, based on the facts available, I certify pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this action will not have a significant economic impact on a substantial number of small entities.

C. Federalism Assessment

The proposed rulemaking action would not have substantial direct effects on states, on the relationship between the Federal 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 (52 FR 41685, Oct. 30, 1987), RSPA has determined that this notice does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

D. Unfunded Mandates

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

E. Paperwork Reduction Act

There are minimal record keeping requirements included in

API 1130 on testing and retesting of each CPM. However, as discussed above, this proposal does not require an operator to have a CPM. API 1130 was developed by the industry, and the vast majority of the industry that uses CPM already has adopted the practices in API 1130. Because the record keeping requirements represent the usual and customary practices of the industry, there is minimal paperwork burden on the public. Nevertheless, RSPA prepared a paperwork analysis for this proposed rule and submitted it to the Office of Management and Budget(OMB) for review. The paperwork analysis for this proposed regulation is available for review at the Docket Office, U.S. Department of Transportation, Plaza 401, 400 Seventh St. SW, Washington, DC. Comments on the paperwork burden of this proposed regulation can be submitted within 60 days of the publication of this notice to Office of Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW Washington, DC 20503 ATTN.: Desk Officer for the Department of Transportation, RSPA. Please send a duplicate copy of comments to the Docket Office, U.S. Department of Transportation Plaza 401, 400 Seventh St. SW, Washington, DC 20590–0001, identifying the RSPA Docket Number (RSPA–97–2362) and the RSPA Rulemaking Number (2137–AD05). Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality utility and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

List of Subjects in 49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA proposes to amend 49 CFR part 195 as follows:

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

1. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

Subpart A—General

2. Section 195.2 would be amended by adding the definition for Computational Pipeline Monitoring to read as follows:

§ 195.2 Definitions.

* * * * *

Computation Pipeline Monitoring (CPM) means a software-based monitoring tool that allows the pipeline dispatcher to respond to a pipeline operating anomaly that may be indicative of a commodity release.

* * * * *

3. Section 195.3 would be amended by redesignating paragraphs (c)(2)(i) through (c)(2)(iii), as paragraphs (c)(2)(ii) through (c)(2)(iv), and adding a new paragraph (c)(2)(i) to read as follows:

§ 195.3 Matter incorporated by reference.

* * * * *

(c) * * *

(2) * * *

(i) API 1130 ''Computational Pipeline Monitoring'' (1st Edition, 1995).

* * * * *

Subpart C—Design Requirements

4. Section 195.134 would be added to read as follows:

§ 195.134 CPM leak detection.

This section applies to each hazardous liquid pipeline transporting liquid in single phase (without gas in the liquid). On such systems, each new computational pipeline monitoring (CPM) leak detection system that will be installed and each replaced component of an existing CPM system must comply with the selection criteria of section 4.2 of API 1130 in its design and with any other design criteria addressed in API 1130 for components of the CPM leak detection system.

Subpart F—Operation and Maintenance

5. Section 195.444 would be added to read as follows:

§ 195.444 CPM leak detection.

Each computational pipeline monitoring (CPM) leak detection system installed on a hazardous liquid pipeline transporting liquid in single phase (without gas in the liquid) must comply with API 1130 in operating, maintaining, testing, record keeping, and dispatcher training of the system.

Issued in Washington, DC, on October 20, 1997.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 97–28135 Filed 10–28–97; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 62, No. 209
Wednesday, October 29, 1997

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

Submission for OMB Review; Comment Request

October 24, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

- **National Agricultural Statistics Service**

Title: Classification Error Survey.
OMB Control Number: 0535–New.
Summary Of Collection: Information is collected on farm or non-farm status.
Need And Use Of The Information: The information will be used to provide measures to evaluate total coverage and to identify procedures contributing to incomplete or erroneous data.
Description Of Respondents: Farms.
Number Of Respondents: 29,300.
Frequency Of Responses: Reporting: Every 5 years.
Total Burden Hours: 5,275.
Expedited Processing Is Requested By November 26, 1997.

- **Farm Service Agency**

Title: Daily Indemnity Payment Program, 7 CFR Part 760.
OMB Control Number: 0560–0116.
Summary Of Collection: Information will be provided by daily farmers and manufacturers of dairy products who have suffered income losses with respect to milk or milk products.
Need And Use Of The Information: The information will be used to determine the amount of indemnity payment a dairy producer or manufacturer is eligible to receive.
Description Of Respondents: Farms; individuals or households; business or other for-profit.
Number Of Respondents: 80.
Frequency Of Responses: Reporting: Monthly.
Total Burden Hours: 140
Emergency Processing Of This Submission Has Been Requested.

- **Food and Consumer Service**

Title: 7 CFR Part 226, Child and Adult Care Food Program.
OMB Control Number: 0584–0055.
Summary Of Collection: Information is collected regarding the provision of meals to eligible persons attending licensed adult day care centers, and children attending nonresidential day care facilities and day care homes.
Need And Use Of The Information: The information is used to determine eligibility of institutions to participate, ensure acceptance of responsibility in managing an effective food service, implement systems for appropriating program funds, and ensure compliance with all statutory and regulatory requirements.
Description Of Respondents: Not-for-profit institutions; Individuals or households; business or other for-profit; Federal Government; State, Local or Tribal Government.
Number Of Respondents: 706,001.
Frequency Of Responses: Recordkeeping; Reporting: On occasion; Monthly; Semi-annually; Annually; Biennially; Daily.
Total Burden Hours: 4,584,476.

- **Farm Service Agency**

Title: Forms and Shipment Information Log.
OMB Control Number: 0560–0177.
Summary Of Collection: Information is submitted for bids/offers for commodities and services to meet domestic and export program needs.
Need And Use Of The Information: The information is used to evaluate offers impartially and purchase commodities to meet domestic and export program needs.
Description Of Respondents: Business or other for-profit; not-for-profit institutions; Federal Government; State, Local or Tribal Government.
Number Of Respondents: 1,061.
Frequency Of Responses: Recordkeeping; reporting: On occasion; weekly; monthly; quarterly; biweekly.
Total Burden Hours: 4,700.

- **Agricultural Marketing Service**

Title: Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.
OMB Control Number: 0581–0177.
Summary of Collection: The USDA needs information from growers to select committee members, to conduct referendum, for sales and disposition of the crop and to amend the marketing order and agreement.
Need and Use of the Information: The information is used to regulate the provisions of Marketing Order No. 930.
Description of Respondents: Business or other for-profit; farms.
Number of Respondents: 1,268.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 1,034.

- **Food and Consumer Service**

Title: 7 CFR Part 210, National School Lunch Program.
OMB Control Number: 0584–0006.

Summary of Collection: Information collected includes claims for reimbursement, daily counts of free, reduced-price and paid lunches served, and daily meal menu and production.

Need and Use of the Information: The information is necessary to operate the National School Lunch Program.

Description of Respondents: State, Local or Tribal Government; Individuals or households; business or other for-profit; not-for-profit institutions; Federal Government.

Number of Respondents: 114,169.

Frequency of Responses: Recordkeeping; reporting: On occasion; monthly; semi-annually; annually; biennially; daily.

Total Burden Hours: 9,434,055.

• **Farm Service Agency**

Title: 7 CFR 1951–5, Farmer Program Account Servicing Policies.

OMB Control Number: 0560–0161.

Summary of Collection: Information collected included requests for loan servicing, appraisal agreements, and response to notices and acceptance of offers.

Need and Use of the Information: The information is used by agency officials to consider a financially distressed or delinquent borrower's request for loan servicing.

Description of Respondents: Farms; individuals or households; business or other for-profit; State, Local Tribal Government

Number of Respondents: 10,400.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 8,588.

• **Cooperative State Research, Education, and Extension Service**

Title: Grant Application Forms for Higher Education Programs.

OMB Control Number: 0524–0030.

Summary of Collection: Information collected includes a project summary, a proposal narrative, technical aspects of the proposed project and supporting documentation of an administrative and budgetary nature.

Need and Use of the Information: The information is necessary to evaluate proposals.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 600.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 23,100.

• **Farm Service Agency**

Title: Noninsured Crop Disaster Assistance Program.

OMB Control Number: 0560–0175.

Summary of Collection: Information collected includes an application for assistance, and records of specific crop acreage, yield and production.

Need and Use of the Information: The information is used to determine eligibility.

Description of Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; farms.

Number of Respondents: 1,575,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,711,250.

Emergency processing of this submission has been requested.

Donald Hulcher,

Departmental Clearance Officer.

[FR Doc. 97–28629 Filed 10–28–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agriculature Marketing Service

[Docket No. TB–97–16]

Public Hearing Regarding Establishment of a New Tobacco Auction Market

Notice is hereby given of a public hearing regarding an application to combine the Clarksville and Chase City, Virginia, tobacco markets.

Date: November 7, 1997.

Time: 9:30 a.m. local time.

Place: VFW Hall No. 8163, 7488 Highway 15, Clarksville, Virginia.

Purpose: To hear testimony and to receive evidence regarding an application for tobacco inspection and price support services to a new market, which would be a consolidation of the currently designated markets of Clarksville and Chase City, Virginia. The application was made by Gerald Stovall, T.M. Ward, Jr., and Mac Bailey, Board of Trade, Clarksville, Virginia; Milton Allgood, Wilson Fleming, and W.M. Park, Board of Trade, Chase City, Virginia.

This public hearing will be conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support service to new markets and to additional sales on designated markets (7 CFR 29.1 through 29.3), issued under the Tobacco Inspection Act, as amended (7 U.S.C. 511 *et seq.*) and the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714 *et seq.*).

Dated: October 24, 1997.

Isi A. Siddiqui,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 97–28743 Filed 10–27–97; 11:20 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–97–17]

Public Hearing Regarding Establishment of a New Tobacco Auction Market

Notice is hereby given of a public hearing regarding an application to combine the Loris, South Carolina, and Tabor City-Whiteville, North Carolina, tobacco markets.

Date: November 5, 1997.

Time: 9:00 a.m. local time.

Place: Dales Family Seafood and Steakhouse, 100 701 Bypass, Tabor City, North Carolina.

Purpose: To hear testimony and to receive evidence regarding an application for tobacco inspection and price support services to a new market, which would be a consolidation of the currently designated markets of Loris, South Carolina, and Tabor City-Whiteville, North Carolina. The application was made by Harvey Graham, Jr., and Bill G. Page, warehouse operators, Loris, South Carolina.

This public hearing will be conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR 29.1 through 29.3), issued under the Tobacco Inspection Act, as amended (7 U.S.C. 511 *et seq.*) and the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714 *et seq.*)

Dated: October 24, 1997.

Isi A. Siddiqui,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 97–28744 Filed 10–27–97; 11:20 am]

BILLING CODE 3410–02–M

ARMS CONTROL AND DISARMAMENT AGENCY

Performance Review Board; Membership

AGENCY: Arms Control and Disarmament Agency.

ACTION: Notice of membership of Performance Review Board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the U.S. Arms Control and Disarmament Agency announces the appointment of Performance Review Board members.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy Aderholdt, Director of Personnel, U.S. Arms Control and Disarmament Agency, Washington, D.C. 20451 (202) 647–2034.

The following are the names and present titles of the individuals

appointed to the register from which Performance Review Boards will be established by the U.S. Arms Control and Disarmament Agency during the period beginning on the effective date of this notice and ending when a new register is published and becomes effective in approximately one year. Specific Performance Review Boards will be established as needed from this register. These appointments supersede those in the announcement published in 1996.

Name	Title
Ralph Earle II	Deputy Director.
Donald Gross	Counselor.
James Sweeney	Special Representative-CSA.
Robert Sherman	Director, Advanced Project.
O. James Sheaks	Deputy Assistant Director, Intelligence, Verification and Information Management Bureau.
Sarah Mullen	Chief, Intelligence Technology and Analysis, Intelligence, Verification and Information Management Bureau.
Norman Wulf	Deputy Assistant Director, Nonproliferation and Regional Arms Control Bureau.
Michael Rosenthal	Chief, Nuclear Safeguards and Technology Division, Nonproliferation and Regional Arms Control Bureau.
Donald Mahley	Deputy Assistant Director, Multilateral Affairs Bureau.
Michael Guhin	Associate Assistant Director, Multilateral Affairs Bureau.
Robert Mikulak	Chief, Chemical and Biological Policy Division, Multilateral Affairs Bureau.
Pierce Corded	Chief, International Security and Nuclear Policy Division Multilateral Affairs Bureau.
R. Lucas Fischer	Deputy Assistant Director, Strategic and Eurasian Affairs Bureau.
Karin Look	Chief, Strategic Negotiations and Implementation Division, Strategic and Eurasian Affairs Bureau.
David Wollan	Chief, Theater and Strategic Defenses Division, Strategic and Eurasian Affairs Bureau.
Cathleen Lawrence	Director of Administration, Office of Administration.
Ivo Spalatin	Director of Congressional Affairs, Office of Congressional Affairs.
Mary Elizabeth Hoinkes	General Counsel, Office of the General Counsel.
Joerg Menzel	Principal Deputy of the On-Site Inspection Agency.
Stanley Riveles	U.S. Standing Consultative Commissioner.

Cathleen Lawrence,

Director of Administration.

[FR Doc. 97–28633 Filed 10–28–97; 8:45 am]

BILLING CODE 6820–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration; National Defense Stockpile Market Impact Committee Request for Public Comments

AGENCY: Office of Strategic Industries and Economic Security, Bureau of Export Administration, U.S. Department of Commerce.

ACTION: Notice of request for public comments on the potential market impact of the disposal of certain commodities from the National Defense Stockpile under the proposed Fiscal Year (FY) 1999 Annual Materials Plan (AMP) and revisions to the FY 1998 AMP.

SUMMARY: This notice is to advise the public that the interagency National Defense Stockpile Market Impact Committee is seeking public comment on the potential market impact of Department of Defense proposed disposals of Stockpile materials under the FY 1999 AMP and under a revised FY 1998 AMP (See Attachment 1).

DATES: Comments must be received by November 28, 1997.

ADDRESSES: Written comments (2 copies) should be sent to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, Office of Strategic Industries and Economic Security, U.S. Department of Commerce, (202) 482–3634; or Stephen H. Muller, Office of International Energy and Commodity Policy, U.S. Department of State, (202) 647–3423; co-chairs of the National Defense Stockpile Market Impact Committee.

SUPPLEMENTARY INFORMATION: Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*)(the Act), the Department of Defense (as National Defense Stockpile Manager) maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. The Act (50 U.S.C. 98h–1) formally established a Market Impact Committee (the Committee) to ''advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *.'' The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury and the Federal Emergency Management Agency and is co-chaired by the Departments of Commerce and State. The Act directs the Committee to ''consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile.''

The Committee is now considering Defense's proposed Stockpile material disposal levels under the FY 1999 AMP and revisions to current Stockpile material disposal levels under the FY 1998 AMP as set forth in Attachment 1. The AMP materials listed in bold in Attachment 1 cannot be sold until Congress has approved their disposal. The Committee is seeking public comment on the potential market impact of the sale of these materials in the event that Congress does grant such disposal authority.

The proposed disposal quantity for each material listed in Attachment 1 is the maximum amount of material that may be sold in a particular fiscal year. Please note that these quantities are not sales targets. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time of the offering. It will also depend on the maximum quantity of each material approved for disposal by the Congress.

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of any commodity in the above lists. Although comments in response to this Notice must be received by November 28, 1997 to ensure full consideration by the Committee, interested parties are encouraged to submit additional comments and supporting information at any time thereafter to keep the Committee informed as to the market impact of the sale of the commodities. Public comment is an important element of the Committee's market impact review process.

Public comments received will be made available at the Department of Commerce for public inspection and copying. Material that is national security classified or business confidential will be exempted from public disclosure. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. Communications from agencies of the United States Government will not be made available for public inspection.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–5653. The records in this facility may be inspected and copied in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*).

Information about the inspection and copying of records at the facility may be obtained from Ms. Margaret Cornejo, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number.

Dated: October 17, 1997.

Karen A. Swasey,

Acting Director, Strategic Industries and Economic Security.

Attachment 1: Proposed FY 1999 and Revised FY 1998 AMPs.

ATTACHMENT 1.—PROPOSED FY 1999 AND REVISED FY 1998 AMPS

[The materials in bold are under Congressional consideration]

Material	Units	Current FY 1998 quantity	Revised FY 1998 quantity	Proposed FY 1999 quantity
Aluminum Oxide, Abrasive	ST	6,000	0	6,000
Aluminum Oxide, Fused Crude	ST	30,000	0	30,000
Analgesics	AMA Lb	64,127	0	64,127
Antimony	ST	5,000	0	5,000
Asbestos (all types)	ST	20,000	0	20,000
Bauxite, Metallurgical (Jamaican)	LDT	600,000	0	600,000
Bauxite, Metallurgical (Surinam)	LDT	300,000	800,000	800,000
Bauxite, Refractory	LCT	80,000	0	0
Beryl Ore	ST	2,000	0	2,000
Beryllium Copper Master Alloy	**ST**	**0**	**1,250**	**1,250**
Bismuth	LB	300,000	0	180,000
Cadmium	LB	1,200,000	0	1,200,000
Celestite	SDT	3,600	0	3,600
Chromite, Chemical	SDT	100,000	0	100,000
Chromite, Metallurgical	SDT	250,000	0	250,000
Chromite, Refractory	SDT	100,000	0	100,000
Chromium, Ferro	ST	50,000	0	50,000
Chromium, Metal	**ST**	**0**	**500**	**500**
Cobalt	LB Co	6,000,000	0	6,000,000
Columbium, Carbide	**LB Cb**	**0**	**21,372**	**21,000**
Columbium Concentrates (Minerals)	**LB Cb**	**0**	**200,000**	**200,000**
Columbium, Ferro	LB Cb	200,000	0	200,000
Diamond, Bort	CT	1,000,000	0	1,000,000
Diamond Dies, Small PCS	PC	25,473	0	25,473
Diamond Stone	CT	2,000,000	0	2,000,000
Fluorspar, Acid Grade	SDT	180,000	0	180,000
Fluorspar, Metallurgical	SDT	50,000	0	50,000
Germanium	KG	8,000	0	8,000
Graphite, Natural Malagasy	ST	2,660	0	2,660
Indium	TR Oz	35,000	0	15,000
Iodine	LB	450,000	1,000,000	1,000,000
Jewel Bearings	PC	31,000,000	52,000,000	52,000,000
Kyanite	SDT	1,200	0	0
Lead	ST	60,000	0	60,000
Manganese, Battery Grade Natural	SDT	20,000	0	20,000
Manganese, Battery Grade Synthetic	SDT	3,011	0	3,011
Manganese, Chemical Grade	SDT	40,000	0	40,000
Manganese, Ferro	ST	50,000	0	50,000
Manganese, Metal Electrolytic	ST	2,000	0	2,000
Manganese, Metallurgical Grade	SDT	250,000	0	250,000
Mercury	FL	20,000	0	20,000
Mica (All Types)	LB	2,260,000	0	2,260,000
Nickel	ST	10,000	0	2,000
Palladium	TR Oz	15,000	200,000	300,000
Platinum	TR Oz	10,000	125,000	125,000
Quinidine	Av Oz	750,000	0	750,000

ATTACHMENT 1.—PROPOSED FY 1999 AND REVISED FY 1998 AMPS—Continued

[The materials in bold are under Congressional consideration]

Material	Units	Current FY 1998 quantity	Revised FY 1998 quantity	Proposed FY 1999 quantity
Quinine	Av Oz	750,000	0	750,00
Rubber	LT	125,000	0	0
Sebacic Acid	LB	1,000,000	0	1,000,000
Silicon Carbide	ST	9,000	0	9,000
Silver (for coinage)	Tr Oz	9,000,000	0	9,000,000
Talc	ST	1,000	0	1,000
Tantalum Carbide Powder	LB Ta	2,000	0	2,000
Tantalum Minerals	LB Ta	100,000	0	100,000
Tantalum Oxide	LB Ta	20,000	0	20,000
Thorium Nitrate	LB	1,000,000	0	1,000,000
Tin	MT	12,000	0	12,000
Titanium Sponge	**ST**	**0**	**4,000**	**5,000**
Tungsten, Carbide	**Lb W**	**0**	**100,000**	**100,000**
Tungsten, Ferro	**LB W**	**0**	**100,000**	**100,000**
Tungsten, Metal Powder	**LB W**	**0**	**100,000**	**100,000**
Tungsten Ores & Concentrates	**LB W**	**0**	**1,000,000**	**1,000,000**
Vanadium Pentoxide	ST V	200	0	0
Vegetable Tannin Extract, Chestnut	LT	7,500	0	7,500
Vegetable Tannin Extract, Quebrac.	LT	10,000	0	10,000
Vegetable Tannin Extract, Wattle	LT	10,000	0	10,000
Zinc	ST	50,000	0	50,000

[FR Doc. 97–28645 Filed 10–28–97; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–601]

Brass Sheet and Strip From Canada; Notice of Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by a manufacturer/exporter of subject merchandise, Wolverine Tube (Canada) Inc., the Department of Commerce initiated an administrative review of the antidumping duty order on brass sheet and strip from Canada. The review covered exports of the subject merchandise to the United States for the period January 1, 1993 through December 31, 1993. Wolverine has filed a withdrawal of its request for this review. Because no other interested party requested a review, we are terminating this review.

EFFECTIVE DATE: October 29, 1997.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Thomas Futtner, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4474 or (202) 482–3814 respectively.

Applicable Statute and Regulations

Unless otherwise stated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published an antidumping duty finding on brass sheet and strip from Canada on January 12, 1987 (52 FR 1217). On January 5, 1994, the Department published in the **Federal Register** a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty finding on brass sheet and strip from Canada (59 FR 564). On January 21, 1994, a manufacturer/exporter, Wolverine Tube (Canada) Inc., requested an administrative review of its exports of the subject merchandise to the United States. In accordance with 19 CFR 353.22(c), we initiated the review on February 17, 1994 (59 FR 7979). On October 20, 1997, the importer withdrew its request for administrative review.

Termination of Review

Pursuant to 19 CFR 353.22(a)(5) of the Department's regulations, the Department may allow a party that requests an administrative review to withdraw such request not later than 90 days after the date of publication of the notice of initiation of the administrative review. The Department may extend this time limit if the Department decides it is reasonable to do so.

There were no requests for administrative review from other interested parties, and the only party affected by the withdrawal request is the party making the request. Because terminating this review is at the request of the only affected party and will serve the interests of administrative efficiency, the Department has determined that it is reasonable to extend the time limit for withdrawal of Wolverine's request for review and to grant the withdrawal request at this time. Therefore, we are terminating this review.

This notice is in accordance with section 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

The Department shall instruct the U.S. Customs Service to liquidate all appropriate entries.

Insofar as the final results for the more current period of review (POR), January 1, 1995 through December 31, 1995, were published prior to this termination notice covering the January 1, 1993 through December 31, 1993 POR, the cash deposit instructions contained in the notice covering the January 1, 1995 through December 31, 1995 POR will continue to apply to all shipments to the United States of subject merchandise entered, or withdrawn from warehouse, for consumption on or after April 8, 1997. Shipments entered, or withdrawn from

warehouse, for consumption during the January 1, 1993 through December 31, 1993 POR will be liquidated at the cash deposit rate then in effect.

This notice also serves as a final 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 the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely written notification of the return or destruction of APO materials is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Dated: October 21, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Group II, Import Administration.

[FR Doc. 97–28670 Filed 10–28–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Notice of Postponement of Preliminary Antidumping Determination: Fresh Atlantic Salmon From Chile

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 29, 1979.

FOR FURTHER INFORMATION CONTACT: Michelle Frederick or Kris Campbell, Office of AD/CVD Enforcement II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–0186, or (202) 482–3813, respectively.

Postponement of Preliminary Determination

The Department of Commerce (the Department) is postponing the preliminary determination in the antidumping duty investigation of fresh Atlantic Salmon from Chile. The deadline for issuing the preliminary determination in this investigation is now no later than January 8, 1998.

On July 2, 1997, the Department initiated an antidumping investigation of fresh Atlantic salmon from Chile. The notice stated we would issue our preliminary determination on November 19, 1997.

On October 17, 1997, pursuant to section 733(c) of the Tariff Act of 1930, as amended, the Coalition for Fair Atlantic Salmon Trade and certain individual members thereof, the petitioners, requested that the Department postpone until January 8, 1998, the issuance of the preliminary determination in this investigation. The petitioners' request for postponement was timely, and the Department finds no compelling reason to deny the request. Therefore, we are postponing the deadline for issuing this determination until no later than January 8, 1998.

This extension is in accordance with section 733(c)(1)(A) of the Act and 19 CFR 353.15(d).

Dated: October 23, 1997.

Richard W. Moreland,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–28669 Filed 10–28–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 093097B]

Marine Mammals; Scientific Research Permit (P36D)

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Bernd Würsig, Director, Marine Mammal Research Program, Texas A&M University, 4700 Avenue U/Building 303, Galveston, Texas 77551, has applied in due form for a permit to take bottlenose dolphins (*Tursiops truncatus*) for purposes of scientific research.

DATES: Written comments must be received on or before November 28, 1997.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702-2432 (813/570-5301).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant requests authorization to take by harassment up to 5,000 bottlenose dolphins of all age and sex classes, in the Gulf of Mexico along the Texas and Louisiana coast, over a five year period during the course of: (1) photo-identification and boat-based behavioral studies; (2) biopsy sampling of 100 individuals for contaminant studies; and (3) acoustic playback experiments to test the behavioral reaction of the dolphins to ''pingers'' used to deter marine mammal entanglement in commercial fishing gear.

Dated: October 1, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–28561 Filed 10–28–97; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

CBT Proposed Amendments to the Circuit Breaker Trading Halt Reopening Provision for the Dow Jones Industrial Average Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The CBT proposes to amend its procedure for reopening trading in its

Dow Jones Industrial Average (DJIA) futures contract following a circuit breaker trading halt. Under the proposal, trading would resume after trading in the underlying securities market has reopened and the CBT Executive Committee has determined to resume futures trading. Under current rules, after a trading halt, futures trading resumes when trading in the underlying securities market has reopened and 50 percent of the DJIA stocks, according to capitalization, have reopened. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before November 28, 1997.

ADDRESSES: Interested persons should submit their views and commends to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the amendments to the trading halt reopening provision of the Dow Jones Industrial Average futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Thomas Leahy of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, 20581, telephone (202) 418–5278. Facsimile number: (202) 418-5527. Electronic mail: tleahy@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the proposal, after a trading halt, trading in the DJIA future would resume at the discretion of the CBT. The CBT stated that this provision would allow for better coordination with the Chicago Board Options Exchange (CBOE), which has submitted to the Securities and Exchange Commission an amendment to the reopening provision for CBOE options.

The Division requests comments on the proposed change to the CBT's reopening provision after a circuit breaker trading halt for the DJIA futures contract. Commenters should address the extent to which the proposed provision would coordinate with the reopening provisions of the equities markets and other equity-index futures markets.

Copies of the amended terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Copies also can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CBT may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the CBT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on October 23, 1997.

John R. Mielke,

Acting Director.

[FR Doc. 97–28562 Filed 10–28–97; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Assessment and Finding of No Significant Impact for the BRAC 95 Disposal and Refuse of the Detroit Army Tank Plant, Warren, Michigan

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the availability of the Environmental Assessment (EA) and Finding of No Significant Impact (FNS) for the disposal and reuse of the Detroit Army Tank Plant (DATP), Warren, Michigan, in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. The 1995 Defense Base Closure and Realignment Commission (BRAC) recommended the realignment of Detroit Arsenal by closing and disposing of the DATP. This EA addresses disposal of the property made available by the realignment of Detroit Arsenal and the closure of DATP as mandated by the 1995 BRAC Commission.

The EA evaluates the environmental and socioeconomic effects associated with the disposal and subsequent reuse of the DATP. The Army proposes to dispose of approximately 153 acres of property on the east side of the Detroit Arsenal that have historically been used to accomplish the mission of manufacturing and assembly of the main battle tank. The Army declared 147.39 acres surplus to its needs. The larger acreage figure of 153 assumes eventual transfer of Buildings 7 and 8, with a long-term lease-back arrangement with the Army. Building 7 and 8 are presently needed by the Army for continued use.

Alternatives examined in the Final EA include encumbered disposal of the property, unencumbered disposal of the property and no action. The Army's preferred alternative for disposal of the DATP property is encumbered disposal which involves conveying the property with conditions imposed pertaining to historical resources, remedial activities, utility easements, potential subsurface impediments, and lead-based paint.

The EA, which is incorporated into the FNSI, examines potential impacts of the proposed action and alternatives on 14 resource areas and areas of environmental concern: land use, climate, air quality, noise, water resources, geology, infrastructure, hazardous and toxic materials, permits and regulatory authorizations, biological resources, cultural resources, the sociological environment, economic development, and quality of life.

The EA concludes that the disposal and subsequent reuse of the property will not have a significant impact on the human environment. Issuance of a FNSI would be appropriate. An Environmental Impact Statement is not required prior to implementation of the proposed actions.

DATES: Inquiries will be accepted until November 28, 1997.

ADDRESSES: A copy of the EA or inquiries into the FNSI may be obtained by writing to Mr. Joe Hand at the Army Corps of Engineers, Mobile District, (Attn: CESAM–PD–EC), 109 St. Joseph Street, Mobile, Alabama 36626–0001, or by calling (334) 694–3881; facsimile (334) 690–2727.

Dated: October 24, 1997.

Richard E. Newsome,

Acting Deputy Assistance Secretary of the Army (Environmental,Safety and Occupational Health) OASA, (I, L&E).

[FR Doc. 97–28673 Filed 10–28–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Renewal of the McGregor Range, New Mexico, Military Land Withdrawal

AGENCY: U.S. Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, Texas and New Mexico, Department of the Army, DoD.

ACTION: Notice of Intent.

SUMMARY: The United States Army will prepare an environmental impact statement (EIS) to assess the potential environmental impacts of renewal of the McGregor Range, New Mexico, military land withdrawal. McGregor Range, New Mexico, is an integral part of the U.S. Army Air Defense Artillery Center and For Bliss (USAADACENFB). The current land withdrawal and reservation of the McGregor Range was established by the Military Lands Withdrawal Act of 1986 (Pub. L. 99–606) for the period ending November 6, 2001. The Act provides that the Army may seek renewal of the McGregor Range withdrawal, in connection with which the Secretary of the Army will publish a Draft EIS consistent with the requirements of the National Environmental Policy Act (NEPA) of 1969. In preparing the DEIS, the Army and the Bureau of Land Management (BLM) have mutually agreed to use the legislative environmental impact statement (LEIS) process pursuant to 40 CFR 1506.8 to comply with the requirements of P.L. 99–606. This LEIS will be prepared in cooperation with BLM and will be completed by November 6, 1998, in accordance with P.L. 99–606. Therefore, pursuant to the LEIS process, a Final LEIS (FLEIS) will be prepared and a Notice of Availability of the FLEIS will be published in the **Federal Register;** however, there will not be a Record of Decision.

The purpose of the proposed McGregor Range renewal is to retain a military training and testing range essential to near and long-term preparedness of the U.S. Army and other military services. Renewing the land withdrawal will provide for the continuation of on-going training and testing missions for air defense artillery systems while maintaining the flexibility to adapt to the training needs of new technologies and doctrine as they develop. McGregor Range provides a combination of attributes that serve this training requirement, including favorable location and weather; sufficient land and airspace; diverse terrain; and developed training support facilities. McGregor Range includes approximately 608,385 acres of withdrawn pubic domain land in Otero County, New Mexico, containing a complex of facilities, ranges, and safety areas to support training and test activities of the U.S. Army and other organizations.

As a result of the Military lands Withdrawal Act of 1986, the Army and BLM co-manage McGregor Range with military requirements having priority over non-military uses. This management arrangement is defined in a Memorandum of Understanding between Fort Bliss and the BLM which define agency responsibilities related to energy and mineral resources, wildlife habitat management, grazing, recreation, hunting, visual and cultural resources, fire management, wilderness study areas and areas of environmental concern.

The LEIS will consider reasonable alternatives including renewal of the current public domain land withdrawal for military use. Without limiting the priority military use, non-military co-use activities would continue to be managed in part by the BLM. The No Action (allowing the current withdrawal to expire) alternative required by NEPA will be evaluated. Other reasonable alternatives will also be considered.

DATES: Comments must be submitted on or before January 9, 1998.

FOR FURTHER INFORMATION CONTACT: Please direct written comments concerning the scope of the McGregor Range, New Mexico, Military Land Withdrawal Renewal LEIS to: Dr. A. Vliet, Program Manager, McGregor Range Withdrawal, U.S. Army Air Defense Artillery Center and Fort Bliss, ATTN: ATZC–CSA, PO Box 6020, Fort Bliss, Texas 79906; telephone (915) 568–6708.

SIGNIFICANT ISSUES: Continuance of military and non-military multiple use of McGregor Range, in particular the area known as Otero Mesa will be addressed.

SUPPLEMENTARY INFORMATION: Public scoping meetings in connection with this LEIS will be held in three communities: Las Cruces and Alamogordo, New Mexico, and El Paso, Texas. Meeting times and locations will be published in local newspapers. These meetings will provide the opportunity for the public to become aware of the LEIS and for the Army to gather public input regarding the scope of the study and reasonable alternatives. Those unable to attend the scheduled scoping meetings may submit written comments regarding the scope of the LEIS through January 9, 1998, to the address above.

A mailing list has been prepared for public scoping and review throughout the process of preparation of this LEIS. This list includes local, state and federal agencies with jurisdiction of other interests in the project. In addition, the mailing list includes adjacent property owners, affected municipalities and other interested parties such as conservation organizations. Anyone wishing to be added to the mailing list may request to be added by contacting the person identified below.

Dated: October 24, 1997.

Richard E. Newsome,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 97–28637 Filed 10–28–97; 8:45 am]

BILLING CODE 3710–38–M

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act, as amended, and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATES AND TIMES: November 20, 1997, from 1:00 p.m. to 4:30 p.m.

ADDRESSES: Hubert Humphrey Building, Room 305A, 200 Independence Avenue, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Libby Doggett or Kim Lawrence, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3080, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–5507 or 205–9068. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–0754.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under

section 685 of the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to discuss issues related to pediatric aids and intervention options for young children; and to assess FICC functioning and changes dictated by the 1997 amendments to the Individuals with Disabilities Education Act.

The meeting of the FICC is open to the public. Written public comment will be accepted at the conclusion of the meeting. These comments will be included in the summary minutes of the meeting. The meeting will be physically accessible with meeting materials provided in both braille and large print. Interpreters for persons who are hearing impaired will be available. Individuals with disabilities who plan to attend and need other reasonable accommodations should contact Kim Lawrence at (202) 205–8428 one week in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 600 Independence Avenue, S.W., Room 3080, Switzer Building, Washington, DC 20202–2644, from the hours of 9:00 a.m. to 5:00 p.m., weekdays except Federal Holidays.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–28600 Filed 10–28–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket No. EA–58–F]

Application to Amend Export Authorization; The Detroit Edison Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Detroit Edison Company has filed, on behalf of itself and Consumers Energy Company, an application for removal of the annual limitation on the existing authorization permitting Detroit Edison and Consumers Energy to export electric energy to Ontario Hydro.

DATES: Comments, protests, or requests to intervene must be submitted on or before November 28, 1997.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal and Power Systems (FE–27), Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On October 16, 1997, The Detroit Edison Company (''Detroit Edison'') applied on behalf of itself and Consumers Energy Company (''Consumers'') for removal of the annual limitation on their existing authorization (FE Docket EA–58–E) to export electricity to Ontario Hydro, a Canadian Provincial utility. The existing authorization, issued by the Federal Power Commission on October 20, 1972, allows Detroit Edison and Consumers (together ''Michigan Companies'') to export to Ontario Hydro up to 4,000,000,000 kilowatt hours (kWhr) of electric energy annually at a maximum rate of 2,200,000,000 volt-amperes (2,200 MVA). Based on emergency situations or other unusual circumstances, the Department of Energy (''DOE'') has granted several temporary waivers of this limit. By this application, the Michigan Companies request that DOE remove the annual energy export limitation on a permanent basis.

In their application, the Michigan Companies assert that reliability will not be adversely affected by the removal of the annual energy export limitation, coordination among the Michigan Companies and Ontario Hydro can be increased, and that there will be no adverse impacts from removing the 4,000,000,000 kWhr limitation. The Michigan Companies do not propose to modify the 2,200,000 kVa limitation on the rate of export, and they represent that they will apply that limitation on a scheduled basis to mitigate loopflow on other systems as a result of increased energy exports to Canada.

The electrical systems of the Michigan Companies and Ontario Hydro presently are interconnected at four points on the U.S.-Canada border. Each interconnection has been authorized by a Presidential permit issued under Executive Order 10485.

Procedural Matters

Any persons desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385,214). Fifteen copies of such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies are to be filed directly with John D. McGrane, Morgan, Lewis & Bockius LLP, 1800 M Street, NW., Washington, DC 20036–5869; Raymond O. Sturdy, Jr., The Detroit Edison Company, 2000 Second Avenue—688WCB, Detroit, Michigan, 48226–1279; William M. Lange, Consumers Energy Company, 1016 16th Street, NW., Washington, DC 20036; and Wayne A. Kirkby, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC on October 23, 1997.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 97–28638 Filed 10–28–97; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–213–006]

Columbia Gas Transmission Corporation; Notice of Amendment to Application

October 23, 1997.

Take notice that on October 16, 1997, Columbia Gas Transmission Corporation (Columbia), a Delaware corporation, having its principal place of business at 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed a letter with attachments, originally filed October 14, 1997, that proposes to amend, pursuant to Section 7(c) of the Natural Gas Act, its certificate previously issued by the Commission in an Order Denying Rehearing And Issuing Certificates on May 14, 1997 in Docket Nos. CP96–213–000, *et al.*, Columbia's Market Expansion Project (MEP).

Columbia states that, due to service level changes requested by two of its customers, UGI Utilities, Inc., and Columbia Gas of Pennsylvania, Inc., Columbia finds that it can delete several of the projects previously approved by the Commission's May 14, Order.

Specifically, the above customers have requested a change in service from Rate Schedules FSS and SST (storage and storage transportation service) to Rate Schedule FTS (firm transportation service) in the aggregate of 54,261 Dth/d. Columbia states that, because of this change in service, it can delete several new wells, enhancement wells, new lines and replacement lines in its McArthur, Coco A and Coco C Storage Fields, and defer the construction of certain wells in its Crawford Storage Field; thus reducing the original cost estimate of the MEP by $16,153,137.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 12, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. 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 the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that 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 Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28579 Filed 10–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–174–005]

Gulf States Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 23, 1997.

Take notice that on October 20, 1997, Gulf States Transmission Corporation (GSTC), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, certain tariff sheets to be effective November 1, 1997.

GSTC states that the purpose of the filing is to comply with the Commission Staff's letter order dated October 14, 1997 in Docket No. RP97–174–004, which involves compliance with the Commission's Order No. 587–C, issued March 4, 1997 in Docket No. RM96–1–004.

GSTC states that copies of the filing are being mailed to its jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest this 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. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28582 Filed 10–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–224–010]

Sea Robin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 23, 1997.

Take notice that on October 21, 1997, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets in compliance with the Commission's Order No. 587–C, the Commission's June 27, 1997, Order and the Commission's October 16, Letter Order in this docket, to become effective November 1, 1997.

First Substitute Third Revised Sheet No. 14
First Substitute First Revised Sheet No. 30a
First Substitute Second Revised Sheet No. 32
First Substitute Third Revised Sheet No. 34
First Substitute Fourth Revised Sheet No. 35
First Substitute Third Revised Sheet No. 95

On April 30, 1997, Sea Robin made a pro forma compliance filing in response to Commission Order No. 587–C in order to implement certain GISB standards. On June 27, 1997, the Commission issued an order accepting Sea Robin's filing subject to certain conditions. The June order required Sea Robin to submit a compliance filing to incorporate into its tariff specific language from GISB standards and definitions addressing OBAs, package Ids, operational flow orders, intra-day nominations, rankings, imbalance penalties and the standard international

unit of gas measurement. In addition, Sea Robin has changed the reference to the version number of Standard 4.3.6 from 1.1 to 1.0.

Sea Robin made a compliance filing consistent with the terms of the June Order on October 1, 1997. On October 16, 1997, the Commission issued a letter order requiring Sea Robin to repaginate 6 of the sheets filed on October 1, 1997. In response to the October 16, letter order, Sea Robin has filed the tariff sheets with the revised pagination. No textual changes were made to the sheets. Sea Robin states that such effective date is appropriate because it is consistent with Sea Robin's April 30, tariff filing, and the timeline established in Order No. 587–C.

Any person desiring to protest this 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 of Practice and Procedures. All such protests must be filed in accordance with 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 the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reading Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28583 Filed 10–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4166–000]

Southern Company Energy Marketing, L.P.; Notice of Issuance of Order

October 24, 1997.

Southern Company Energy Marketing, L.P. (SCEM), a company indirectly owned by Atlantic Richfield Company and the The Southern Company, filed an application for authorization to sell electric energy and capacity at market-based rates, and for certain waivers and authorizations. In particular, SCEM requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by SCEM. On October 10, 1997, the Commission issued an order Accepting Proposed Market-Based Rates for Filing (Order), in the above-docketed proceeding.

The Commission's October 10, 1997 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuance of securities or assumptions of liabilities by SCEM 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 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, SCEM is hereby authorized, pursuant to section 204 of the FPA to issue securities and assume obligations of liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of SCEM compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approved of SCEM's issuance of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 10, 1997.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28675 Filed 10–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–36–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

October 23, 1997.

Take notice that on October 17, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP98–36–000 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 new metering and associated appurtenant facilities in Big Horn County, Wyoming, for use in providing delivery of transportation service to KCS Mountain Resources, Inc. (KCS), under Williston Basin's blanket certificate issued in Docket Nos. CP82–487–000, *et al.*, 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.

Williston Basin states that KCS has requested the installation of metering facilities to allow Williston Basin to make deliveries of up to 7,500 Mcf per day to KCS to be used at its gas processing plant and for KCS to provide gas service to a local distribution company.

Williston Basin states that the facilities to be constructed will consist of a new four-inch meter run, meter, SCADA communication equipment and miscellaneous piping, gauges and valves, all of which will be installed within the existing buildings or within the existing fenced metering station. Williston Basin estimates the cost of the proposed metering facilities to be $59,000, and that the actual cost of the facilities is 100% reimbursable by KCS.

Williston Basin states that in addition to the facilities mentioned above, Williston Basin will be installing approximately 12 feet of additional six-inch piping to connect its system at the intersection of its 10-inch Manderson Lateral and its 12-inch Worland-Cabin Creek Yellow Line to effectuate the delivery of gas to KCS. Williston Basin states that this construction will occur entirely on existing pipeline right-of-way within a concrete-enclosed underground valve box and no ground disturbance will occur. Williston Basin proposes to complete and report such construction under Section 157.208(a) of the Commission's Regulations.

Williston Basin states that it will provide natural gas transportation deliveries to KCS under Rate Schedules FT–1 and/or IT–1 of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1, and that Williston Basin's FERC Gas tariff does not prohibit the addition of new delivery points. Williston Basin also states that the addition of the proposed facilities will have no significant effect on its peak day or annual requirements and capacity has been determined to exist on the Williston Basin system to serve this natural gas market. Williston Basin

further states that the volumes to be delivered will be within the contractual entitlements of the customer.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28580 Filed 10–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–42–000, et al.]

Louisville Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

October 23, 1997

Take notice that the following filings have been made with the Commission:

1. Louisville Gas and Electric Company

[Docket No. ER98–42–000]

Take notice that on October 6, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and AYP Energy, Inc., under LG&E's Open Access Transmission Tariff.

Comment date: November 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Washington Water Power

[Docket No. ER98–43–000]

Take notice that on October 6, 1997, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed a Service Agreement and Certificate of Concurrence under WWP's FERC Electric Tariff First Revised Volume No. 9, with Mason County PUD No. 3. WWP requests waiver of the prior notice requirement and requests an effective date of October 1, 1997.

Comment date: November 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Electric Power Company

[Docket No. ER98–44–000]

Take notice that on October 6, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Transmission Service Agreement between itself and Entergy Power Marketing Corporation (Entergy). The Transmission Service Agreement allows Entergy to receive transmission service under Wisconsin Electric's FERC Electric Tariff, Volume No. 7, which is pending Commission consideration in Docket No. OA97–578.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear. Copies of the filing have been served on Entergy, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: November 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Cleveland Electric Illuminating Company and The Toledo Edison Company

[Docket No. ER98–45–000]

Take notice that on October 6, 1997, the Centerior Service Company as Agent for The Cleveland Electric Illuminating Company and The Toledo Edison Company filed Service Agreements to provide Non-Firm Point-to-Point Transmission Service for Constellation Power Source, Inc., Entergy Power Marketing Corporation, and NP Energy Inc., the Transmission Customers. Services are being provided under the Centerior Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–204–000. The proposed effective date under the Service Agreement is October 1, 1997.

Comment date: November 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Company

[Docket No. ER98–46–000]

Take notice that on October 6, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing non-firm transmission agreements under which The Dayton Power & Light 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 September 27, 1997.

Comment date: November 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric Company

[Docket No. ER98–47–000]

Take notice that on October 6, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Purchase and Sales Agreement between LG&E and Proliance Energy, LLC under LG&E's Rate Schedule GSS.

Comment date: November 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Maine Public Service Company

[Docket No. ER98–48–000]

Take notice that on October 6, 1997, Maine Public Service Company (Maine Public) filed an executed Service Agreement for non-firm point-to-point transmission service under Maine Public's open access transmission tariff with New York State Electric & Gas Corporation.

Comment date: November 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Maine Public Service Company

[Docket No. ER98–49–000]

Take notice that on October 6, 1997, Maine Public Service Company (Maine Public) filed an executed Service Agreement for non-firm point-to-point transmission service under Maine Public's open access transmission tariff with New Energy Ventures, L.L.C.

Comment date: November 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Duquesne Light Company Pennsylvania Public Utility Commission

[Docket No. ER98–50–000]

Take notice that on October 6, 1997, Duquesne Light Company and the Pennsylvania Public Utility Commission filed a Request for Acceptance of Retail Transmission Rates Implementing Duquesne Light Company's Retail Access Pilot Program.

Comment date: November 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. MIECO Inc.

[Docket No. ER98–51–000]

Take notice that on October 6, 1997, MIECO Inc. (MIECO), petitioned the

Federal Energy Regulatory Commission to grant certain blanket authorizations, to waive certain of the Commissions Regulations and to issue an order accepting MIECO's FERC Electric Rate Schedule No. 1.

MIECO intends to engage in power marketing transactions, purchasing and reselling electricity at wholesale, through one of its divisions, MIECO Power Marketing. MIECO does not own or control electric generating or transmission facilities or have any franchised service territories. MIECO is a petroleum trading company.

Comment date: November 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Boston Edison Company

[Docket No. ER98–52–000]

Take notice that on October 6, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Tractebel Energy Marketing, Inc., (Tractebel). Boston Edison requests that the Service Agreement become effective as of September 11, 1997.

Edison states that it has served a copy of this filing on Tractebel and the Massachusetts Department of Public Utilities.

Comment date: November 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Boston Edison Company

[Docket No. ER98–53–000]

Take notice that on October 6, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order No. 888 Tariff (Tariff) for NorAm Energy Services, Inc., (NorAm). Boston Edison requests that the Service Agreement become effective as of September 1, 1997.

Edison states that it has served a copy of this filing on NorAm and the Massachusetts Department of Public Utilities.

Comment date: November 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Northern Indiana Public Service Company

[Docket No. ER98–54–000]

Take notice that on October 6, 1997, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Kansas City Power & Light Company.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Kansas City Power & Light Company pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of October 1, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: November 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER98–55–000]

Take notice that on October 6, 1997, PECO Energy Company (PECO) filed a Service Agreement dated September 30, 1997, with Constellation Power Source, Inc. (CONSTELLATION), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds CONSTELLATION as a customer under the Tariff.

PECO requests an effective date of September 30, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to CONSTELLATION and to the Pennsylvania Public Utility Commission.

Comment date: November 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas and Electric Company

[Docket No. ER98–56–000]

Take notice that on October 6, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and Proliance Energy, LLC under LG&E's Open Access Transmission Tariff.

Comment date: November 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corporation

[Docket No. ER98–57–000]

Take notice that on October 6, 1997, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and The Dayton Power and Light Company. This Transmission Service Agreement specifies that The Dayton Power and Light Company has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and The Dayton Power and Light Company to enter into separately scheduled transactions under which NMPC will provide transmission service for The Dayton Power and Light Company as the parties may mutually agree.

NMPC requests an effective date of September 30, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and The Dayton Power and Light Company.

Comment date: November 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Boston Edison Company

[Docket No. ER98–58–000]

Take notice that on October 6, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order No. 888 Tariff (Tariff) for Sonat Power Marketing L.P.,(Sonat). Boston Edison requests that the Service Agreement become effective as of September 1, 1997.

Edison states that it has served a copy of this filing on Sonat and the Massachusetts Department of Public Utilities.

Comment date: November 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Western Resources, Inc.

[Docket No. ER98–59–000]

Take notice that on October 6, 1997, Western Resources, Inc., tendered for filing a non-firm transmission agreement between Western Resources and Avista Energy. Western Resources states that the purpose of the agreement is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreement is proposed to become effective September 30, 1997.

Copies of the filing were served upon Avista Energy and the Kansas Corporation Commission.

Comment date: November 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. New Century Services, Inc.

[Docket No. ER98–60–000]

Take notice that on October 7, 1997, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between Public Service Company of Colorado and Cook Inlet Energy Supply.

Comment date: November 6, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Sithe Power Marketing, Inc.

[Docket No. ER98–107–000]

Take notice that on October 9, 1997, Sithe Power Marketing, Inc. (Sithe PM), petitioned the Federal Energy Regulatory Commission to grant certain blanket authorizations, to waive certain of the Commission's Regulations and to issue an order accepting Sithe PM's FERC Electric Rate Schedule No. 1.

Sithe PM intends to engage in power marketing transactions, purchasing and reselling electricity at wholesale. Sithe PM states that it does not own or control and is not affiliated with any entity that owns or controls electric transmission or distribution facilities in the United States. Sithe further states that it is not affiliated with any franchised electric utility in the United States. Sithe concludes that any interests that its affiliates have in domestic electric generation facilities do not raise any generation market power concerns.

Comment date: November 5, 1997, 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. 97–28674 Filed 10–28–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

October 23, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type Modification:* Request for Temporary Minimum Flow.

b. *Project No.:* 2100–083.

c. *Date Filed:* September 29, 1997.

d. *Applicant:* California Department of Water Resources.

e. *Name of Project:* Feather River Hydroelectric Project.

f. *Location:* The project is located on the Feather River Butte County, California.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Mr. Jim Snow, Chief, Operations Scheduling Section, California Department of Water Resources, P.O. Box 942836, Sacramento, CA, (916) 574–2666.

i. *FERC Contact:* Diane Shannon, (202) 208–7774.

j. *Comment Date:* November 17, 1997.

k. *Description of Amendment:* The California Department of Water Resources (licensee) requests Federal Energy Regulatory Commission approval to temporarily modify its minimum flow requirement at the Themalito Afterbay Outlet (outlet) of the Feather River Hydroelectric Project. Article 53 of the project license requires the licensee to release a minimum flow of 1,700 cubic feet per second (cfs) from the outlet from October through March, depending on runoff. Based on an agreement with state and federal resource agencies, the licensee wishes to temporarily reduce flows at the outlet to 1,500 cfs for a maximum of 75 days, from January 1 through March 15, 1998, to help recover water supply lost due to actions taken in the spring of 1997 to help fish. The agreement also calls for the licensee to increase flows to the ''low flow channel'' of the Feather River from 600 to 900 cfs from October 15, 1997 through February 28, 1998.

This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing 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, NE., Washington, DC 20426. A copy of any motion of 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–28581 Filed 10–28–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed During the Week of August 4 Through August 8, 1997

During the Week of August 4 through August 8, 1997, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: October 17, 1997.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 4 Through August 8, 1997]

Date	Name and Location of Applicant	Case No.	Type of Submission
8/07/97	Bruce Darren Gaither, Tulsa, Oklahoma	VFA–0324	Appeal of an Information Request Denial. If granted: The June 30, 1997 Freedom of Information Request Denial issued by the Office of the Executive Secretariat would be rescinded, and Bruce Darren Gaither would receive access to certain DOE information.
8/04/97	Personnel Security Hearing	VSO–0170	Request for Hearing under 10 CFR Part 710. If granted: An individual employed by the Department of Energy would receive a hearing under 10 CFR Part 710.
8/07/97	Hanford Advisory Board, Richland, Washington.	VFA–0323	Appeal of an Information Request Denial. If granted: The July 25, 1997 Freedom of Information Request Denial issued by the Richland Operations Office would be rescinded, and Hanford Advisory Board would receive access to certain DOE information.
8/07/97	Personnel Security Review	VSA–0126	Request for Review of Opinion under 10 CFR Part 710. If granted: The May 1, 1997 Opinion of the Office of Hearings and Appeals Case No. VSO–0126 would be reviewed at the request of an individual employed by the Department of Energy.

[FR Doc. 97–28639 Filed 10–28–97; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5914–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Clean Air Act Tribal Authority

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 continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Clean Air Act Tribal Authority, OMB Code No. 2060–0306, expiring 03/31/98. 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 December 29, 1997.

ADDRESSES: Office of Air and Radiation, Office of Program Management Operations, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Interested persons may request a copy of the ICR by calling (202) 260–7652, or by electronic mail at ''Laroche.david@EPAmail.EPA.gov''.

FOR FURTHER INFORMATION CONTACT: David Laroche, Telephone No. (202) 260–7652/ Facsimile No. (202) 260–8509/E-MAIL Address. ''Laroche.david@EPAmail.EPA.gov''.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are Indian Tribes.

Title: Clean Air Act Tribal Authority, (OMB Code No.2060–0306; EPA ICR No. 1676.02), expiring 03/31/98.

Abstract: This ICR requests clearance on EPA's review and approval process for determining Tribe eligibility to carry out the Clean Air Act (CAA). Tribes may choose to submit a CAA eligibility and a CAA program application to EPA at the same time for approval and EPA will review both submittals simultaneously. EPA will use this information to determine if a Tribe meets the statutory criteria under the section 301(d) of the CAA and is qualified for purposes of implementing an Air Quality Program. Section 114 of the CAA is the authority for the collection of information.

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. Section 301(d) of the CAA directs EPA's Administrator to promulgate regulations specifying those provisions of the Act which determine Tribe eligibility. When promulgated, the regulations will give Tribes the opportunity, if they choose, to implement all CAA programs. The Tribal rule will authorize approved Tribes to exercise civil authority over all air resources within the exterior boundaries of their reservations, including nontribal owned fee lands, or other areas within the Tribes' jurisdiction. The regulation is under administrative review and promulgation is expected in 1997.

Each Tribe is to meet eligibility by demonstrating it: (1) Is a Federally recognized Tribe; (2) has a governing body carrying out substantial governmental duties and powers; and (3) is reasonably expected to be capable of carrying out the program for which it is seeking approval in a manner consistent with the CAA and applicable regulations. If the Tribe is asserting jurisdiction over off-reservation lands, it must demonstrate the legal and factual basis for its jurisdiction consistent with applicable principles of Indian Laws.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: This rule incorporates the Agency's streamlined process for Tribes to be determined eligible to implement directly provisions of the CAA. Some of the Tribes may have compiled the information necessary to apply for eligibility determination for purposes of the Clean Water Act or Safe Drinking Water Act. The number of respondents will vary depending upon air quality conditions and major sources on reservations. The annual burden associated with eligibility is estimated to be 40 hours per Tribe and average respondent per hour labor cost is $25.13, with no associated projected capital or Operations and Management costs. The estimated number of respondent Tribes applying for CAA programs over the next three years is 36.

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 22, 1997.

Richard D. Wilson,

Acting Assistant Administrator for Air & Radiation.

[FR Doc. 97–28549 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00506; FRL–5747–8]

Versar Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Versar Inc. has been awarded a contract to perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This infomation will be transferred to Versar Inc. consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), and will enable Versar Inc. to fulfill the obligations of the contract.

DATES: Versar Inc. will be given access to this information no sooner than November 3, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 700N, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259, e-mail: alexander.bewanda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–W6–0030, Versar Inc. will perform reviews of pesticide field exposure studies for planned program activities, special review, and reregistration for the Chemistry and Exposure Branches of the Office of Pesticide Programs. This contract involves no subcontractor. The Office of Pesticide Programs has determined that access by Versar Inc. to information on all pesticide chemicals is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Versar Inc. prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Versar Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to Versar Inc. by EPA for use in connection with this contract will be returned to EPA when Versar Inc. has completed its work.

Dated: October 7, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 97–28660 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00507; FRL–5757–9]

Versar Inc., Syracuse Research Corp., and General Sciences Corp; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Versar Inc. and its subcontractors, Syracuse Research Corp. (SRC) and General Sciences Corp. (GSC), have been awarded a contract to perform work for the EPA Office of Pollution Prevention and Toxics and other EPA programs, and will be provided access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This infomation will be transferred to Versar Inc. and its subcontractors, SRC and GSC, consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), and will

enable Versar Inc. and its subcontractors, SRC and GSC, to fulfill the obligations of the contract.

DATES: Versar Inc. and its subcontractors, SRC and GSC, will be given access to this information no sooner than November 3, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 700N, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259, e-mail: alexander.bewanda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–W6–0023, Versar Inc. and its subcontractors, SRC and GSC, will perform reviews of pesticide field exposure studies for planned program activities, special review, and reregistration and provide related technical support to the Chemistry and Exposure Branches of the EPA Office of Pesticide Programs. Under this contract, Versar, Inc. and its subcontractors, SRC and GSC, will prepare environment exposure and risk assessments for the Exposure Assessment Branch of the Office of Water in support of the development of effluent guideline regulations and other similar regulatory actions necessary to preserve and protect human and aquatic life from adverse exposure and risks. The Office of Pollution Prevention and Toxics and Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Versar Inc. and its subcontractors, SRC and GSC, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Versar Inc. and its subcontractors, SRC and GSC, are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor and its subcontractor until the above requirements have been fully satisfied. Records of information provided to this contractor and subcontractor will be maintained by the Project Officer for this contract in the EPA Office of Pollution Prevention and Toxics.

All information supplied to Versar Inc. and its subcontractors, SRC and GSC, by EPA for use in connection with this contract will be returned to EPA when Versar Inc. and its subcontractors, SRC and GSC, have completed their work.

Dated: October 7, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 97–28661 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00503; FRL–5747–5]

Dynamac Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Dynamac Corporation has been awarded a contract to perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This infomation will be transferred to Dynamac Corporation consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), and will enable Dynamac Corporation to fulfill the obligations of the contract.

DATES: Dynamac Corporation will be given access to this information no sooner than November 3, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 700N, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259, e-mail: alexander.bewanda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–D4–0010, Dynamac Corporation will conduct a comprehensive examination of all product chemistry and residue chemistry data submitted in support of reregistration for List A, B, C, and D pesticide active ingredients and prepare a reregistration review document. This contract involves no subcontractor. The Office of Pesticide Programs has determined that access by Dynamac Corporation to information on all pesticide chemicals is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Dynamac Corporation prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Dynamac Corporation is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to Dynamac Corporation by EPA for use in connection with this contract will be returned to EPA when Dynamac Corporation has completed its work.

Dated: October 7, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 97–28662 Filed 10–29–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00505; FRL–5747–7]

Syracuse Research Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Syracuse Research Corporation (SRC) has been awarded a contract to perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This infomation will be transferred to SRC consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), and will enable SRC to fulfill the obligations of the contract.

DATES: SRC will be given access to this information no sooner than November 3, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 700N, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259, e-mail: alexander.bewanda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–W6–0043, SRC will assist the Office of Pesticide Programs review environmental fate information for a wide range of pesticides, including both registration and reregistration pesticides. The environmental fate information, submitted under Subdivision N, 40 CFR 158.290, will be reviewed for adherence to guidelines and for scientific validity. This contract involves no subcontractor. The Office of Pesticide Programs has determined that access by SRC to information on all pesticide chemicals is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with SRC prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, SRC is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to SRC by EPA for use in connection with this contract will be returned to EPA when SRC has completed its work.

Dated: October 7, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 97–28665 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00504; FRL–5747–6]

Dynamac Corporation and Environmental Management Support; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Dynamac Corporation and its subcontractor, Environmental Management Support (EMS) have been awarded a contract to perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This infomation will be transferred to Dynamac and EMS consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(h)(2), and will enable Dynamac and EMS to fulfill the obligations of the contract.

DATES: Dynamac and EMS will be given access to this information no sooner than November 3, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda B. Alexander, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 700N, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259, e-mail: alexander.bewanda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–D5–0041, Dynamac and EMS will provide evaluations of the health effect-related toxicological and exposure data submitted by pesticide manufacturers, other EPA programs, and Government agencies to determine whether pesticides and their proposed uses may pose an unreasonable adverse effect on human health and the environment. Dynamac and EMS will support EPA's Office of Pesticide Programs Health Effects Division scientific technical assessments of potential hazards and risk of pesticide use by performing preliminary, detailed evaluations of toxicity studies and their data and prepare Data Evaluation Reports (DERs). The Office of Pesticide Programs has determined that access by Dynamac and EMS to information on all pesticide chemicals is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Dynamac and EMS prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Dynamac and EMS is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this

contractor and its subcontractor until the above requirements have been fully satisfied. Records of information provided to this contractor and subcontractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to Dynamac and EMS by EPA for use in connection with this contract will be returned to EPA when Dynamac and EMS have completed their work.

Dated: October 7, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 97–28666 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400118; FRL–5752–1]

Notice of Moving of Emergency Planning and Community-Right-to-Know Act Reporting Center

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice is to inform all submitters of Toxic Chemical Release Inventory (TRI) data that the Emergency Planning and Community-Right-to-Know Act (EPCRA) Reporting Center will move to a new location on November 3, 1997. This move only affects TRI data submitters sending their submissions or other correspondence directly to the EPCRA Reporting Center by courier or other direct delivery service. The new address is: EPCRA Reporting Center, c/o Computer Based Systems, Inc., Suite 300, 4600 North Fairfax Drive, Arlington, VA 22203. The phone numbers will remain unchanged: Phone: (703) 816–4445, Fax: (703) 816–4459. Also, normal TRI correspondence to the EPCRA Reporting Center should continue to be sent to: EPCRA Reporting Center, P.O. Box 3348, Merrifield, VA 22116-3348.

FOR FURTHER INFORMATION CONTACT: By mail: Janette Petersen (7407), Information Management Division, Office of Pollution Prevention and Toxics, Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. G102, North East Mall, Telephone: 202–260–1558, e-mail: petersen.janette@epamail.epa.gov.

List of Subjects

Environmental protection, Community right-to-know.

Dated: October 20, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–28652 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5914–8]

EPA's National Drinking Water Contaminant Occurrence Data Base

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of a Joint Requirements Planning Meeting on the National Drinking Water Contaminant Occurrence Data Base.

SUMMARY: The Environmental Protection Agency (EPA) has scheduled a five-day Joint Requirement Planning (JRP) meeting on EPA's development of a National Drinking Water Contaminant Occurrence Data Base (NCOD). The JRP is a structured meeting designed to gather requirements on a new information system from a varied body of stakeholders with an interest in the system. At the upcoming meeting, EPA is seeking input from key national, State, individual stakeholders and other interested parties concerning the objectives, questions and data elements to be addressed in the design and development of the NCOD.

DATES: The Joint Requirements Planning Meeting on the National Drinking Water Contaminant Occurrence Data Base will be held on November 17–21, 1997 from 9:00 a.m. to 5:00 p.m. EST.

ADDRESSES: The meeting will be held in the WIC–2 South conference room at USEPA Waterside Mall, 401 M Street, S.W. Washington, D.C. 20460. For additional information, please contact Harriet Colbert, at phone: (202) 260–2302, fax: (202) 260–3762, or by e-mail at colbert.harriet@epamail.epa.gov. Members of the public wishing to attend the meeting may register by phone by contacting Harriet Colbert by October 31, 1997.

FOR FURTHER INFORMATION CONTACT: For information and logistics for the meeting, please contact Harriet Colbert, at phone: (202) 260–2302, fax: (202) 260–3762, or by e-mail at colbert.harriet@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

A. Background on the National Drinking Water Contaminant Occurrence Data Base Section 126(g)(1) of the Safe Drinking Water Act Amendments of 1996 (SDWA) requires the Administrator to assemble and maintain a national drinking water contaminant occurrence database by using information on the occurrence of both regulated and unregulated contaminants in public water systems and reliable information from other public and private sources. This National Contaminant Occurrence Database (NCOD) will be a collection of data of documented quality on unregulated and regulated chemical or microbial contaminants likely to occur in drinking water systems. The purpose of the data system is to support the identification and selection of contaminants for future regulation or other appropriate actions and to support the review of existing regulations for possible modification. The database must be developed no later than three years after the date of enactment of the SDWA Amendments. Therefore, SDWA requires the Office of Ground Water and Drinking Water (OGWDW) to develop the NCOD by August 6, 1999.

B. Request for stakeholder Involvement. At the May 1997 NCOD Stakeholders meeting, there was general concurrence that the primary user of the database will be EPA. Stakeholders such as industry, environmental groups, States and the general public are secondary users. As a result of the meeting, the NCOD Team established a system development strategy. The strategy will serve as a ''road map'' over the next two years for developing the first release of the data base to meet the statutory requirements. One of the major steps in implementing the development strategy is to determine what the needs are and specifically what types of data are required to meet those needs. User requirements will serve as the foundation upon which the database will be developed.

Discussion materials will be available at the meeting. The specific issue for discussion at the meeting will be what data elements are needed to allow sound scientific analysis to support contaminant identification, contaminant selection, regulatory development, and regulatory re-examination.

The public is invited to provide comments on the issue listed above or other issues related to the National Drinking Water Contaminant Occurrence Data Base during the November 17–21 meeting.

Dated: October 23, 1997.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–28554 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00509; FRL–5749–5]

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: Rm. 226, Crystal Mall No. #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6426.

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 PB97–205629.

III. Electronic Access

The Pesticide Data Submitters List is available on EPA's worldwide web site on the Internet. The Internet address of EPA's web site is www.epa.gov. To Access the Data Submitters List from the EPA Home Page, select ''Databases and Software.'' From the next page, select ''Media Specific.'' The Pesticide Data Submitters List may also be found by searching for the key words ''data submitters list'' from the EPA Home Page, or may be accessed directly on the EPA web site, by going directly to: http://www.epa.gov./opppmsd1/DataSubmittersList/index.html. Note that this address is case sensitive.

List of Subjects

Environmental protection.

Dated: October 16, 1997.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 97–28668 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34117; FRL 5749–4]

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 April 27, 1998.

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, telephone number and e-mail: 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 two 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 April 27, 1998 to discuss withdrawal of the applications for amendment. This 180–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
011773–00003	Cornbelt 4 lb. Lovol Ester	Acetic acid, (2,4-dichlorophenoxy) 2-ethylhexyl ester	Usage along drainage ditch banks
011773–00004	Cornbelt 6 lb. Lovol Ester	Acetic acid, (2,4 dichlorphenoxy) 2-ethylhexyl ester)	Usage along drainage ditch banks

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
011773	Van Diest Supply Co., 1434 220th Street, P.O. Box 610, Webster City, IA 50595.

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 16, 1997.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 97–28667 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66246; FRL 5749–9]

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 April 27, 1998, 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, telephone number and e-mail: Rm. 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 18 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
000279 LA–91–0019	Furadan 4F	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
000352 AZ–87–0020	Vydate L Insecticide Nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-methyl ester
000524–00492	Cryia(B) Form of the B.T.K. Insect Control Protein	HD-1 Protein as encoded by Bacillus thuringiensis *subsp. kurstaki* gene and produced in corn
000829–00203	SA–50 Insecticide Bait contains 5% Dylox	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
001130–00013	Burnishine Disinfectant Solution & Pump Spray	Isopropanol
		Alkyl* dimethyl benzyl ammonium chloride *(60%C_{14}, 30%C_{16}, 5%C_{18}, 5%C_{12})
		Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C_{12}, 32%C_{14})
001685–00039	State Brand Deo-Phene Bactericide	2-Benzyl-4-chlorophenol
010163–00186	Gowan Mepiquat Chloride 4.2 Liquid	*N,N*-Dimethylpiperidinium chloride
011603–00013	Triflurex (Trifluralin) Technical	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine) (Note: α = alpha)
011694–00010	BKI Spray	5-Bromo-3-sec-butyl-6-methyluracil
		Acetic acid, (2,4-dichlorophenoxy)-2-ethylhexyl ester
011715–00199	B-Have! Dog and Cat Repellent Spray	Methyl nonyl ketone
011715–00285	Whitmire B'Have Cat Repellent Spray	Methyl nonyl ketone
011715–00286	B'Have Dog Repellent Indoor-Outdoor Use	Methyl nonyl ketone
028293–00026	Unicorn Dog and Cat Repellent	Methyl nonyl ketone
059639 AZ–93–0006	Monitor 4 Spray	*O,S*-Dimethyl phosphoramidothioate

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
062719–00207	SYN-PY–26	(5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate
062719–00208	Tapp Pet Concentrate	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
062719–00209	Tapp I–1ME	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
067572–00073	Pro ''1'' Pre-Emergence Herbicide	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine) (Note: α = alpha)
		N-Butyl-*N*-ethyl-α,α,α-trifluoro-2,6-dinitro-*p*-toluidine (Note: α = alpha)

Unless a request is withdrawn by the registrant within 180 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 180–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
000279	FMC Corp., Agricultural Products Group, 1735 Market St., Philadelphia, PA 19103.
000352	E. I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000524	Monsanto Co., Agent For: Monsanto Agricultural Co., 700 14th St., NW., Suite 1100, Washington, DC 20005.
000829	Southern Agricultural Insecticides, Inc., Box 218, Palmetto, FL 34220.
001130	Burnishine Products Division, The Herbert Stanley Co., 1100 Lakeside Dr., Gurnee, IL 60031.
001685	The State Chemical Mfg. Co., 3100 Hamilton Ave, Cleveland, OH 44114.
010163	Gowan Co., Box 5569, Yuma, AZ 85366.
011603	Agan Chem Mfg, Ltd., Makhteshim-Agan of N. America Inc., 551 Fifth Ave., Suite 1100, New York, NY 10176.
011694	Dymon Inc., Box 340, Olathe, KS 66051.
011715	Speer Products Inc., Box 18993, Memphis, TN 38181.
028293	Unicorn Laboratories, 13535 Feather Sound Dr., Suite 400, Clearwater, FL 34622.
059639	Valent U.S.A. Corp., 1333 N. California Blvd, Ste 600, Walnut Creek, CA 94596.
062719	DowElanco, 9330 Zionsville Rd., 308/3E, Indianapolis, IN 46268.
067572	Contract Packaging Inc., Bldg 1, 4132 U.S., Hwy 278, Covington, GA 30209.

III. Loss of Active Ingredients

Unless the requests for cancellation are withdrawn, one pesticide active ingredient will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant(s) to explore the possibility of withdrawing their request for cancellation. The active ingredient is 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.
None assigned	HD-1 Protein as encoded by Bacillus Thuringiensis *Subsp. Kurstaki* Gene and Produced in Corn	000524

IV. Procedures for Withdrawal of Request

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 April 27, 1998. 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 16, 1997.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 97–28659 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–772; FRL–5751–3]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–772, must be received on or before November 28, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticides 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.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

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). 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 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION: By mail: Regulatory Action Leader, Edward Allen, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460. Office location and telephone number: 5th floor CS #1, 2800 Crystal Drive, Arlington, VA 22202. Telephone No. (703) 308–8699; e-mail: allen.edward@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–772] (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 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

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. Comment 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 [PF–772] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 15, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical

residues or an explanation of why no such method is needed.

1. Auxein Corporation

PP 7F4842

EPA has received a pesticide petition (7F4842) from Auxein Corporation, P. O. Box 27519, 3125 Sovereign Drive, Suite B, Lansing, MI, proposing pursuant to section 408 (d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a (d), to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of glutamic acid in or on all food commodities.

Pursuant to the section 408 (d) (2) (A) (i) of the FFDCA, as amended, Auxein Corporation has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Auxein Corporation and EPA has not fully evaluated the merits of the petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary was not clear that it reflected the conclusion of the petitioner and not necessarily EPA.

A. Proposed Use Practices

Glutamic acid will be incorporated into the end-use product, AuxiGro WP Plant Growth Enhancer as an active ingredient. AuxiGro is proposed for use in a variety of agricultural, horticultural, and floricultural applications to enhance plant growth and crop productivity.

Depending on the crop, the first application of AuxiGro is made at first bloom, first bud, at the 4-6 leaf stage, or other prescribed growth stage. A subsequent application, for a maximum of two (2) applications, may be made 1-3 weeks later. The rate range is 0.10 - 0.75 pounds of formulated product/acre per treatment, not to exceed a maximum of 1.5 lb/A per growing season. This equates to the application of 0.55 lb/A glutamic acid at the maximum use rate.

B. Product Identity/Chemistry

Glutamic acid is an amino acid found in microorganisms, tissues of animals, all food, and higher plants as free amino acid or bound in protein. The biochemical is a white, practically odorless, free flowing crystalline powder. It is slightly soluble in water, forming acidic solutions. The pH of a saturated solution is about 3.22. The specific gravity for glutamic acid is 1.538 and the decomposition point is 175° C @ 10 mm Hg.

C. Toxicological Profile

Glutamic acid is highly regulated in man and other organisms, the mechanisms of which are well understood. It is classified as Generally Recognized as Safe (GRAS) by the Food and Drug Administration.

Glutamate has been administered to numerous species in long term dietary studies without adverse effects. The end-use product containing glutamic acid, AuxiGro WP, has been evaluated for acute toxicity. Acute oral toxicity in rats is greater than 5,050 mg/kg (Toxicity Category IV). Acute dermal toxicity in rabbits is greater than 5,050 mg/kg (Toxicity Category IV). In an eye irritation study, all signs of irritation cleared within 24 hours (washed eyes) following administration of AuxiGro (Toxicity Category IV); in unwashed eyes, irritation cleared in 5/6 rabbits within 24 hours. Irritation cleared within 48 hours in the remaining rabbit. A rabbit dermal irritation study with AuxiGro resulted in limited signs of irritation that cleared within 24 hours (Toxicity Category IV). There was no indication of dermal sensitization in a guinea pig dermal sensitization study.

Waivers have been requested for acute toxicity, genotoxicity, reproductive and developmental toxicity, subchronic toxicity, chronic toxicity, and acute toxicity to nontarget species based on glutamic acid's ubiquity in nature, long history of food uses, favorable toxicological profile in chronic toxicology studies, and inconsequential exposure resulting from label-directed use rates.

D. Aggregate Exposure

In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures. The primary non-food sources of exposure the Agency considers include drinking water or groundwater, and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Dietary exposure*. Glutamic acid is ubiquitous in nature and is found in microorganisms, lower and higher plant species, fish, birds, insects, mammals, and natural and processed foods. It is the most prevalent amino acid in plant and animal proteins. Worldwide production of glutamic acid is over 340,000 tons/yr. Many items in the human daily diet contain appreciable quantities of free glutamic acid. For example, ripe tomatoes, mushrooms, peas, corn, potatoes, squash, cheese, eggs, poultry and meat provide from 20 to 150 mg of glutamic acid per 100 gram serving. Daily consumption for a 70-kg individual of glutamate has been previously reported to be 10.4 g per day, based on an intake of 100 grams of protein/day. Regarding the sodium salt of glutamic acid, monosodium glutamate (MSG), the Joint Expert Committee on Food Additives of the United Nations (JEFCA) has assigned an Acceptable Daily Intake of ''not specified'' (no numerical limitation), meaning that MSG can be used safely according to food manufacturing practices in food by people of all ages.

Dietary exposure due to topical applications of glutamic acid is difficult to estimate because of the amino acid's prevalence in nature. However, a comparison of naturally-occurring levels of glutamic acid to topically applied levels shows that the applied level is a small fraction of that found naturally. Naturally-occurring levels of glutamic acid in corn and tomatoes are estimated to be 143 lb/A and 195 lb/A, respectively. Applied levels of glutamic acid resulting from the application of AuxiGro at maximum use levels (1.5 lb/A) is 0.55 lb/A, several orders of magnitude lower than naturally-occurring levels.

Considering the low dose of AuxiGro required to achieve the desired effect, the levels of glutamic acid found naturally in the diet and the quantity consumed from processed foods, it can be concluded that incremental dietary exposure to glutamic acid resulting from AuxiGro applications is negligible.

2. *Non-dietary, non-occupational exposure*. AuxiGro is proposed for use on turf and ornamentals. Exposure from turfgrass applications is expected to be minimal because golfers will be protected by shoes and socks. Further, based on the limited frequency of use on turfgrass, this non-food use is not likely to result in potential chronic exposure and thus should not be factored into a chronic exposure assessment. Exposures resulting from application to ornamentals is also anticipated to be negligible because consumers will not be in contact with treated plants until after the foliage is dry.

E. Cumulative Exposure

Glutamic acid is highly regulated in plants and mammals, the mechanisms of which are well understood. This amino acid is not intended for pesticidal use and does not share a common mechanism of toxicity with currently available pesticides, thus Auxein anticipates no cumulative effects with other substances.

F. Endocrine Disruptors

The Agency has no information to suggest that glutamic acid will adversely affect the immune or endocrine systems.

G. Safety Considerations

Glutamic acid is classified as Generally Recognized as Safe (GRAS) for use as a direct food additive by the Food and Drug Administration (FDA) and is cleared by the EPA for use as an inert ingredient in certain pesticide products. Condensed, extracted fermentation glutamic acid is approved by the FDA for use in animal feed.

Incremental exposure resulting from application of glutamic acid is miniscule compared to levels of glutamic acid consumed from natural and processed food products. Considering the negligible contributions to the environment resulting from the application of AuxiGro, the abundance and role of glutamic acid in foods and in the human body, and the prevalence of glutamic acid in nature, glutamic acid does not pose an undue risk to human health.

H. Analytical Method

An analytical method using High Performance Liquid Chromatography (HPLC) for determining glutamic acid content in AuxiGro, the end-use product, is available. However, because this amino acid is found naturally in plants, residue analysis would not yield meaningful results, i.e., the analysis would not discern whether the glutamic acid source was the plant or the product treatment.

I. Codex Maximum Residue Level

There are no CODEX tolerances or international tolerance exemptions for glutamic acid at this time. Glutamic acid is presently listed as exempt from tolerances under 40 CFR 180.1001 when used as a plant nutrient for seed treatment.

2. Auxein Corporation

PP 7F4843

EPA has received a pesticide petition (7F4843) from Auxein Corporation, P. O. Box 27519, 3125 Sovereign Drive, Suite B, Lansing, MI, proposing pursuant to section 408 (d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a (d), to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of GABA in or on all food commodities.

Pursuant to the section 408 (d) (2) (A) (i) of the FFDCA, as amended, Auxein Corporation has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Auxein Corporation and EPA has not fully evaluated the merits of the petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary was not clear that it reflected the conclusion of the petitioner and not necessarily EPA.

A. Proposed Use Practices

Gamma aminobutyric acid (GABA) will be incorporated into the end-use product, AuxiGro Plant Growth Enhancer as an active ingredient. AuxiGro is proposed for use in a variety of agricultural, horticultural, and floricultural applications to enhance plant growth and crop productivity.

Depending on the crop, the first application of AuxiGro is made at first bloom, first bud, at the 4-6 leaf stage, or at a prescribed growth stage. A subsequent application, for a maximum of two (2) applications, may be made 1-3 weeks later. The rate range is 0.10 - 0.75 pounds of formulated product/acre per treatment, not to exceed a maximum of 1.5 lb/A per growing season. This equates to 0.4 lb/A of GABA applied at the maximum use rate.

B. Product Identity/Chemistry

GABA is a non-protein amino acid that is ubiquitous in nature. It has been found in microorganisms, lower and higher plants, fish, birds, insects, and mammals. GABA is a white, crystalline powder with a pH of 6.5 to 7.5. It is freely soluble in water, but insoluble or poorly soluble in other solvents. The melting point for GABA is 202° C.

C. Toxicological Profile

GABA is an ubiquitous non-protein amino acid present in all living things. It is an inhibitory neurotransmitter in brain regions and central nervous systems of mammals. Because of the inability of GABA to cross the blood-brain barrier, exogenous sources do not affect the levels in the brain.

The open literature reports studies involving prolonged chronic administration of large doses (up to 1 g/kg/day) of GABA to rats and dogs. No signs of toxicity or untoward effects were observed in these studies. According to the literature, similar doses have been administered repeatedly to unanesthetized dogs without untoward effects. In clinical studies, daily oral doses of 8 mM/kg have been administered to humans for a year or more with no indication of chronic or cumulative toxicity.

AuxiGro, the end-use product containing 29.2% GABA, has been studied for acute toxicity. Acute oral toxicity of AuxiGro in rats is greater than 5,050 mg/kg (Toxicity Category IV). Acute dermal toxicity in rabbits is greater than 5,050 mg/kg (Toxicity Category IV). In an eye irritation study, all signs of irritation cleared within 24 hours (washed eyes) following administration of AuxiGro (Toxicity Category IV); in unwashed eyes, irritation cleared in 5/6 rabbits within 24 hours. Irritation cleared within 48 hours in the remaining rabbit. A rabbit dermal irritation study with AuxiGro resulted in limited signs of irritation that cleared within 24 hours (Toxicity Category IV). There was no indication of dermal sensitization in a guinea pig dermal sensitization study.

Waivers have been requested for acute toxicity, genotoxicity, reproductive and developmental toxicity, subchronic toxicity, chronic toxicity, and acute toxicity to nontarget species based on GABA's ubiquity in nature, use as a pharmaceutical agent, favorable toxicological profile in chronic and other toxicology studies, and inconsequential exposure resulting from label-directed uses.

D. Aggregate Exposure

In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures. The primary non-food sources of exposure the Agency considers include drinking water or groundwater, and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Dietary exposure*. GABA is ubiquitous in nature. Therefore, applications of AuxiGro would only incrementally add to levels occurring naturally in the environment.

GABA concentrations in plants have been reported to range from 0.03 to 32.5 uM/g, fresh weight. It is presumed that the higher levels are probably due to stress and/or localized high levels within certain plant tissues. Based on these figures, the naturally-occurring level of GABA is calculated to be 0.1 kg/A 7.15 kg/A. The high-end (maximum application rate) estimate of incremental loading of GABA resulting from application of AuxiGro is 0.2 kg. Thus, applied GABA is well within the range of that found in nature.

2. *Non-dietary, non-occupational exposure*. AuxiGro is proposed for use on turf and ornamentals. Exposure from turfgrass applications are expected to be minimal because golfers will be

protected by shoes and socks. Further, based on the limited frequency of use on turfgrass, this non-food use is not likely to result in potential chronic exposure and thus should not be factored into a chronic exposure assessment. Exposures resulting from application to ornamentals is also anticipated to be negligible because consumers will not be in contact with treated plants until after the foliage is dry.

E. Endocrine Disruptors

Auxein has no information to suggest that GABA will adversely affect the immune or endocrine systems.

F. Safety Considerations

GABA is naturally-occurring in food and is a pharmaceutical agent. Incremental exposure to GABA resulting from the application of AuxiGro is minimal to negligible. Considering the negligible contributions of GABA to the environment resulting from the application of AuxiGro, the biochemical's prevalence in nature, and its role and abundance in foods, GABA does not pose a human health risk.

G. Analytical Method

An analytical method using High Performance Liquid Chromatography (HPLC) for determining the GABA content in AuxiGro, the end-use product, is available. However, because GABA is found naturally in plants, residue analysis would not yield meaningful results, i.e., the analysis would not discern whether the source of GABA was the plant or the product treatment.

H. Codex Maximum Residue Level

There are no CODEX tolerances or international tolerance exemptions for GABA.

[FR Doc. 97–28664 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–775; FRL–5752–2]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–775, must be received on or before November 28, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticides 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.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

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). 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 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Elizabeth Haeberer, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 250, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–2891; e-mail: haeberer.elizabeth@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–775] (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 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

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. Comment 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 [PF–775] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 16, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Gustafson, Inc.

PP 4F4415

EPA has received a pesticide petition (PP 4F4415) from Gustafson, Inc., 1400 Preston Road, Suite 400, Plano, Texas 75093, proposing pursuant to section 408(d) of the Federal Food, Drug and

Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR Part 180 to make the time limited tolerances permanent by establishing a tolerance for residues of imidacloprid in or on the raw agricultural commodity sorghum grain 0.05 parts per million (ppm), forage 0.10 ppm, and stover 0.10 ppm. The proposed analytical method involves homogenization, filtration, partition and cleanup with analysis by high performance liquid chromatography using UV detection'' for determining residues is a common moiety method for imidacloprid and its metabolites containing the 6-chloro-pyridinyl moiety using oxidation, derivatization, and analysis by capillary gas chromatography with a mass-selective detector. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of imidacloprid in plants is adequately understood for the purposes of these tolerances. The residues of concern are combined residues of imidacloprid and its metabolites containing the 6-chloro-pyridinyl moiety, all calculated as imidacloprid.

2. *Analytical method*. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloro-pyridinyl moiety using a permanganate oxidation, silyl derivatization, and capillary GC-MS selective ion monitoring. This method has successfully passed a petition method validation in EPA labs. There is a confirmatory method specifically for imidacloprid and several metabolites utilizing GC/MS and HPLC-UV which has been validated by the EPA as well. Imidacloprid and its metabolites are stable for at least 24 months in the commodities when frozen.

3. *Magnitude of residues*. Sorghum seed was treated with imidacloprid, formulated as Gaucho 480 FS at a rate of 8.0 oz. ai/cwt seed. Field trials were conducted at fifteen locations: Arkansas, California, Colorado (two locations), Kansas (two locations), Louisiana, Missouri, Nebraska (two locations), North Carolina, Oklahoma, South Dakota, and Texas (two locations). The sorghum seed was planted and the RACs were harvested at the appropriate growth stages. Residue levels in the sorghum grain were less than 0.05 ppm. Maximum residues were 0.058 ppm in the forage and 0.065 ppm in the stover. These residue data support tolerances of 0.05 ppm for sorghum grain, 0.10 ppm for sorghum forage, and 0.10 ppm for sorghum stover. A processing study was submitted with this petition. No tolerances were required for processed fractions of sorghum grain since residues in the sorghum grain when treated at the 2X rate (which is higher than the maximum theoretical concentration factor of 1.6X) were less than the limit of quantitation (LOQ) of 0.05 ppm.

B. Toxicological Profile

1. *Acute toxicity*. The acute oral LD_{50} values for imidacloprid technical ranged from 424 to 475 mg/kg bwt in the rat. The acute dermal LD_{50} was greater than 5,000 mg/kg in rats. The 4-hour inhalation LC_{50} was less than 69 mg/m^3 air (aerosol). Imidacloprid was not irritating to rabbit skin or eyes. Imidacloprid did not cause skin sensitization in guinea pigs.

2. *Genotoxicity*. Extensive mutagenicity studies conducted to investigate point and gene mutations, DNA damage and chromosomal aberration, both using *in vitro* and *in vivo* test systems show imidacloprid to be non-genotoxic.

3. *Reproductive and developmental toxicity*. A 2-generation rat reproduction study gave a no-observed-effect level (NOEL) of 100 ppm (8 mg/kg/bwt). Rat and rabbit developmental toxicity studies were negative at doses up to 30 mg/kg/bwt and 24 mg/kg/bwt, respectively.

4. *Subchronic toxicity*. Ninety-day feeding studies were conducted in rats and dogs. The NOELs for these tests were 14 mg/kg/bwt/day (150 ppm) and 5 mg/kg/bwt/day (200 ppm), for the rat and dog studies, respectively.

5. *Chronic toxicity*. A 2-year rat feeding/carcinogenicity study was negative for carcinogenic effects under the conditions of the study and had a NOEL of 100 ppm (5.7 mg/kg/bwt in males and 7.6 mg/kg/bwt in females for noncarcinogenic effects that included decreased body weight gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm. A 1-year dog feeding study indicated a NOEL of 1,250 ppm (41 mg/kg/bwt). A 2-year mouse carcinogenicity study that was negative for carcinogenic effects under conditions of the study and that had a NOEL of 1,000 ppm (208 mg/kg/day).

Imidacloprid has been classified under ''Group E'' (no evidence of carcinogenicity) by EPA's OPP/HED's Reference Dose (RfD) Committee. There is no cancer risk associated with exposure to this chemical. The reference dose (RfD) based on the 2-year rat feeding/carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100-fold uncertainty factor, is calculated to be 0.057 mg/kg/bwt. The theoretical maximum residue contribution (TMRC) from published uses is 0.008358 mg/kg/bwt/day utilizing 14.7% of the RfD.

6. *Animal metabolism*. The nature of the imidacloprid residue in animals is adequately understood. The residues of concern are combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid.

7. *Metabolite toxicology*. Metabolites, at the levels reported, are not toxicologically significant. No separate regulation of metabolites is warranted, and there is no scientific objection to the tolerance expression being for the combined residues of imidacloprid and its metabolites containing the 6-chloropyridinyl moiety.

C. Aggregate Exposure

1. *Dietary exposure*. The EPA has determined that the reference dose (RfD) based on the 2-year rat feeding/carcinogenicity study with a NOEL of 5.7 mg/kg/bwt and 100-fold uncertainty factor, is calculated to be 0.057 mg/kg/bwt. As published in the **Federal Register** June 12, 1996 (61 FR 29674) (petition to establish tolerances on leafy green vegetables (PP 5F4522/R2237)), the theoretical maximum residue contribution (TMRC) from published uses is 0.008358 mg/kg/bwt utilizing 14.7% of the RfD for the general population. For the most highly exposed subgroup in the population, non-nursing infants (less than 1-year old), the TMRC for the published tolerances is 0.01547 mg/kg/day. This is equal to 27.1% of the RfD. The December 1, 1994 **Federal Register** (59 FR 61552) indicates that the tolerances for sorghum contribute 0.000001188 mg/kg/bwt/day which represents 0.002% of the RfD which is included in the total values published in the June 12, 1996 **Federal Register**. Therefore, dietary exposure from the existing uses including the current temporary tolerances will not exceed the reference dose for any subpopulation (including infants and children).

2. *Food*. Dietary exposure from the existing uses including the current temporary tolerances will not exceed the reference dose for any subpopulation (including infants and children).

3. *Drinking water*. Although the various imidacloprid labels contain a

statement that this chemical demonstrates the properties associated with chemicals detected in groundwater, the Registrant is not aware of imidacloprid being detected in any wells, ponds, lakes, streams, etc. from its use in the United States. In studies conducted in 1995, imidacloprid was not detected in seventeen wells on potato farms in Quebec, Canada. In addition, groundwater monitoring studies are currently underway in California and Michigan. Therefore, contributions to the dietary burden from residues of imidacloprid in water would be inconsequential.

4. *Non-dietary exposure*— a. *Residential turf*. Bayer Corporation has conducted an exposure study to address the potential exposures of adults and children from contact with imidacloprid treated turf. The population considered to have the greatest potential exposure from contact with pesticide treated turf soon after pesticides are applied are young children. Margins of safety (MOS) of 7,587 - 41,546 for 10 year old children and 6,859 - 45,249 for 5 year old children were estimated by comparing dermal exposure doses to the imidacloprid no-observable effect level of 1,000 mg/kg/day established in a 15-day dermal toxicity study in rabbits. The estimated safe residue levels of imidacloprid on treated turf for 10 year old children ranged from 5.6 - 38.2 g/cm^2 and for 5 year old children from 5.1 - 33.3 g/cm^2. This compares with the average imidacloprid transferable residue level of 0.080 g/cm^2 present immediately after the sprays have dried. These data indicate that children can safely contact. Bayer Corporation has conducted an exposure imidacloprid-treated turf as soon after application as the spray has dried.

b. *Termiticide*. Imidacloprid is registered as a termiticide. Due to the nature of the treatment for termites, exposure would be limited to that from inhalation and was evaluated by EPA's Occupational and Residential Exposure Branch (OREB) and Bayer Corporation. Data indicate that the Margins of Safety for the worst case exposures for adults and infants occupying a treated building who are exposed continuously (24 hours/day) are 8.0 x 10^7 and 2.4 x 10^8, respectively, and exposure can thus be considered negligible.

c. *Tobacco smoke*. Studies have been conducted to determine residues in tobacco and the resulting smoke following treatment. Residues of imidacloprid in cured tobacco following treatment were a maximum of 31 ppm (7 ppm in fresh leaves). When this tobacco was burned in a pyrolysis study only two percent of the initial residue was recovered in the resulting smoke (main stream plus side stream). This would result in an inhalation exposure to imidacloprid from smoking of approximately 0.0005 mg per cigarette. Using the measured subacute rat inhalation NOEL of 5.5 mg/m^3, it is apparent that exposure to imidacloprid from smoking (direct and/or indirect exposure) would not be significant.

d. *Pet treatment*. Human exposure from the use of imidacloprid to treat dogs and cats for fleas has been addressed by EPA's Occupational and Residential Exposure Branch (OREB) who have concluded that due to the fact that imidacloprid is not an inhalation or dermal toxicant and that while dermal absorption data are not available, imidacloprid is not considered to present a hazard via the dermal route.

D. Cumulative Effects

No other chemicals having the same mechanism of toxicity are currently registered, therefore, there is no risk from cumulative effects from other substances with a common mechanism of toxicity.

E. Safety Determination

1. *U.S. population*. Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data, it can be concluded that total aggregate exposure to imidacloprid from all current uses including those currently proposed will utilize little more than 15% of the RfD for the U.S. population. EPA generally has no concerns for exposures below 100% of the RfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Thus, it can be concluded that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of imidacloprid, the data from developmental studies in both rat and rabbit and a 2-generation reproduction study in the rat have been considered. The developmental toxicity studies evaluate potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates effects from exposure to the pesticide on the reproductive capability of mating animals through two generations, as well as any observed systemic toxicity.

FFDCA Section 408 provides that the EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal effects and the completeness of the toxicity database. Based on current toxicological data requirements, the toxicology database for imidacloprid relative to pre- and post-natal effects is complete. Further for imidacloprid, the NOEL of 5.7 mg/kg/bwt from the 2-year rat feeding/carcinogenic study, which was used to calculate the RfD (discussed above), is already lower than the NOELs from the developmental studies in rats and rabbits by a factor of 4.2 to 17.5 times. Since a 100-fold uncertainty factor is already used to calculate the RfD, it is surmised that an additional uncertainty factor is not warranted and that the RfD at 0.057 mg/kg/bwt/day is appropriate for assessing aggregate risk to infants and children. Using the conservative exposure assumptions described above, EPA has concluded that the TMRC from use of imidacloprid from published uses is 0.008358 mg/kg/bwt/day utilizing 14.7% of the RfD for the general population. For the most highly exposed subgroup in the population, non-nursing infants (less than 1 year old), the TMRC for the published tolerances is 0.01547 mg/kg/day. This is equal to 27.1% of the RfD. Therefore, dietary exposure from the existing uses including the currently proposed tolerances will not exceed the reference dose for any subpopulation (including infants and children).

F. International Tolerances

No CODEX Maximum Residue Levels (MRLs) have been established for residues of imidacloprid on any crops at this time.

[FR Doc. 97–28663 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–771; FRL–5749–7]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–771, must be received on or before November 28, 1997.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides 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.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

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). 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 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney C. Jackson, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number, Rm. 274, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., 703–305–7610, e-mail: jackson.sidney@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–771] (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 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

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. Comment and data will also be accepted on disks in Wordperfect 6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF-771] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 22, 1997

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. IR-4 Project

PP 2E4044 and 3E4164

EPA has received pesticide petitions (PP 2E4044 and 3E4164) from the Interregional Research Project number 4 (IR-4), proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of Triadimefon, 1-(4-Chlorophenoxy)-3,3-dimethyl-1-(1*H*-1,2,4-triazol-1-yl)-2-butanone, and its metablolites containing chlorophenoxy and triazole moieties expressed as the fungicide in or on the raw agricultural commodities artichoke, globe at 0.6 parts per million (ppm) and pome fruits group (Crop Group 11) at 0.2 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of each petition prepared by the Bayer Corporation(Bayer), the registrant.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the residue in plants and animals is adequately understood. The residue of concern is triadimefon and its triazole and chlorophenoxy metabolites. Triadimefon is rapidly absorbed by plants and translocated systemically in the young growing tissue.

2. *Analytical method*. Adequate analytical methods are available for analysis of triadimefon and its triazole and chlorophenoxy metabolites in or on artichokes. These methods are available in PAM II as Method I.

3. *Magnitude of residues*. Three separate residue trials have been conducted on globe artichokes and submitted to the EPA. The EPA has determined that these data show that residues of triadimefon and its metabolites containing chlorophenoxy and triazole moieties (expressed as the fungicide) in the raw agricultural commodity artichokes, globe will not exceed the proposed tolerance of 0.6 ppm.

For pome fruits and as part of the reregistration requirements for triadimefon, Bayer has submitted nine trials on apples and six trials on pears to the EPA. EPA's Chemistry Branch Tolerance Support has concluded that these data are adequate to support the requested crop group tolerance for triadimefon and its metabolites containing chlorophenoxy and triazole moieties expressed as the fungicide in or on pome fruit at 0.2 ppm.

There are no livestock feed stuffs from globe artichokes and pome fruits, therefore, secondary residues in meat, milk, poultry and eggs are not expected.

B. Toxicological Profile

1. *Acute toxicity*. A rat acute oral study resulted in a lethal dose (LD_{50}) of 568 ± 61 milligrams (mg)/kilogram (kg)

for males and 363 ± 41 mg/kg for females. In a rabbit acute dermal study a LD_{50} of >2,000 mg/kg was determined. A rat acute inhalation study produced a lethal concentration (LC_{50}) of >3.570 mg/liter(l). A primary eye irritation study in the rabbit showed practically no irritation. A primary dermal irritation study showed practically no irritation and a primary dermal sensitization study indicated that triadimefon is a skin sensitizer.

2. *Genotoxicity*. Triadimefon has been found to be negative in the Ames reverse mutation test and in the Structural Chromosome Aberration Test.

3. *Reproductive and developmental toxicity*. A rat developmental toxicity study showed a maternal systemic no-observed-effect level (NOEL) of 30 mg/kg/day and the lowest-observed-effect level (LOEL) 90 mg/kg/day. The NOEL for developmental toxicity was 30 mg/kg/day and the LOEL was 90 mg/kg/day.

In the developmental toxicity study in rabbits, the maternal systemic NOEL was 50 mg/kg/day and the LOEL 120 mg/kg/day. The NOEL for developmental toxicity was 20 mg/kg/day and the LOEL was 50 mg/kg/day. Effects seen at the developmental lowest effect level(LEL) in the rabbit study were irregular spinous process and ossification of various bones.

A 3-generation rat reproduction study showed decreases in maternal body weight gain, fertility, and in litter size, pups survival during the lactation phase, and pups weights. The maternal NOEL was 300 ppm and the reproductive NOEL was 50 ppm.

A 2-generation rat reproductive study showed reductions in litter size, pups viability, birth and lactational weights. The reproductive NOEL was 50 ppm.

4. *Subchronic toxicity*. A 3-month feeding study in the rat produced a NOEL of 2,000 ppm based on decreased body weight gain and food consumption attributed to palatability. A rat 30-day feeding study showed a NOEL of 10 mg/kg. A 13-week dog-feeding study resulted in a NOEL of 2,400 ppm based on decreased body weight gain and food consumption due to palatability. Test results also showed a decreased hematocrit, RBC count, hemoglobin volume and microsomal induction. A 28-day rabbit dermal study produced a NOEL >250 mg/kg and a 21-day inhalation study in rats showed a NOEL of 78.7 mg/cubic meters(m^3)/6 hrs. per day/ 15 exposures.

5. *Chronic toxicity*. A 2–year rat chronic feeding study defined a NOEL for systemic effect as 300 ppm (males = 16.4 mg/kg/day; females = 22.5 mg/kg/day). The systemic LOEL was 1,800 ppm (males = 114.0 mg/kg/day; females = 199.0 mg/kg/day) based on neoplastic and systemic effects. A dog feeding study showed only minimal toxic effects decrease in body weight, increase in liver weight and in hepatic N-demethylase activity, and an increase in serum alkaline phosphatase activity. The NOEL was established at 100 ppm. A mouse oncogenicity study showed hepatocellular adenomas in both sexes of NMRI mice. The NOEL was established for males at 50 ppm. No NOEL was reached for females. A mouse carcinogenicity study using CF1-W74 mice was negative for carcinogenicity.

6. *Animal metabolism*. In a general rat metabolism study triadimefon was initially converted by reduction of its carbonyl group. This conversion was more rapid in males. The major metabolites were the acid and alcohol of triadimefon. In males radioactivity was found mainly in feces, whereas, in females, radioactivity was equally distributed between urine and feces. No radioactivity was recovered in the expired air. Peak tissue levels were found in 2 to 4 hours and were highest in fat, liver and kidney.

7. *Endocrine effects*. No special studies investigating potential estrogenic or endocrine effects of triadimefon have been conducted. However, the standard battery of required studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. No adverse effects were noted in any of the studies with either triadimefon or its metabolites.

C. Aggregate Exposure

1. *Dietary exposure*. For purposes of assessing the potential dietary exposure from food under the proposed tolerances, the EPA estimates exposure based on the Theoretical Maximum Residue Contribution (TMRC). The TMRC is obtained by using a model which multiplies the tolerance level residue for each commodity by consumption data which estimates the amount of each commodity and products derived from the commodities that are eaten by the U.S. population and various population subgroups. The model uses a reference dose (RfD) which the EPA has determined to be 0.04 milligrams(mg)/ kilogram(kg)/day. This RfD is based on a 2–year dog feeding study with a NOEL of 11.4 mg/kg/day and an uncertainty factor of 300. An uncertainty factor of 300 was applied to account for inter-species extrapolation (10), intra-species variability (10), and the lack of an adequate reproduction study (3). Decreased food intake, depression in weight gain, and significantly (p >0.05) increased alkaline phosphatase activity in both sexes were the effects observed at the lowest effect level (LEL). This assessment assumes 100% of all commodities will contain triadimefon residues, and those residues would be at the level of the tolerance for estimating potential human exposure.

2. *Food*. Using assumptions discussed above, it was determined that the TMRC for existing tolerances plus the proposed uses on globe artichokes and pome fruits. For globe artichokes, the TMRC is equivalent to 17% of the RfD for the US general population (48 states) and 74% of the RfD for the highest population subgroup (non-nursing infants >1 year old).

For pome fruits, the TMRC for triadimefon derived from the previously established tolerances plus the proposed 0.2 ppm tolerance for this crop group (pome fruit) would be 0.003782 mg/kg body weight(bwt)/day (9.5% of the RfD) for the U.S. population 48 states and 0.009549 mg/kg bwt/day (23.9% of the RfD) for the most highly exposed population subgroup, children (1-6 year old). Therefore, Bayer concludes that dietary exposure from the existing and proposed uses will not exceed the reference dose for any subpopulation including infants and children.

For globe artichoke, the estimated acute dietary exposure is based on a maternal NOEL of 10 mg/kg/day. The calculated Margin of Exposure (MOE) for the general US population is 100 (at the 99th percentile); for infants (>1 year old) 100 (at the 95th percentile); for children (1-6 year old) 200 (at the 96th percentile); and for both females (13+ years) and males (13+ years) 333 (at the 99th percentile). These values are all at or above the MOE level EPA considers to provide an adequate safety margin (100).

3. *Drinking water*. Available data show that triadimefon and its metabolites are mobile and persistent and have the potential to leach into groundwater. There is no established Maximum Concentration Level for residues of triadimefon in drinking water. No drinking water health advisory levels have been issued for triadimefon or its metabolite triadimefon. The ''Pesticides in Groundwater Database'' (EPA 734–12–92–001, September 1992) indicated that triadimefon was monitored for in 14 wells in California from 1984 to 1989. There were no detectable residues (limit of detection was not stated).

Previous experience with more persistent and mobile pesticides for

which there have been available data to perform quantitative risk assessments have demonstrated that drinking water exposure is typically a small percentage of the total exposure when compared to the total dietary exposure. This observation holds even for pesticides detected in wells and drinking water at levels nearing or exceeding established maximum residue levels (MCL's). Best scientific judgement from available data suggests that the potential exposure from residues of triadimefon in drinking water, added to the current dietary exposure, will not result in an exposure which exceeds the RfD.

4. *Non-dietary exposure*. Triadimefon is currently registered for use on turf and ornamentals. Studies were conducted by Bayer designed to measure the upper bound acute exposure potential of adults and children from contact with triadimefon treated turf. The population considered to have the greatest potential exposure from contact with pesticide treated turf soon after pesticides are applied are young children. The estimated safe residue levels for triadimefon on treated turf for 10-year old children ranged from 1.3 - 6.4 micro gram(μg)/centimeter(cm)^2 and for 5-year old children from 1.1 - 5.6 μg/cm^2. This compares with the average triadimefon transferable residue level of 1.0 μg/cm^2 present immediately after the sprays have dried. Bayer concludes from these studies that children can safely contact triadimefon-treated turf as soon after application as the spray has dried.

D. Cumulative Effects

At this time, the Agency has not made a determination that triadimefon and other substances that may have a common mode of toxicity would have cumulative effects. For purposes of this tolerance, only the potential risks of triadimefon in its aggregate exposure are being considered.

E. Safety Determination

1. *U.S. population*. Using the exposure assumptions described above under aggregate exposure and based on the toxicity data, Bayer concludes that aggregate dietary exposure to triadimefon from the previously established tolerances plus the proposed use on globe artichoke will utilize 17% of the RfD for the U.S. population (48 states) and 74% of the RfD for the most highly exposed population subgroup (non-nursing infants >1 year old). In comparison, pome fruit will vitilize 9.5% and 23.9% of the RfD for the same U.S. population and for children (1-6 yrs), respectively. There is generally no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Bayer concludes that there is a reasonable certainty that no harm will result from aggregate exposure to triadimefon.

Bayer estimated acute dietary exposure using the maternal NOEL of 10 mg/kg/day and determined that the calculated MOE for each population group is at or above the MOE level EPA considers to provide an adequate safety margin.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of triadimefon, the data from developmental studies in both rat and rabbit and a 2-generation reproduction study in the rat were considered. The developmental toxicity studies evaluate any potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates any effects from exposure to the pesticide on the reproductive capability of mating animals through 2-generations, as well as any observed systemic toxicity.

Results of a rat and rabbit developmental toxicity studies and a 2-generation and 3-generation rat reproduction studies conducted with triadimefon have been reviewed. Maternal and developmental toxicity NOELs of 30 mg/kg/day were determined in the rat developmental toxicity studies. In the rabbit developmental toxicity study, the maternal NOEL was 50 mg/kg body weight(bwt)/day and the developmental NOEL was 20 mg/kg bwt/day. The rat reproduction studies were inconclusive.

FFDCA Section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal effects and the completeness of the toxicity database. Therefore, EPA has incorporated an additional 3-fold uncertainty factor into the calculation of the RfD because of the absence of an acceptable reproduction study.

There is approximately a two-fold difference between the developmental NOEL of 20 mg/kg/day from the rabbit developmental toxicity study and the NOEL of 11.4 mg/kg/day from the 2–year dog feeding study which was the basis of the RfD. It is further noted that in the rabbit developmental toxicity study, the developmental NOEL of 20 mg/kg/day is lower than the maternal systemic NOEL of 50 mg/kg/day, suggesting the possibility of increased sensitivity for the pre-natal child.

The TMRC value for the most highly exposed infant and children subgroup (non-nursing infants >1 year old) occupies 74% of the RfD. However, this calculation also assumes 100% crop treated and uses tolerance level residues for all commodities. Refinement of the dietary risk assessment by using percent of crop treated and anticipated residue data would likely greatly reduce the dietary exposure estimate and result in an anticipated residue contribution (ARC) which would occupy a percent of the RfD that is substantially lower than the currently calculated TMRC value.

Should an additional uncertainty factor be deemed appropriate, when considered in conjunction with a refined exposure estimate, Bayer believes it is unlikely that the dietary risk will exceed 100 percent of the RfD. Due to the completeness and reliability of the toxicity data and the exposure assessment, Bayer believes there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to triadimefon residues.

Bayer estimated acute dietary exposure using the maternal NOEL of 10 mg/kg/day and determined that the calculated MOE for infants and children population groups is at or above the MOE level EPA considers to provide an adequate safety margin.

F. International Tolerances

There are no CODEX, Canadian, or Mexican MRLs for triadimefon residues in/on globe artichokes. A CODEX MRL for triadimefon residues in/on pome fruits has been established at 0.5 ppm.

2. IR-4 Project

PP 6E4652

EPA has received a pesticide petition (PP 6E4652) from the Interregional Research Project number 4 (IR-4), proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for the combined residues of quizalofop-p ethyl ester [ethyl (*R*)-(2-[4-((6-chloroquinoxalin-2-yl) oxy)phenoxy])-propanoate), and its acid metabolite quizalofop-p [*R*-(2-[4-((6-chloroquinoxalin-2-yl)oxy)phenoxy]) propanoic acid), and the S enantiomers of both the ester and the acid, all expressed as quizalofop-p ethyl ester in or on the raw agricultural commodities spearmint tops and peppermint tops at 3.0 parts per million(ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully

evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of the petition prepared by the DuPont Agricultural Products(DuPont), the registrant.

A. Residue Chemistry

1. *Plant metabolism*. The registrant has provided plant metabolism studies for soybeans, cotton, tomatoes, potatoes, and sugar beets. These studies have been previously reviewed in PP 3F4268. In summary, quizalofop-p ethyl ester is metabolized by cleavage at three sites as follows: (a) Primary pathway is hydrolysis of the ethyl ester to form the quizalofop-p acid, then (b) cleavage of the enol ether linkage in the acid, between the phenyl and quinoxalinyl rings, to form phenols, and (c) cleavage of the ether linkage between the isopropanic group and the phenyl ring to form a phenol.

The plant metabolism data show that quizalofop-p ethyl ester does not translocate, but is rapidly hydrolyzed to the corresponding acid; then the phenols conjugate with the plant sugars. Metabolism studies in soybeans using the racemic mixture quizalofop ethyl ester and the resolved D+ isomer show nearly identical pathways.

The nature of the quizalofop-p ethyl ester residue in cottonseed, potatoes, tomatoes, soybeans, and sugar beets is adequately understood. The residues of concern are quizalofop-p ethyl ester and its acid metabolite, quizalofop-p, and the S enantiomers of both the ester and the acid, all expressed as quizalofop-p ethyl ester. EPA is translating these data to mint.

2. *Analytical method*. An adequately validated residue analytical method, LAN-1, was used to gather the magnitude of the quizalofop-p, its acid metabolite, and residue data on mint hay and mint oil. Samples were analyzed using MS30.00, an adaptation of Analytical Method for the Quantification of Quizalofop (IN-YE945) and Quizalofop-Ethyl (DPX-79379) in Raw and Processed Agricultural Commodities, Protocol No. Lan-1, Enviro-Test Laboratory. (Reference Method: Determination of DPX-79376, DPX-79376 Acid and Conjugates as DPX-79376 as Acid in Cottonseed and Fractions Treated with Assure (II Herbicide. DuPont Report No. AMR 1853–90).

3. *Magnitude of residues*. The maximum residues detected on fresh mint foliage at the proposed labeled level of DuPont's product, Assure, of 0.2 pounds(lbs) active ingredient(ai) acre (1x) applied 30 days before harvest were 0.22, 0.46, and 1.0 ppm for Indiana, Oregon and Washington, respectively. The largest residue found on fresh mint foliage, 2.6 ppm, was detected in a Washington sample treated with 0.4 lbs. acre (2x) 29 days before harvest, twice the maximum yearly rate allowed. At the Level of Quantitation of 0.05 ppm, there were no detectable residues in the mint oil, either at the proposed label rate of 0.2 lbs. ai/acre(A), or at the exaggerated rate of 0.4 lbs. ai/A, indicating that quizalofop-p ethyl and its acid metabolite are not concentrated during the oil distillation process.

Results of a freezer storage stability study demonstrated that the two compounds, quizalofop-p ethyl ester and quizalofop acid, were stable in frozen storage at -20 degrees centigrade for 592 to 593 days in mint hay, and 597 days in oil. Field samples were stored a maximum of 654 days.

The residues detected in this study are well below the proposed tolerances of 3.0 ppm for the raw agricultural commodity mint. The nature of the residues is adequately understood and an adequate analytical method is available for enforcement purposes. Based on the information presented above, Dupont believes the establishment of the proposed tolerance would protect the public health and would not expose man or the environment to unreasonable adverse effects.

B. Toxicological Profile

1. *Acute toxicity*. Several acute toxicology studies were conducted and the overall results placed technical grade quizalofop ethyl in toxicity Category III. These include the following studies in Category III: acute oral toxicity (LD_{50}s 1,480 and 1,670 for female and male rats, respectively) and eye irritation (mild effects; reversible within 4 days). Dermal toxicity (lethal dose) LD_{50} >5,000 milligram(mg)/kilogram(kg); rabbit), inhalation toxicity (lethal concentration) LC_{50} >5.8 mg/liter(L); rat) and dermal irritation were classified within Category IV. Technical quizalofop ethyl was not a dermal sensitizer.

2. *Genotoxicity*. Technical quizalofop ethyl was negative in the following genotoxicity tests: bacterial gene mutation assays with *E. coli* and *S. typhimurium*; gene mutation assays in Chinese hamster ovary(CHO) cells ; *in vitro* DNA damage assays with B. subtillis and in rat hepatocytes; and an *in vitro* chromosomal aberration test in CHO cells.

3. *Reproductive and developmental toxicity*. Studies supporting the registration include: A developmental toxicity study in rats administered dosage levels of 0, 30, 100, and 300 mg/kg/day (HDT). The maternal toxicity no-observed-effect level (NOEL) was 30 mg/kg/day and a developmental toxicity NOEL was greater than 300 mg/kg/day (HDT). The maternal NOEL was based on reduced food consumption and increased liver weights.

A developmental toxicity study in rabbits administered dosage levels of 0, 7, 20, and 60 mg/kg/day with no developmental effects noted at 60 mg/kg/day (HDT). The maternal toxicity NOEL was 20 mg/kg/day based on decreases in food consumption and body weight gain at 60/mg/kg/day (HDT).

A 2-generation reproduction study in rats fed diets containing 0, 25, 100 or 400 ppm (or approximately 1, 1.25, 5, and 20 mg/kg/day, respectively) with a developmental (systemic effects) NOEL of 1.25 mg/kg/day for F2B weanlings based on increased liver weights and increased incidence of eosinophilic changes in the livers at 5.0 mg/kg/day. These liver changes were considered to be physiological or adaptive changes to compound exposure among weanlings. When access to the mother's feed is available, it is a common observation that young rats will begin consuming chow prior to complete weaning at 21-days of age. Consumption could not be quantified; therefore, the maternal consumption was assumed as the NOEL (if normalized on a body weight basis, exposures to the weanling rats were likely higher). The parental NOEL of 5.0 mg/kg/day was based on decreased body weight and premating weight gain in males at 20 mg/kg/day (HDT).

4. *Subchronic toxicity*. A 90-day study was conducted in rats fed diets containing 0, 40, 128, 1,280 ppm (or approximately 0, 2, 6.4 and 64 mg/kg/day, respectively). The NOEL was 2 mg/kg/day. This was based on increased liver weights at 6.4 mg/kg.

A 90–day feeding study in mice was conducted with diets that contained 0, 100, 316 or 1,000 ppm (or approximately 0, 15, 47.4, and 150 mg/kg/day, respectively). The NOEL was >15 mg/kg/day Lowest Dose Tested (LDT) based on increased liver weights and reversible histopathological effects in the liver at the LDT. A 6-month feeding study in dogs was conducted with diets that contained 0, 25, 100 or 400 ppm (or approximately 0, 0.625, 2.5, and 10 mg/kg/day, respectively). The NOEL was 2.5 mg/kg/day based on increased blood urea nitrogen at 10 mg/kg/day. A 21–day dermal study was conducted in rabbits at doses of 0, 125,

500 or 2,000 mg/kg/day. The NOEL was 2,000 mg/kg/day (HDT).

5. *Chronic toxicity*. An 18-month carcinogenicity study was conducted in CD-1 mice fed diets containing 0, 2, 10, 80 or 320 ppm (or approximately 0, 0.3, 1.5, 12, and 48 mg/kg/day, respectively). There were no carcinogenic effects observed under the conditions of the study at levels up to and including 12 mg/kg/day. A marginal increase in the incidence of hepatocellular tumors was observed at 48 mg/kg/day, the highest dose tested (HDT) which exceeded the maximum tolerated dose (MTD).

A 2–year chronic toxicity/carcinogenicity study was conducted in rats fed diets containing 0, 25, 100 or 400 ppm (or 0, 0.9, 3.7, and 15.5 mg/kg/day for males and 0, 1.1, 4.6, and 18.6 mg/kg/day for females, respectively). There were no carcinogenic effects observed under the conditions of the study at levels up to and including 18.6 mg/kg/day (HDT). The systemic NOEL was 0.9 mg/kg/day based on altered red cell parameters and slight/minimal centrilobuler enlargement of the liver at 3.7 mg/kg/day.

A 1–year feeding study was conducted in dogs fed diets containing 0, 25, 100 or 400 ppm (or approximately 0, 0.625, 2.5, and 10 mg/kg/day, respectively). The NOEL was 10 mg/kg/day (HDT).

The Carcinogenicity Peer Review Committee (CPRC) of the EPA has evaluated the rat and mouse cancer studies on quizalofop along with other relevant short-term toxicity studies, mutagenicity studies, and structure activity relationships. The CPRC concluded, after three meetings and an evaluation by the EPA Science Advisory panel, that the classification should be a Category D (not classifiable as to human cancer potential). No new cancer studies were required.

The first CPRC review tentatively concluded that quizalofop should be classified as a Category B2 (probable human carcinogen). That classification was based on liver tumors in female rats, ovarian tumors in female mice, and liver tumors in male mice. This classification was downgraded to a Category C (possible human carcinogen) at a second CPRC review. The change in classification was due to a reexamination of the liver tumors in female rats and ovarian tumors in female mice. The first peer review had found a statistically significant positive trend for liver carcinomas in female rats. Subsequent to this conclusion the tumor data were reevaluated, and the revaluation showed a reduced number of carcinomas. Although there remained a statistically significant positive trend for carcinomas in the study, the CPRC concluded that the carcinomas were not biologically significant given the few carcinomas identified (one at the mid-dose and two at the high dose). Noting that this level of carcinomas was within historical levels, the CPRC concluded that administration of quizalofop did not appear to be associated with the liver carcinomas.

As to the ovarian tumors in female mice, the CPRC had first attached importance to the fact that these tumors were statistically significant at the high dose as compared to historical control values although statistically significant when compared to concurrent controls. However, review of further historical control data showed that the level of ovarian tumors in the quizalofop study was similar to the background rate in several other studies. Given this information and that the quizalofop study showed no hyperplasia of the ovary, no signs of endocrine activity related to ovarian function, and no dose response relationship, the CPRC concluded that the ovarian tumors were probably not compound-related.

The findings of the second CPRC review were presented to EPA's Scientific Advisory Panel (SAP). The SAP concurred with the CPRC conclusion that the liver tumors in female rats and the ovary tumors in female mice showed no evidence of carcinogenicity. However, the SAP disagreed with CPRC's classification of quizalofop as a Category C based on the liver tumors in male mice. The SAP concluded that the mouse liver tumors did not support such a classification because the tumors occurred at a dose above the maximum-tolerated dose (MTD) and because they were not statistically significant if a ''p''value of less than 0.05. The SAP believed that such greater statistical rigor was appropriate for variable tumor endpoints such as male mouse liver tumors.

Following the SAP review, the CPRC changed the classification for quizalofop to Category D. The Category D classification is based on an approximate doubling in the incidence of male mice liver tumors between controls an the high dose. This finding was not considered strong enough to warrant the finding of a Category C (possible human carcinogen) since the increase was of marginal statistical significance, occurred at a high dose which exceeded the predicted MTD, and occurred in a study in which the concurrent control for liver tumors was somewhat low as compared to the historical controls, while the high dose control group was at the upper end of previous historical control-groups.

EPA has found the evidence on the carcinogenicity of quizalofop-p ethyl ester in animals to be equivocal and therefore concludes that quizalofop-p ethyl ester does not induce cancer in animals within the meaning of the Delaney clause. Important to this conclusion was the following evidence: (a) The only statistically significant tumor response that appears compound-related was seen at a single dose in a single sex in a single species; (b) the response was only marginally statistically significant; (c) the response was only significant when benign and malignant tumors were combined; (d) the tumors were in the male mouse liver; (e) the tumors were within historical controls; and (f) the mutagenicity studies were negative. Although in some circumstances a finding of animal carcinogenicity would be made despite any one, or even several, of the six factors noted, the combination of all of these factors here cast sufficient doubt on the reproducibility of the response in the high dose male mouse that EPA concludes the evidence on carcinogenicity is equivocal.

6. *Animal metabolism*. The metabolism of quizalofop ethyl in animals (rat, goat and poultry) is well understood. 14_C-phenyl and 14_C-quinoxaline quizalofop ethyl ester metabolism studies have been conducted in each species. There are similarities among these species with respect to metabolism. Quizalofop ethyl is rapidly and extensively metabolized and rapidly excreted by rats. The principal metabolites were the quizalofop-p acid and two dechlorinated hydroxylated forms of the acid. Tissue residues were minimal and there was no evidence of accumulation of quizalofop ethyl or its metabolites in the rat.

The primary pathway in ruminants is hydrolysis of the ethyl ester to form the quizalofop-p methyl ester. In poultry, the primary metabolic pathway is also the hydrolysis of the ethyl ester to form the quizalofop-p acid, then the methyl esterification to form the quizalofop methyl ester becomes a minor pathway.

The nature of the quizalofop ethyl ester residue in livestock is adequately understood. The residues of concern are quizalofop ethyl, quizalofop methyl, and quizalofop, all expressed as quizalofop ethyl.

7. *Metabolite toxicology*. There is no evidence that the metabolites of quizalofop ethyl as identified as either the plant or animal metabolism studies are of any toxicological significance.

C. Aggregate Exposure

1. *Dietary exposure.* An analysis of chronic dietary risk was conducted to determine the impact of the possible addition of peppermint and spearmint to the Assure label. A Reference Dose (RfD) of 0.009 mg/kg/day was used in the analyses. Consumption data were available for peppermint and spearmint from previous studies.

2. *Food.* The first step in the analysis was to run the TAS (Tolerance Assessment System) program using current tolerances with an RfD of 0.009 mg/kg/day. The Theoretical Maximum Residue Concentration (TMRC), based on the current tolerances, was 0.000288 mg/kg/day for the U.S. population (48 states) and 0.000759 mg/kg/day for the population subgroup with the highest estimated exposure (non-nursing infants >1 year old). For the U.S. population subgroup this represents approximately 3.2% of the RfD while for the most exposed population this represents approximately 8.4% of the RfD. Based on the risk estimates arrived at in this analysis, chronic dietary risk from the current uses of Assure is minimal.

Consumption data for peppermint and spearmint within the TAS database are available only for the entire U.S. population (48 states) and not for the population subgroups. For peppermint the consumption is listed as 0.000001 gram(g)/kg body weight(bw)/day for the raw commodity and 0.000255 for the flavoring oil. For spearmint the consumption is 0.000001 g/kg bw/day for the raw commodity and 0.000458 for the flavoring oil. The TMRC, based on the current tolerances and the potential peppermint and spearmint tolerances, was 0.000290 mg/kg/day for the U.S. population (48 states). Since no consumption data were available for population subgroups, Theoretical Maximum Residue Concentrations did not change and the sub group with the highest potential exposure had a TMRC of 0.000759 g/kg/day (non-nursing infants >1 year old). When expressed as a percentage of the RfD, the U.S. population (48 states) was approximately 3.2% and that of the population subgroup with the highest potential exposure, i.e. infants and children, was approximately 8.4%. These results indicate that predicted chronic exposure after the addition of a peppermint tolerance is well below the RfD. The lack of specific population sub-group data for these commodities should not be a problem since both peppermint and spearmint are not likely to be consumed in large quantities by any population subgroup and the difference between the TMRC and the RfD is so great.

3. *Drinking water.* Another potential source of dietary exposure to pesticides is residues in drinking water. There is no established Maximum Concentration Level (MCL) for quizalofop ethyl in water. Based on the low use rate of quizalofop ethyl, and a use pattern that is not widespread (since the current and proposed uses are on minor crops), DuPont does not anticipate residues of quizalofop in drinking water and exposure from this route is unlikely.

4. *Non-dietary exposure.* Quizalofop ethyl is not registered for any use which could result in non-occupational, non-dietary exposure to the general population.

D. Cumulative Effects

There is no evidence to indicate or suggest that quizalofop p-ethyl has any toxic effects on mammals that would be cumulative with those of any other chemicals.

E. Safety Determination

1. *U.S. population.* Using the exposure assumptions described above and based on the most sensitive species chronic NOEL of 0.9 mg/kg and a reference dose (RfD) of 0.009 mg/kg/day, the existing tolerances and proposed use of quizalofop ethyl on mint are expected to utilize 3.2% of the RfD for the general U.S. population. Generally, exposures below 100% of the RfD are of no concern because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose risk to human health. Thus, there is a reasonable certainty that no harm will result from aggregate exposure to quizalofop ethyl resulting from proposed agricultural use on peppermint and spearmint.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of quizalofop ethyl, data were considered from developmental toxicity studies in the rat and rabbit, and a multi-generation reproduction study in rats. There were no developmental effects observed in the absence of maternal toxicity in the rat and rabbit developmental studies. Minimal adaptive or physiological effects were observed in livers of weanlings in the 2-generation rat reproduction study described earlier. However, this effect was only observed at a dose that far exceeds any expected human exposure. Further, the NOEL of 0.9 mg/kg/day from the 2–year rat study with quizalofop ethyl, which was used to calculate the RfD(discussed above), is already lower than any of the NOELs defined in the developmental and reproductive toxicity studies with quizalofop ethyl.

Using the exposure assumptions described above and based on the most sensitive species chronic NOEL of 0.9 mg/kg and a reference dose (RfD) of 0.009 mg/kg/day, the existing tolerances and proposed use of quizalofop ethyl on mint are expected to utilize 8.4% of the RfD for infants and children. Infants and children have a low potential for quizalofop ethyl exposure because of both the low levels of mint in the diet (mint is a low dietary intake crop used primarily as an oil for flavoring, and is diluted to a ratio of 1:250 or greater in the finished food product), and the absence of detectable residues in mint oil. The toxicology profile of quizalofop ethyl demonstrates low mammalian toxicity. Because there was no evidence that offspring were uniquely susceptible to the toxic effects of quizalofop ethyl, an additional 10-fold uncertainty factor should not be required to protect infants and children. Therefore, the registrant believes that the RfD of 0.009 mg/kg/day, which utilizes a 100-fold safety factor, is appropriate to assure a reasonable certainty of no harm to infants and children from aggregate exposure to quizalofop ethyl.

F. International Tolerances

Since there are no Mexican, Canadian, or Codex MRLs/tolerances, compatibility is not a problem at this time.

3. IR-4 Project

PP 6E4658

EPA has received a pesticide petition (PP 6E4658) from the Interregional Research Project Number 4 (IR-4), proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirements of a tolerance for copper-ethylenediamine complex (Komeen) in or on the raw agricultural commodity (RAC) potatoes. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of the petition prepared by the Griffin Corporation (Griffin), the registrant.

A. Residue Chemistry

1. *Analytical method*. A practical analytical method for copper-ethylenediamine complex is not required for crop use since it is expected that no residues will occur in RACs.

2. *Magnitude of residues*. Residues are not expected in the RAC (potatoes) since the potato tubers are underground and only the vines which are above ground are treated.

B. Toxicological Profile

The Agency does not require subchronic, chronic, reproductive or developmental toxicity studies for the copper salts.

Copper-ethylenediamine(Komeen) is slightly to moderately toxic upon acute oral, dermal and inhalation exposure, slightly irritating to the skin and moderately irritating to the eye.

Acute toxicity. The acute oral lethal dose LD_{50} (95% confidence limits) for Komeen was 498 milligram(mg)/kilogram(kg) (349–710 mg/kg).

The acute dermal LD_{50} for Komeen was determined to be >2,000 mg/kg.

The acute inhalation lethal concentration LC_{50} (95% confidence limits) for Komeen was 0.81 mg/liter(l) (0.26-1.37 mg/l).

Komeen was shown to be moderately irritating to the eye with all signs of ocular irritation cleared within 10 days of treatment.

C. Aggregate Exposure

1. *Dietary (food) exposure*. Based on the proposed used pattern of potato vine desiccation, no copper residues are expected to occur on potatoes and the dietary exposure would be negligible by comparison to the normal daily intake of copper. A single day's diet may contain 10 mg or more of copper. The daily recommended allowance of copper for adults nutritional needs is 2 mg.

2. *Drinking water*. Copper is ubiquitous in the environment and found in natural water. In 1991, the USEPA established a maximum contamination level (MCL) for copper in drinking water of 1.3 mg/l. No impact on copper levels found naturally in water would occur as a result of potato vine desiccant use for this product.

3. *Non-dietary exposure*. Copper is registered for use as an aquatic herbicide for outdoor residential sites. Any contributions to aggregate exposure from this use would not be expected to be significant.

4. *Potential for endocrine effects*. Since copper is required for homeostasis, low copper dietary exposures would not be expected result in any adverse endocrine effects.

D. Cumulative Effects

Griffin believes that no cumulative adverse effects are expected from long-term exposure to copper salts. No other elements are expected to produce cumulative toxicity with copper.

E. Safety Determination

Copper compounds such as copper sulfate pentahydrate are considered as Generally Recognized as Safe (GRAS) by the Food and Drug Administration and as such are exempt from the requirement of a tolerance when used as aquatic herbicides (40 CFR 180.1021). Copper compounds are also exempt from the requirement of a tolerance when applied to growing crops when used as a plant fungicide in accordance with good agricultural practices (40 CFR 180.1001(b)(1). Copper-ethylenediamine complex is registered as an aquatic herbicide under the trade name, Komeen.

1. *U.S. population*. Copper is a component of the human diet and an essential element. Use of copper-ethylenediamine complex is not expected to increase the amount of copper in the diet as a result of potato vine desiccation.

2. *Infants and children*. Infants and children also require copper in their diets and Griffin believes that no special sensitivity for this population subgroup would be expected as a result of the proposed use.

F. International Tolerances

No international tolerances have been established for copper-ethylenediamine complex.

[FR Doc. 97–28640 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181049; FRL 5751–6]

Bifenthrin; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the California Department of Pesticide Regulations (hereafter referred to as the ''Applicant'') to use the pesticide bifenthrin (CAS #8657–04–3 *cis* and 83322–02–5 *trans*), formulated as Capture 2EC, to treat up to 22,000 acres of broccoli, cauliflower, cabbage, and rapini; and 40,000 acres of lettuce, to control silverleaf whitefly. An emergency exemption has been requested for this use for the previous 6 years. Since this request proposes a use which has been requested or granted in any 3 previous years, and a complete application for registration and petition for tolerance has not yet been submitted to the Agency, EPA is soliciting public comment before making the decision whether or not to grant the exemption, in accordance with 40 CFR 166.24(a)(6).

DATES: Comments must be received on or before November 13, 1997.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181049,'' should be submitted by mail to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No Confidential Business Information (CBI) should be submitted through e-mail.

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 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 Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: Crystal Mall #2, Rm. 267, 1921 Jefferson Davis Highway, Arlington, VA, (703) 308–9356; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of

FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of bifenthrin on broccoli, cauliflower, cabbage, lettuce, and rapini to control whiteflies. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, materials are still not available to growers which will provide them with satisfactory late season control of the silverleaf whitefly. An alternative is available for early season control (imidacloprid), which the registrant (Bayer, Inc.) does not want used throughout the growing season, in order to avoid potential for the whitefly to develop resistance to imidacloprid. The Applicant states that when used in a complementary fashion (imidacloprid for early season control, and bifenthrin for late), these two materials have helped the growers to continue to grow a marketable crop in the past several years. Without this use of bifenthrin, the Applicant claims that growers will suffer significant economic loss due to inadequate control of the silverleaf whitefly in the aforementioned crops.

Under the proposed exemption, a maximum of four applications for lettuce, and five applications for broccoli, cauliflower, cabbage, and rapini would be made at 0.08 to 0.1 lb. active ingredient (5.2 to 6.4 fl. oz. of product) per acre, by ground or air equipment. At the maximum rates and acreages, the uses proposed in this request could result in a potential total of 27,000 lbs. of active ingredient used. Other restrictions proposed include: a 20–day pre-harvest interval; aquatic buffer zones of 25 ft. for ground and 150 ft. by air; and buffer zones around endangered species habitat of 40 yards for ground and 200 yards by aerial application.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing a use which has been requested or granted in any 3 previous years, and a complete application for registration and/or tolerance petition has not been submitted to the Agency [40 CFR 166.24 (a)(6)]. Such notice provides for opportunity for public comment on the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP-181049] (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 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in ''ADDRESSES'' at the beginning of this document.

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. Comments and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPP–181049]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the California Department of Pesticide Regulation.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: October 17, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–28658 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181050; FRL 5752–5]

Emamectin Benzoate; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Florida Department of Agriculture (hereafter referred to as the ''Applicant'') to use the pesticide emamectin benzoate (CAS 137512–74–4) (formulated as ''Proclaim 5SG'') to control the diamondback moth on up to 13,400 acres of the *Brassica* (cole) leafy vegetable group in Florida. The Applicant proposes the use of a ''new'' chemical (an active ingredient not currently found in any registered product). In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before November 13, 1997.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181050,'' should be submitted by mail to: Public Information and Records Integrity Branch, Information Resources Services Division, (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No Confidential Business Information (CBI) should be submitted through e-mail.

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 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 Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Olga Odiott, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: Rm. 268, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 308–9363; e-mail: odiott.olga@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of emamectin benzoate on the *Brassica* (cole) leafy vegetable group to control the diamondback moth. Information in

accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that the diamondback moth, a pest of almost all crops in the cole vegetable group, has become resistant to registered materials, which were formerly effective at providing control. The applicant states that without an effective control such as emamectin benzoate, the cole crop growers in Florida will likely suffer severe economic losses.

The Applicant proposes to apply emamectin benzoate at a rate of 0.015 lb. active ingredient (a.i.) per acre with a maximum of six applications per crop season, but no more than 0.09 lb. a.i., applied per acre per crop season. The proposed use is for up to 13,400 acres of the cole vegetable group. Therefore, use under this exemption could potentially amount to a maximum total of 1,206 lbs. of the active ingredient, emamectin benzoate. This is the first time an exemption request for this use has been requested by the state of Florida.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** for an application for a specific exemption proposing the use of a new (unregistered) chemical. Such notice provides for opportunity for public comment on the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–181050] (including comments and data 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 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is locate at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be send 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. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181050]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Accordingly, interested persons may submit written views on this subject to the Information Resources and Services Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Florida Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: October 17, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–28643 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5914–7]

Joint EPA/State Agreement on Pursue Regulatory Innovation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit public comment on the draft Joint EPA/State Agreement to Pursue Regulatory Innovation. This draft was prepared jointly by the EPA and the Environmental Council of the States (ECOS). The agreement will provide a framework for how EPA and the States will promote and implement future regulatory innovation efforts. A copy of this notice is available on the Internet at http://www.epa.gov/reinvent.

DATE: Comments are due by November 28, 1997.

ADDRESSES: Comments may be submitted to: Gail Robarge, Office of Reinvention (mailcode 1102), 401 M Street, SW., Washington, DC 20460; email address: robarge.gail@epamail.epa.gov. ECOS members may submit comments to: Tina Parker, Environmental Council of the State, 444 N. Capitol Street, NW., Suite 305, Washington, DC 20001; email address tparker@sso.org.

FOR FURTHER INFORMATION CONTACT: Gail Robarge, EPA Office of Reinvention, phone 202/260–9101, email robarge.gail@epamail.epa.gov; or Bruce Brott, Minnesota Pollution Control Agency, phone 612/297–8380, email bruce.brott@pca.state.mn.us.

SUPPLEMENTARY INFORMATION:

Background

In order to find new, better and more efficient and effective ways to improve environmental protection, the ECOS and EPA Administrator formed a joint task group to develop an agreement on EPA-State regulatory innovation. The purposes of the agreement are to: improve environmental protection in the United States; improve EPA/State environmental management systems; and provide for timely decision-making on innovation proposals.

The agreement establishes guiding principles for innovation and an efficient process that is receptive to innovative proposals from the States for achieving shared environmental objectives. The agreement will encourage and facilitate the exploration of ideas which are potentially more cost-effective and/or have a better environmental impact. It will improve decision-making between the States and EPA on innovation proposals, emphasizing clear lines of communication, decision authority, accountability and timeliness. It will provide opportunities for stakeholder involvement at the state and national levels.

An informal stakeholder meeting was held to discuss the draft agreement in September. Participants offered many thoughtful comments and constructive suggestions (a summary of this meeting is posted on the Web at http://www.epa.gov/reinvent). Comments from the meeting will be taken into consideration by EPA and ECOS as we review other comments received during the next 30 days.

A public meeting to discuss the draft agreement will be held on Nov. 20, 1997, in Washington, D.C. Please contact Louise McLaurin (202/260–4261 or mclaurin.louise@epamail.epa.gov) to register for the meeting and to obtain details regarding time and location.

TEXT OF DRAFT AGREEMENT

Part 1

Joint EPA/State Agreement To Pursue Regulatory Innovation

''* * * We must encourage innovation by providing flexibility with an industry-by-industry, place-by-place approach to achieving standards,* * * But we will require accountability that such standards be met. Rather than focusing on pollutant-by-pollutant approaches, attention must shift to integrated strategies for whole facilities, whole economic sectors, and whole communities.'' [Excerpt from President Clinton's ''Reinventing Environmental Regulation,'' March 16, 1995]

The U.S. Environmental Protection Agency and the states agree on the need to experiment with new approaches to improve our nation's environment. These new approaches can help us identify cleaner, cheaper, smarter ways

to ensure that all Americans enjoy a clean environment and healthy ecosystems. Through this joint commitment, EPA and the states agree to encourage, evaluate, implement, and disseminate ideas that seek better ways of achieving our environmental goals. This agreement presumes that EPA and the states will find ways to help good ideas succeed, and that joint EPA and state efforts to promote and test new ideas will result in the maximum benefit to the American people and their environment.

Two years ago, EPA and the states entered into an historic agreement to establish the National Environmental Performance Partnership System (NEPPS). That agreement recognized that we have achieved significant progress since environmental protection programs were created more than 25 years ago. Yet to meet today's new challenges, we agreed that states and EPA must manage for environmental results, increase public involvement, and use environmental indicators to track our progress. We agreed that states and EPA must become true partners in implementing federal programs, and that different state programs need different levels of federal involvement.

This new partnership creates an environment in which state and local regulatory innovations can, and should, flourish. As the primary, front-line delivery agent for environmental programs, states are a natural laboratory for testing new ideas. State and local environmental professionals are closest to environmental problems and communities, and can often develop the most practical solutions. These professionals should be encouraged to seek innovative solutions that may not fit within the traditional approaches. We agree that our efforts to promote innovation must, in the end, be directed toward achieving our public health and environmental goals in a more efficient or effective way.

EPA also seeks to promote regulatory innovations at all levels. This agreement complements, but does not supplant, other national or state efforts to develop regulatory innovations. Its purpose is to establish a clear pathway and decision-making process for state innovations that have encountered federal barriers or need greater attention to help them succeed.

States and EPA agree that the following principles should guide us as we develop, test and implement regulatory innovations:

Experimentation

Innovation involves change, new ideas, experimentation and some risk of failure. Experiments that will help us achieve environmental goals in better ways are worth pursuing when success is clearly defined, costs are reasonable, and environmental and public health protections are maintained.

Environmental Performance

Innovations must seek more efficient and/or effective ways to achieve our environmental and programmatic goals, with the objective of achieving a cleaner, healthier environment and promoting sustainable ecosystems.

Smarter Approaches

To reinvent environmental regulation, regulators must be willing to change the way we traditionally look at environmental problems and be receptive to innovative, common sense approaches.

Stakeholder Involvement

Stakeholders must have an opportunity for meaningful involvement in the design and evaluation of innovations. Stakeholders may include other state/local government agencies, the regulated community, citizen organizations, environmental groups, and others. The opportunities for stakeholder involvement should be appropriate to the type and complexity of the innovation proposal.

Measuring and Verifying Results

Innovations must be based on agreed-upon goals and objectives with results that can be reliably measured in order to enable regulators and stakeholders to monitor progress, analyze results, and respond appropriately.

Accountability/Enforcement

For innovations that can be implemented within the current regulatory framework, current systems of accountability and mechanisms of enforcement remain in place. For innovations that involve some degree of regulatory flexibility, innovators must be accountable to the public, both for alternative regulatory requirements that replace existing regulations and for meeting commitments that go beyond compliance with current requirements. Regulators will reserve full enforcement authority to ensure compliance with alternative regulatory requirements, and must be willing to explore new approaches to ensure accountability for beyond-compliance commitments.

State-EPA Partnership

The states and EPA will promote innovations at all levels to increase the efficiency and effectiveness of environmental programs. We must work together in the design, testing, evaluation and implementation of innovative ideas and programs, utilizing each other's strengths to full advantage.

EPA agrees to establish a process that ensures timely review and decision-making on state innovation proposals based on implementation of the above seven principles. The states agree to consult early with EPA, to develop proposals consistent with the above principles, and to involve stakeholders. EPA and the states agree on the need for a clearinghouse of regulatory innovations so that promising ideas can be shared across state lines and within EPA.

We agree that the principles and process described in this agreement should be open to continual improvement. As part of ongoing review and evaluation, EPA and the states agree to evaluate the need to further institutionalize the broad principles and process to help future innovations succeed.

Through this agreement, as detailed in Part 2, states and EPA are committed to work together and with all stakeholders to apply the lessons learned from successful innovations in creating the best possible system to achieve greater environmental protection at a reasonable cost. We agree to encourage innovation that will prepare us for meeting our environmental challenges well into the 21st century.

Part 2

I. Overview of This Agreement

This agreement embodies a set of general principles and a process for EPA/State innovation activities. This agreement includes:

—Statements of purpose and scope of the agreement;

—Over-arching principles that will govern joint EPA/state regulatory innovation activities;

—The process EPA and the states will use to identify good ideas, including both the continuation of existing State/EPA interactions to start innovation projects, and the establishment of a new mechanism for making decisions on innovative proposals that do not fit into ongoing reinvention programs; and

—Guidelines for how EPA and the states will evaluate the success of innovation activities carried out under this agreement.

This agreement builds on the many reinvention efforts that are underway in the states and EPA. It is intended to ensure joint decision-making, timely review, broad public involvement, and continued progress in fostering and implementing ideas that are good for

our environment and the people we serve.

II. Purpose and Scope of the Agreement

A. Purpose

The Administrator of the U.S. Environmental Protection Agency (EPA) and senior State environmental officials agree to three purposes for this effort: to improve environmental protection in the United States; to improve EPA/State environmental management practices; and to provide timely decision-making on good ideas. These purposes are described below.

1. Improved Environmental Protection

The Administrator of the U.S. Environmental Protection Agency (EPA) and senior State environmental officials agree that the states and EPA need to encourage, seek out, and try innovative approaches to improve our nation's environment. These innovative approaches can offer mechanisms that are more cost-effective, less adversarial and contentious, and have a better environmental impact. To support sustainable development and continuous environmental improvement, innovations should utilize pollution prevention methods rather than pollution control whenever possible. While we have made significant progress in environmental protection, much remains to be done and no backsliding can be permitted. Innovative approaches offer us tools to improve current environmental protection programs and to tackle the environmental problems of the future.

2. Improved EPA/State Environmental Management Practices

Through this agreement, EPA and the states will develop improved management practices that promote collaboration and shared responsibility for innovations. This agreement is consistent with the concepts embodied in the National Environmental Performance Partnership System (NEPPS). In fact, NEPPS was established, in part, to encourage innovative approaches by states, consistent with agreed-upon environmental goals and indicators. The agreement recognizes that states and local governments are natural laboratories for testing new ideas and that EPA has an important role in promoting innovation at all levels, while continuing to ensure that the states provide fundamental public health and environmental protection. This agreement identifies how we will work together to identify and promote innovative ideas and better ways of doing business. It is intended to help us communicate and evaluate such ideas and to encourage joint decision-making on how such innovations can be fostered, designed and implemented.

3. Timely Decision-Making on Good Ideas

Finding better ways to accomplish our environmental goals is part of the everyday practice of good government. Current processes through which many successful state innovations have been carried out should continue. We recognize that the most challenging regulatory innovation proposals have been difficult to address. This agreement establishes an optional avenue for prompt consideration and evaluation of innovation proposals.

EPA and States may conclude that some successful regulatory innovation projects demonstrate that changes in EPA regulations, policies, guidance, or interpretations are needed to improve the nation's environmental protection system. Where such changes can be made under existing law, EPA will initiate the process for making the changes—following applicable procedures. EPA and States may also initiate policy discussions on potential statutory changes that may be needed to enable nation-wide adoption of innovative approaches.

B. Scope of the Agreement

As used in this agreement, ''regulatory innovation'' is a broad concept. It encompasses the process of proposing, testing, evaluating, refining and sharing innovative approaches to environmental regulation in order to achieve national, regional, state, tribal, and local environmental objectives. Regulatory innovations should be more efficient and/or provide greater environmental protection than current approaches, foster cooperation, and include opportunities for strong stakeholder involvement.

Many types of innovations are possible, and potential innovations will vary in scope, complexity, ease of implementation, environmental benefits, and other characteristics. At this point in time, it is difficult to design a single system or process that is appropriate for all potential innovations. Innovations should be accomplished through the normal course of business whenever possible. This agreement provides a clear pathway for innovative proposals that need extra attention or are too complex to be handled through normal channels. Proposals that are less complex can be implemented more quickly, leading to early success, while more difficult projects will likely need more analysis and stakeholder participation. This agreement builds on and complements other innovation activities, but is not intended to replace them.

III. Principles for EPA/State Regulatory Innovation

EPA and the States agree to a set of basic overarching principles which will guide our joint regulatory innovation activities. There are seven overarching principles relating to regulatory innovation activities—Experimentation, Environmental Performance, Smarter Approaches, Stakeholder Involvement, Measuring and Verifying Results, and Accountability/Enforcement, and State-EPA Partnership.

A. Experimentation

Innovation involves change, new ideas, experimentation, and some risk of failure. Experiments that will help us achieve environmental goals in better ways are worth pursuing when success is clearly defined, costs are reasonable, and environmental and public health protections are maintained.

1. The States and EPA should recognize the value of prudent risk-taking and value-added experiments to achieve improved results.
2. The States and EPA should seek ways to make good ideas work, presuming that change and innovations consistent with environmental goals are worth our investment.
3. The States and EPA should carefully monitor and manage innovations to ensure that problems are immediately identified and remedied. Experimentation should be based on sound judgment, reasoning and common sense.
4. If a promising experiment encounters difficulties, but environmental protection is not jeopardized, project sponsors should be allowed sufficient time to fix problems before the experiment is abandoned in favor of the traditional approach.
5. Innovations with greater potential benefits may warrant some additional risk-taking.
6. Experimentation does not include relaxing health or environmental standards or reducing protection of public health or the environment.

B. Environmental Performance

Innovations must seek more efficient and/or effective ways to achieve our environmental and programmatic goals, with the objective of achieving a cleaner, healthier environment and promoting sustainable ecosystems.

1. Protecting public health and the environment are the primary goals of

both EPA and State environmental agencies, and we agree that innovations can help us find cleaner, cheaper, smarter ways of improving our nation's environment.

2. Many opportunities exist to improve environmental protection through innovations that have the clear potential to provide environmental and ecosystem benefits. In addition, innovations may be designed primarily to improve the cost effectiveness of achieving environmental goals; these projects must ensure that there is no adverse impact on: environmental protection, public access to information, and public access to the decision-making process.

3. For projects that have a greater uncertainty of the environmental outcome, or that involve experimental technologies or approaches, alternative requirements should be expected to have the clear potential to provide increased environmental protection, promote ecosystem sustainability, or both. EPA and the state agency, in their best judgment and in consultation with stakeholders, will determine whether such proposals have the clear potential to produce appropriate gains in environmental protection, improved sustainability of the ecosystem, or both.

4. Innovations may be designed to fit local and regional conditions, as long as local solutions do not create environmental problems for other localities, such as undesired downwind and downstream effects, or undermine national standards.

5. No population group should be subjected to unjust or disproportionate environmental impacts as a result of the innovation.

C. Smarter Approaches

To reinvent environmental regulation, regulators must be willing to change the way we traditionally look at environmental problems and be receptive to innovative, common sense approaches.

1. Regulators should seek creative ways to remedy environmental problems or improve environmental protection in a community, facility, sector or place.

2. Regulators should work with industry and communities to solve environmental problems by removing barriers that prevent prudent, common sense solutions.

3. Regulators should be professional, accountable and deserving of the public's trust.

4. Regulators should seek to understand all perspectives, and help stakeholders find common ground.

5. Regulators should act promptly to evaluate, and implement, proposals that are straightforward, technically achievable, and have clear advantages, while ensuring adequate public review.

D. Stakeholder Involvement

Stakeholders must have an opportunity for meaningful involvement in the design and evaluation of innovations. Stakeholders may include other state/local government agencies, the regulated community, citizen organizations, environmental groups, and others. The opportunities for stakeholder involvement should be appropriate to the type and complexity of the innovation proposal.

1. Innovations should include opportunities for early, open, and inclusive stakeholder involvement in project development, specifically including those who may be affected by the decisions. Stakeholders should be provided adequate time to review proposals and participate in the process.

2. Consistent with the principle of providing meaningful opportunity for stakeholder involvement, each State should have the flexibility to use its own stakeholder participation process, as long as applicable federal and state requirements are met or exceeded. EPA and States will identify national program issues and ensure opportunities for active involvement from national stakeholder groups.

3. Project proposals and the process for their consideration should be made transparent to stakeholders so that the benefits of the proposed change can be fully evaluated. Information needed to understand the proposed innovation and to verify compliance and environmental performance should be publicly available in an understandable form. EPA and States commit to provide regular analysis of the types of innovations implemented and their environmental impacts.

E. Measuring and Verifying Results

Innovations must be based on agreed-upon goals and objectives with results that can be reliably measured in order to enable regulators and stake-holders to monitor progress, analyze results and respond appropriately.

1. The success of innovations should be judged by the results they achieve. Goals and objectives should be: established in advance, measurable, and based on the desired results.

2. Results should be verifiable by reliable measurements and both process and results should be understandable to regulators and the public.

3. Regulators should have access to high quality information sufficient to verify the environmental performance of an innovation.

4. Regulators and the public should have a full understanding of the differences between the innovation and traditional approaches, including expectations for the project, accountability for performance, and any potential risks.

F. Accountability/Enforcement

For innovations that can be implemented within the current regulatory framework, current systems of accountability and mechanisms of enforcement remain in place. For innovations that involve some degree of regulatory flexibility, innovators must be accountable to the public, both for alternative regulatory requirements that replace existing regulations and for meeting commitments that go beyond compliance with current requirements. Regulators will reserve full enforcement authority to ensure compliance with alternative regulatory requirements, and must be willing to explore new approaches to establish accountability for beyond-compliance commitments.

1. During the project, existing statutory and regulatory requirements remain in effect and fully enforceable for persons or activities not covered by the innovation project.

2. If a promising innovation project encounters difficulties, but environmental protection is not jeopardized, flexible enforcement responses should be used to allow project sponsors sufficient time to fix problems before a project is abandoned in favor of the traditional approach.

3. Regulators must have authority to address such circumstances as imminent and substantial endangerment, actual harm, or criminal conduct.

4. Innovations may include both: (a) Enforceable ''alternative regulatory requirements'' that provide protection equivalent to current environmental standards, and (b) other ''beyond-compliance commitments'' which seek to exceed current standards or requirements. Alternative regulatory requirements and beyond-compliance commitments should be clearly distinguished in advance.

Alternative Regulatory Requirements:

—Alternative regulatory requirements should be enforceable with all the remedies available under current law.

—Regulators should use enforcement discretion in choosing remedies when a facility fails to meet alternative regulatory requirements.

—Potential responses for failure to meet such alternative regulatory

requirements should be identified in advance.

Beyond-Compliance Commitments

—As part of an innovation, facilities may agree to beyond-compliance commitments in exchange for regulatory flexibility or some other incentive.

—Potential responses for failure to meet such beyond-compliance commitments should be defined in advance.

—Responses for failure to meet beyond-compliance commitments should fit the circumstances. They may include trying a different approach, modifying the innovative approach, or reverting to the traditional approach, but they should not include enforcement penalties.

G. State-EPA Partnership

The States and EPA will promote innovations at all levels to increase the efficiency and effectiveness of environmental programs. We must work together in the design, testing, evaluation and implementation of innovative ideas and programs, utilizing each other's strengths to full advantage.

1. As the primary front-line managers of many environmental protection programs, the States and local governments are a natural laboratory for innovations. The States should manage their own programs, adapt to local conditions, and test new approaches for delivering more environmental protection for less.

2. The federal government should ensure good science, strong national health and environmental standards, and should work in partnership with the States by providing analysis, expertise, and facilitating learning among the States. EPA should promote innovation at all levels (national, regional, state, tribal, place-based, community, and in the private sector). EPA retains its role to set national standards and measures, implement programs not delegated to states or tribes, address interstate issues, apply and interpret national statutes and regulations, and ensure fair and effective enforcement, thus ensuring that all States provide fundamental public health and environmental protection.

3. EPA and State roles in innovations must be clearly designed to utilize each party's unique strengths and avoid duplication. Decision makers should be clearly identified.

4. Assigned roles and responsibilities should be honored and respected, and joint problem-solving should be encouraged.

5. Communication must be open, honest, frank and frequent. The States and EPA should work to understand each other's perspectives, achieve consensus on major issues, make decisions in a timely manner, and resolve conflicts quickly and efficiently.

IV. Process for Considering State Innovations Proposals

EPA and the states are engaged in many successful efforts to reinvent environmental regulation. These efforts should continue unimpeded. EPA and the States agree that, where procedures currently exist, innovation proposals should be handled through normal EPA/state program activities or other ongoing reinvention activities. Proposals that do not fit into an existing pathway can be handled via the new process established under this agreement.

The process of developing Performance Partnership Agreements (PPAs) under National Environmental Performance Partnership System offers one opportunity for States and EPA, working with stakeholders, to agree on innovative approaches to pursue. However, participation in a PPA is not the only avenue for States and EPA to work on innovative approaches. Memorandum of Agreements and/or Work Plans can serve the same function as a PPA. Inclusion of anticipated innovative approaches in the PPAs or other agreements will allow the states and EPA to allocate staff resources and establish priorities for innovative projects. For example, individual states may choose to place higher priority on innovation projects which promote clear cost or environmental benefits for the public. It is envisioned that States will include in the PPAs or other agreements a discussion of potential innovative activities, indicating how the innovations link to environmental goals and providing a picture of proposed changes.

A. Use Existing Pathways

This agreement is designed to supplement, rather than replace, ongoing innovation activities underway in EPA and the States. Such innovation activities should continue. State innovations that do not require a change to Federal guidance, regulations or statutes can proceed without EPA review. EPA's role will consist of support and advice, if requested. EPA and States should continue to work together on innovations that may involve using existing flexibilities in current law and regulation, and on existing innovation programs such as Project XL.

B. New Process Established Under This Agreement

The States and EPA agree to establish an optional process which States may use to get timely decisions on innovation proposals. This process includes senior-level management attention and specific time frames to ensure prompt decisions by EPA. The following process establishes a management framework so that actions and next steps, along with interested participants and decision-makers, can be clearly identified and taken into account. EPA's Regional Administrators are responsible for ensuring that the process moves forward; individual states are expected to establish similar senior-level points of contact to manage the State's role in the innovation process.

This process is intended to be flexible. For example, EPA Regional Offices, EPA Headquarters Offices, and the States are encouraged to maintain open lines of communication at both staff and management levels beyond the formal process described below, and states are encouraged to invite EPA into the early discussion stages of any project. Early consultation between EPA and the States is important in identifying obstacles early and in determining who needs to be involved so that the project can move forward expeditiously.

EPA will also work with individual States as needed to establish priorities in the review of proposals based on guidance developed in the Performance Partnership Agreement or other EPA/State agreed mechanism. EPA and the States recognize that the success of this process will be affected by the quality and clarity of proposals and the effectiveness of communication between EPA, the state, and stakeholders. The States and EPA are committed to working together to ensure that communications are frequent, open, honest, and directed to finding means to allow innovations to succeed.

While one of the objectives of the innovation proposals is efficiency, the very act of designing an experiment, testing the hypothesis, and evaluating the results may be resource intensive for all parties. The optimum management of resources by EPA and the State will help ensure the success of the review process, the implementation of the projects, and adherence to time lines.

1. Stage One—Developing Quality Proposals

States and EPA recognize that clear, well-developed proposals will facilitate review and speed decision-making.

States are encouraged to consult with EPA as early as possible in the development of a proposal. The States should be able to use this early consultation process to develop a clear understanding of their proposals with EPA and key stakeholders.

During the early consultation, the State and EPA will identify issues that need attention, possible barriers to implementation, uncertainties regarding risks, and value added to all parties. These discussions will be open and candid and will provide the States with information that will be important and useful for the development of the proposal. While early consultation is encouraged, not all proposals will require the same degree of discussion and/or consultation.

EPA and States will bring a positive, constructive approach to consideration of proposals and seek ways to help good ideas to succeed.

States will prepare proposals that: (a) Are consistent with the principles described in this agreement, and (b) clearly present the objective of the proposal, the expected benefits, a description of the activities, and a determination as to whether the proposal: may require a change to Federal guidance, policy, past practices or rule interpretation, but not regulations or statutes; may require a change to or waiver from Federal regulations, but not statutes; or, may require a change to a Federal statute.

EPA will: (a) Provide clear statements of its position, along with timely and authoritative answers to questions about what changes, variances, or associated approvals a particular proposal may require; and (b) work with the State to identify the most efficient path by which a particular proposal could be implemented.

In addition, States will provide meaningful opportunities for stakeholder involvement in the development of regulatory innovation proposals. The degree of stakeholder involvement depends on the nature of the proposal. Where a proposal would involve a change in or variance from existing national guidance, regulations, or statutes, early consultation among EPA, states, and national stakeholder groups can help identify critical issues that need to be addressed. If EPA believes that national stakeholder involvement is warranted, EPA will contact the State and identify, in partnership with the State, an approach to obtain such involvement as early in the process as possible.

The Senior State Environmental Official or their designee then submits a written description of the regulatory innovation proposal to the EPA Regional Administrator, who then initiates the review process described below. The State will designate a high-level official as the single point of contact for each project.

2. Stage Two—Review of Proposal and Decision

a. EPA Review. The EPA Regional Office will have primary responsibility for review of the innovation proposal. This responsibility includes proposal distribution within the Region and to the affected EPA National Program Managers and the Office of Reinvention; review and response to the State; and appropriate stakeholder involvement. In cases where national policy or regulatory issues are involved, the Regional Administrator must ensure complete review by relevant national program offices.

EPA will consider several factors in the review of the innovative proposals, including

(1) Consistency with the principles in this agreement;

(2) Comments from stakeholders;

(3) Type of flexibility from federal guidance or regulation needed to implement the proposal;

(4) Clear presentation and analysis of issues;

(5) Potential benefits of the innovation as compared to the investment of time and resources required for implementation, and impact on agencies' resources and workloads.

The review process is intended to be flexible. EPA and the State should maintain open lines of communication at all levels—staff and management—to ensure that questions and concerns are raised and discussed. During the review process, EPA may seek input from other States and stakeholders, including environmental groups and the regulated community, to fully identify the strengths and weaknesses of the proposal.

b. EPA Decision. Upon completion of the consultation and review period, the Regional Administrator will make a decision to accept or reject a proposal. If a proposal involves a national policy or regulatory issue, the decision will be made jointly with relevant National Program Managers and the Office of Reinvention. This decision will be communicated verbally and in a written form to the designated Senior State Environmental Official. If the proposal is not accepted, the decision will include the rationale for the determination.

EPA and the State will determine the category into which the proposal falls. The type of proposal will have an impact on the time frame for implementation. The categories are:

Category 1: Straight-forward, transparent proposal with clear advantages, few obstacles, technically achievable, and minimum environmental risk.

Category 2: Experimental proposal that has a greater uncertainty of environmental outcome; requires more attention to design, implementation, and evaluation; and may involve some risk of failure. The unpredictability of the experiment means that it will be more resource intensive and may require more time.

Category 3: Strategic proposal that involves broad-based, new approaches (e.g., statutory changes) and requires policy discussion to further develop concepts. Proposals may be assigned to an existing policy forum for discussion or a new forum could be established.

If the proposal requires changes of interpretation or substance regarding national statutes, regulations or policies before proceeding with an innovation project, both EPA and the State will reach agreement on all proposed changes. These projects will be accomplished through mechanisms available under Federal law and regulation, which may include variances, site-specific rules, legal interpretations, or other means.

c. Appeals. In the event that a dispute arises during this process or a State disagrees with a Region's decision, the State may appeal in writing to the EPA Deputy Administrator. The State may also request a review by a panel consisting of EPA Senior Managers and State Commissioners. The panel will review the proposal, the issues, and merits of the dispute, and submit recommendations to the EPA Deputy Administrator for a final decision.

4. Time Frames for Decision

EPA and the States are committed to working together to ensure timely responses to State proposals.

a. Initial response to proposal. EPA will respond to the State with follow-up questions, clarifications, and initial reactions including an initial identification of obstacles to approval within four weeks of its receipt of a written innovation proposal from the State.

b. Decision to proceed with proposal: EPA will decide whether to make a favorable recommendation within 3 months of the receipt of a proposal from the State. Decisions on proposals may be reached more quickly for proposals that are straight-forward, with clear

advantages, widely supported, technically achievable, and implementable in the short-term.

V. Measuring and Evaluating Success

Before an approved proposal is implemented, we must define success and how we will measure it. This can help eliminate misunderstandings about whether or not the process and innovation as a whole is progressing effectively, and if it is not, what steps need to be taken to correct any problems.

Therefore, EPA and the States agree on the importance of evaluating the success of regulatory innovation activities that flow through the process outlined in Section IV. The challenge is to develop useful measures without choking the very creativity we seek to stimulate. We want to ensure that a variety of ideas are being proposed, that decisions are made in a timely fashion, and that the most promising innovations are being implemented successfully. To accomplish this, we must measure both the success of our decision-making process and the success of the innovations themselves.

A. Measuring the Process

We must ensure that the decision making process is effective, or the process will not be used. The success of the process depends primarily on the effectiveness of the communications between EPA and the States and the timeliness of decisions. Measurements include: (1) the number and quality of innovation projects proposed, (2) the number and quality of innovations implemented, (3) the timeliness of the actions taken in the process, (4) the number of proposals appealed, and (5) the speed with which information about successful innovations are disseminated to other states. EPA and states will also evaluate other factors that are difficult to measure but are critically important to successful outcomes, including the degree of EPA-State cooperation and stakeholder participation. EPA should collect this information and make it available at a central location so it can be used by the States, EPA, and stakeholders. Within 60 days of signing this agreement, EPA and ECOS will designate a central location.

B. Measuring the Innovation's Impact

The success of the innovation project's impact will depend on how well it was designed and the results achieved. Successful innovation project designs should be clearly described so successful projects can be used to improve the entire system, and/or adapted to other site specific situations. The quality of the projects implemented can be measured by: (1) Environmental impact, (2) efficiency, and (3) other relevant indicators. In addition to providing information about the success of an individual innovation project, these measurements also provide guidance on improving future innovation projects. States and EPA should agree in advance who is responsible for collecting and disseminating this information.

The proposed measures in Appendix A provide a starting point for discussion in terms of a framework and some common criteria for innovations. Common criteria allow the states and EPA to evaluate the progress in innovations state-wide and nationally.

VI. Information Sharing

Accepted state innovation proposals and completed projects are most valuable when widely available to state and local regulators, the regulated community, environmental organizations and the public at large. We agree on the need to share information, track commonalities and analyze barriers to promising state innovations. Knowledge of both successes and failures will help the states, EPA and stakeholders develop better approaches for achieving our environmental goals. Because sharing information and innovative ideas among the states is core to ECOS' mission, ECOS will set up a regulatory innovation clearinghouse that highlights the results of this agreement and other state/EPA innovations that EPA Regional Reinvention Ombudsmen or State Commissioners deem appropriate.

VII. Next Steps

EPA and the States agree on the following steps to ensure prompt implementation of the agreement:

A. Joint Evaluation

By October 1998, states and EPA will begin to evaluate the success of regulatory activities that have been reviewed under the new process. The evaluation will consider both the environmental and efficiency benefits derived from each innovation, and the efficiency of the new review process. The results of the evaluation will be shared with EPA, the states and stakeholders.

B. Modifications to the Agreement

If the evaluation indicates a need to modify or amend this agreement, EPA and the states agree to discuss such modifications or amendments and make needed changes by January 1999.

Attachments:

A. Model for Core Performance Measures

B. Examples of Regulatory Innovations

Attachment A—EPA/State Environmental Regulatory Innovations Core Performance Measures

Environmental Goal

A sustainable environment with healthy communities and ecosystems

Environmental Objectives

—Air quality improvements
—Water quality improvements
—Land quality improvements

Program Objectives (Outcomes)

—More effective and efficient environmental regulatory systems
—Reductions in releases to the environment
—Reductions in resources expended to implement the regulatory process, by regulators, regulated entities, other stakeholders: time, workyears, money
—Increased stakeholder participation in the regulatory process
—Large majority of high priority, high quality innovation projects are successfully implemented
—Successful results of innovation projects are: clearly described, widely disseminated, adopted in other site specific situations, used to improve entire systems

Program Activities (Outputs)

—Number of innovation projects proposed
—Number of innovation projects implemented
—Quality of projects implemented: environmental, efficiency, other indicators
—Stakeholder participation
—Timeliness of actions taken in process

Attachment B—Examples of Regulatory Innovations

To encourage creative thinking and the development of good regulatory innovation proposals, EPA and the States have developed the attached examples of regulatory innovation projects. Four examples of potential regulatory innovations are provided. Examples 1, 2 and 3 are suggestions of innovative ideas that states have developed—they are intended to illustrate the kinds of proposals that may be developed. These examples have not been reviewed or accepted by EPA as projects for this process. Example 4 describes an innovative proposal that was recently implemented in North Carolina.

Example 1: Mercury in Wastewater Effluent

Objective: Substitute sludge testing and limit requirements for mercury in place of effluent limits and monitoring requirements in NPDES permits for municipalities.

Description and expected benefits: Mercury cannot be detected accurately in municipal wastewater effluent. Dilution of mercury in effluent leads to non-detectable monitoring results. In addition, mercury test methods at the low levels seen in municipal effluent can easily pick up contamination of sampling and analysis and lead to false positives. As a result, most municipalities

can show compliance with mercury effluent limits and need take no steps to reduce mercury in their effluent.

This proposal would eliminate effluent limits from NPDES permits for municipalities, and instead substitute sludge monitoring (where mercury concentrates in the wastewater treatment process). If mercury in sludge exceeds federal clean sludge levels, municipalities would be required to develop mercury source reduction programs. Since mercury can be more accurately detected in sludge, this would lead to better targeting of the municipalities that need to develop mercury source reduction programs.

Federal obstacle halting or hindering progress: Requires changes in either federal statute or variance/change in federal regulations. Attorneys state that sludge requirements as proposed cannot be tied to surface water standards.

Additional background information: This proposal was strongly supported by municipalities, environmental groups, Wisconsin DNR staff, and EPA staff. All saw that this proposal would lead to greater environmental benefits than the current NPDES system.

State: Wisconsin Department of Natural Resources, Bureau of Watershed Management.

Example 2: Continuous Emissions Monitoring for Air Pollutants

Objective: Create a flexible approach to compliance demonstration for air emission limits that have been consistently achieved. In exchange, install continuous emissions monitoring for other toxic pollutants for which more data is needed. This approach would reward facilities which have demonstrated superior environmental performance with simplified compliance demonstration requirements.

Description and expected benefits:

—Federal guidance on practical enforceability requires that compliance demonstration schemes use available technology which produces verification of compliance data as frequently as practically possible.

—A facility is required to use continuous emission monitors (CEMs) to show compliance with an air emission limit. Data has been gathered for several years and it shows consistent emission levels at or lower than 50% of the limit. In addition, other surrogate process parameters are continuously monitored.

—The permittee wishes to show compliance by an alternative compliance method which requires periodic testing to assure continued compliance. The surrogate parameters will continue to be monitored and will be used to ensure that the operating conditions remain within the range under which compliance has been demonstrated by periodic testing.

—In exchange, the facility agrees to install CEM for certain toxic organics from certain processes. The nature and levels of these toxics are not very well defined based on mass balance approaches. The information generated by these CEMs will be useful for an air toxics analysis being conducted in the area.

Federal obstacle halting or hindering progress: Requires change or deviation from established EPA policies regarding federal enforceability as a practical matter on emission limits. However, the demonstrated level of confidence on compliance warrants a less rigorous approach, particularly because it includes a periodic verification process.

Additional background information: The permittees believe that it is important to build a trust relationship with regulators to be able to re-direct resources to areas where the need is greater to realize further improvements or to generate new information on environmental matters.

State: Minnesota Pollution Control Agency, Air Quality Division, Permits Section

Example 3: Tiered Permitting System for Hazardous Waste Facilities

Objective: Create a permitting system for hazardous waste (HW) management facilities that are presently exempt from the existing RCRA Part B permitting system but still pose a potential threat to human health and the environment if improperly designed and operated.

Description and expected benefits:

—Current RCRA regulations exempt recycling facilities from any permitting requirements, but require a Part B permit if HW is stored prior to recycling.

—Environmentally safe recycling is preferable to disposal and should be encouraged.

—Recycling facilities can be as complicated as treatment and disposal facilities and require some oversight to ensure that they are protective of human health and the environment.

—Requiring the standard Part B permit for recycling facilities creates a disincentive and may greatly limit the number of recycling facilities.

—A less onerous tiered permit provides regulatory oversight and does not pose the same disincentive as a Part B permit for recycling facilities.

—The tiered permit incorporates performance standards and financial assurance as appropriate and is custom tailored to the facility without requiring all of the elaborate features of a Part B permit.

Federal obstacle halting or hindering progress: May require a variance from federal statutes and regulations that prescribe standards and require a Part B permit for storage of HW depending on what type of storage activities are covered under the tiered permit.

Additional background information: State legislation required fluorescent lamp recyclers to be permitted. Rules are in the development stage with extensive regulated community involvement. The tiered permitting system will be extended to all types of HW facilities for which a Part B permit is not required or not appropriate, including recyclers and some types of storage facilities.

State: Minnesota Pollution Control Agency, Hazardous Waste Division, Regulatory Compliance Section.

Example 4: River Basin-Based Planning and Permitting

Objective: To coordinate stream modeling and permitting on a river-basin or sub-basin scale instead of in a piecemeal fashion.

Description and expected benefits:

River-basin based planning and permitting would:

—Enable better planning and resource allocation

—Increase consistency between permits

—Increase consideration of basin-wide pollutant inputs (point and nonpoint) for better decision-making and planning

—Improve efficiency of modeling, data collection for modeling, and permitting activities

—Provide opportunity for greater stakeholder involvement in the planning process

Federal statutes prohibit permits with a term greater than five years. To synchronize NPDES permit renewal for an entire river basin, the state had to issue five year permits followed by an additional short-term permit. The burden on permitting and modeling staff was further increased because EPA Region IV was also pressing NC to address its permit backlog. The state lacked sufficient modeling resources to address the existing backlog and also issue short term permits in selected basins. The state proposed to reissue the short-term permits with existing limits without modeling and to refocus its permitting staff away from the permit backlog and toward the basin-wide permitting approach. Region IV was hesitant to endorse the basin-wide concept.

Contact with EPA Headquarters (Office of Water) convinced EPA to hire a facilitator to help the state develop an implementation strategy for the basin-wide planning and permitting approach. EPA Headquarters also sponsored a workshop to obtain input from surrounding states. This involvement allowed the state to develop a convincing strategy, and subsequently, Region IV agreed to the proposal. EPA also provided a 104(b)(3) grant to increase monitoring and modeling in the Tar-Pamlico River Basin to help pilot the approach.

Federal obstacle halting or hindering progress: Required change in EPA past practice.

Additional background information: At first, permittees reacted to the short-term permits due to the extra burden of completing permit applications and paying application fees. However, the concerns of permittees were quelled by pointing out the long-term improvements in consistency among permits in the river basin and in efficiency of issuing these permits. Environmental stakeholders were supportive of the approach from the start due to a greater opportunity for involvement in the planning process.

State: North Carolina.

Dated: October 16, 1997.

J. Charles Fox,

Associate Administrator, Office of Reinvention.

[FR Doc. 97–28553 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5915–2]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Office of Management and Budget's (OMB) responses to Agency clearance request, in compliance with the paperwork Reduction Act (44 U.S.C. 3501 et. seq.). 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.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740, please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1812.01; Public Water Systems Annual Compliance Report; was approved 09/30/97; OMB No. 2040–0186; expires 09/30/2000.

EPA ICR No. 1176.05; NSPS for New Residential Wood Heaters—40 CFR 60.530 thru 60.539(b), Subpart AAA; was approved 09/26/97; OMB No. 2060–0161; expires 09/30/2000.

EPA ICR No. 1672.02; Request for Information for Bioremediation Field Initiative Database System; was approved 05/15/97; OMB No. 2080–0048; expires 05/31/2000.

OMB Disapprovals

EPA ICR No. 1813.01; Information Collection Request of Proposed Regional Haze Rule; was disapproved by OMB 10/03/97.

EPA ICR No. 1801.01; National Emission Standards for Hazardous Air Pollutants Cement Manufacturing; was disapproved by OMB 10/03/97.

EPA ICR No. 1788.01 NESHAP for Source Category: Oil and Natural Gas Production; was disapproved by OMB 10/14/97.

EPA ICR No. 1789.01; NESHAP for Source Category: Natural Gas Transmission and Storage; was disapproved by OMB 10/14/97.

Notice of Short Term Extensions

EPA ICR No. 1676.01; Clean Air Act Tribal Authority; OMB No. 2060–0306; expiration date was extended from 10/31/97 to 03/31/98.

EPA ICR No. 1637.03; Determining Conformity of General Federal Actions to State Implementation Plans; OMB No. 2060–0279; expiration date was extended from 10/31/97 to 04/30/98.

Dated: October 23, 1997.

Joseph Retzer,

Division Director, Regulatory Information Division.

[FR Doc. 97–28646 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5914–9]

Proposed Settlement Under Section 104 and 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act; Yakima Plating Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is seeking public comment on a proposed administrative settlement to resolve claims against Robert and Shirley Mastel under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve all liabilities of Robert and Shirley Mastel for costs incurred by EPA at the former Yakima Plating Company electroplating facility in Yakima, Washington.

PUBLIC COMMENT PERIOD: Comments must be provided on or before November 28, 1997. The public is encouraged to comment on the proposed settlement, called an Administrative Order on Consent, in writing during the pubic comment period. Comments should be sent to: Sean Sheldrake, Project Manager, U.S. Environmental Protection Agency (ECL–111), 1200 Sixth Avenue, Seattle, Washington 98101.

SUPPLEMENTARY INFORMATION: In accordance with section 122(h) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Yakima Plating hazardous waste Site located at 1804 ½ South Third Street, Yakima, Washington. The Site was listed on the National Priorities List (NPL) on March 31, 1989 (54 FR 13296). EPA completed a Remedial Investigation and Feasibility Study for the Site on August 1, 1991. A Record of Decision (ROD) for the Site was issued by EPA on September 30, 1991. The ROD's selected remedy included excavation and decontamination of underground tanks on-Site, removal of electroplating liquids stored in containers, excavation of contaminated soils, disposal of contaminated soils at an off-site hazardous waste disposal facility, and monitoring of the groundwater under the Site. On June 15, 1992, EPA removed approximately 2567 cubic yards of contaminated soil and debris from the Site. The Site was then backfilled with gravel and a layer of topsoil. Results of groundwater monitoring indicated that no further work was necessary at the Site to protect human health and the environment. As such, the Site was removed from the NPL on August 23, 1994 (59 FR 43291). Cleanup costs incurred by EPA totaled more than $2.5 million, excluding interest. Subject to review by the public pursuant to this Notice, the agreement has been approved by the United States Department of Justice.

The EPA is entering into this agreement under the authority of sections 122(h), 104, and 107 of CERCLA, 42 U.S.C. 9622(h), 9604, and 9607. Section 122(h) authorizes administrative cost recovery settlements with responsible parties, and where the total response costs exceed $500,000, such cost recovery settlements must be approved by the Department of Justice. Under this authority, the agreement proposes to settle with Robert and Shirley Mastel, the owners of the property upon which Yakima Plating Company operated its chrome replating facility. In the proposed agreement, Robert and Shirley Mastel, owners of the property, have agreed to reimburse EPA $50,000, which is the fair market value of the property that was cleaned up by EPA. Payment will be made within 30 days of the effective date of the Administrative Order. They have also agreed to pay EPA 50 percent of any money that they are able to recover from other potentially responsible parties or insurance companies related to the Site. Upon making their initial payment to EPA, Robert and Shirley Mastel will receive a release from further civil or administrative liabilities for the Site and will receive statutory contribution protection under section 122(h)(4).

EPA will receive written comments relating to this proposed settlement for

a period of thirty (30) days from the date of this publication.

The proposed settlement agreement and all documents relied upon by EPA in making decisions for this site are included in the Administrative Record which is located in the Information Repository at: The Yakima Public Library, 102 North Third Street, Yakima, Washington.

If you have any questions about the proposed settlement, please contact Sean Sheldrake at (206) 553–1220 or call EPA's toll free number 800–424–4372. People with impaired hearing or speech may contact EPA's telecommunications device for the hearing impaired (TDD) at (206) 553–1698. To ensure effective communication with everyone, additional services can be made available to persons with disabilities by contacting one of the numbers listed above.

Authority: The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601–9675.

Chuck Clarke,

Regional Administrator.

[FR Doc. 97–28648 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5914–5]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding American Commercial Marine Service Company, Jeffersonville, Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding American Commercial Marine Service Company, Jeffersonville, Indiana.

SUMMARY: The EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act (Act). The EPA is also 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. The EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. The EPA provides the 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 document.

On September 30, 1997, EPA commenced the following Class II proceeding for the assessment of penalties by filing with Venessa Cobbs, Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following two Complaints: *In the Matter of American Commercial Marine Service Company, Jeffersonville, Indiana*, EPA Docket Nos. VII–97–W–0054 and VII–97–W–0055.

The Complaints proposed penalties of Zero Dollars ($0) for failure to obtain a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of pollutants into navigable water of the United States in violation of section 301(a) of the Clean Water Act.

Under the EPA's final policy statement on Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations (60 FR 66706 *et seq.*, December 22, 1995). companies who voluntarily self-disclose violations of statutes may be eligible for a reduction of penalties. American Commercial Marine Service Company has voluntary self-disclosed violations in satisfaction of the terms of the EPA's final policy and penalties have been reduced to Zero ($0).

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaints, or other documents filed in this proceeding, Comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact Venessa Cobbs, Regional Hearing Clerk, at (913) 551–7630.

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 American Commercial Marine Service Company, Jeffersonville, Indiana, 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 penalties in these proceedings prior to thirty (30) days from the date of this document.

Dated: October 17, 1997.

William Rice,

Acting Regional Administrator.

[FR Doc. 97–28550 Filed 10–28–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 21, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Premier Bancshares, Inc., Atlanta, Georgia; to merge with Citizens Gwinnett Bankshares, Inc., Duluth, Georgia, and thereby indirectly acquire Citizens Bank of Gwinnett, Duluth, Georgia.

Board of Governors of the Federal Reserve System, October 23, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28560 Filed 10–28–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 12, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Mid America Mortgage Services, Inc., Columbia, Missouri; to engage in making, acquiring and servicing mortgage loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 23, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–28559 Filed 10–28–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–02–98]

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.

Proposed Projects

1. Health Effects from Exposure to High Levels of Sulfate in Drinking Water—New—The Safe Drinking Water Act Amendments of August 1996 require the Centers for Disease Control and Prevention, in collaboration with the U.S. Environmental Protection Agency, to conduct a dose-response study of the health effects of exposure of susceptible populations to drinking water that contains sulfate. There is concern that individuals who are not used to drinking water containing sulfate will experience diarrhea when they first drink tap water containing high levels of sulfate. The effect is acute and temporary. However, becoming acclimated, or used to, water with high levels of sulfate may take approximately two weeks, during which time individuals, particularly those who cannot control their fluid intake, i.e., infants, may become dehydrated. Previous studies of the effects of sulfate on the incidence of diarrhea have suffered from a number of limitations, including small sample size, failure to account for other causes of diarrhea, and inadequate characterization of the water itself. This study will analyze the incidence of diarrhea in non-acclimated infants and adults exposed to drinking water containing a range of sulfate concentrations by collecting data from mothers of newborn infants living in areas with a range of naturally-occurring sulfate levels and adult volunteers who will consume drinking water containing specific levels of sulfate. The total burden hours are 6063.4.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hrs.)
Recruitment-Mothers	1600	1	0.25
Second Interview-Mothers	880	1	1
1st Follow-up phone call	880	1	0.25
2nd Follow-up phone call	880	1	0.16666
3rd Follow-up phone call	440	1	0.16666
4th Follow-up Phone call	220	1	0.16666
5th Follow-up Phone call	110	1	0.16666
Diary-mothers	880	28	0.16666
Accessing Medical Records	80	1	0.0833
Adult volunteers: questionnaire	150	1	0.16666
Diary	150	6	0.16666

Dated: October 23, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–28599 Filed 10–28–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Biologics License Application for Blood Products, and Reporting Changes to an Approved Application; Public Workshop

AGENCY: Food and Drug Administration.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Workshop on the Biologics License Application (BLA) for Blood Products, and Reporting Changes to an Approved Application.'' The topics to be discussed include completing Form FDA 356h; chemistry, manufacturing, and controls information; establishment information; changes requiring supplement submission and approval; changes requiring supplement submission at least 30 days prior to distribution; changes to be described in an annual report; and comparability protocols.

Date and Time: The workshop will be held on December 2, 1997, 8:30 a.m. to 5 p.m.

Location: The workshop will be held at Jack Masur Auditorium, National Institutes of Health, 8800 Rockville Pike, Bldg. 10, Bethesda, MD 20892.

Contact: Joseph Wilczek, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3514, FAX 301–827–2843.

SUPPLEMENTARY INFORMATION: The public workshop is intended for firms which manufacture or intend to manufacture licensed human blood products, including products for transfusion and source materials for further manufacture. The workshop is also intended for firms planning to supplement their current license for additional products or modifications to current products.

The goals for the workshop are to provide guidance on the application procedures, forms, and documentation needed for the single BLA and guidance on how changes to approved applications are to be reported to the FDA.

Registration: Early registration is recommended on or before Friday, November 21, 1997. Mail or fax registration information (including name, title, firm name, address, telephone, and fax number) to Michelle Priester Healy, Conference Management Associates, Inc., 1010 Wayne Ave., suite 450, Silver Spring, MD 20910, 301–585–8203, FAX 301–585–1186, e-mail confmgmtmd@aol.com. Registration at the site will be done on a space available basis on the day of the workshop, beginning at 7:30 a.m. There is no registration fee for the workshop.

If you need special accommodations due to a disability, please contact Michelle Priester Healy at least 7 days in advance.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: October 23, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–28671 Filed 10–28–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97P–0220]

Determination That Pseudoephedrine Hydrochloride 120-Milligram Extended-Release Capsules Over-the-Counter Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that pseudoephedrine hydrochloride (Sudafed 12-Hour Capsules) 120-milligram (mg) extended-release capsules over-the-counter (OTC) were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDA's) for pseudoephedrine hydrochloride 120-mg extended-release capsules.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDA's do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments included what is now section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(6)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products with Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)). Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

In a citizen petition dated June 3, 1997, and an amendment dated June 24, 1997 (Docket Nos. 97P–0220/CP1 and 97P–0220/AMD1), submitted under 21 CFR 10.30 and 314.161(a)(3), Eurand America, Inc., requested that the agency determine whether pseudoephedrine hydrochloride 120-mg extended-release capsules (OTC) were withdrawn from sale for reasons of safety or effectiveness. Pseudoephedrine hydrochloride 120-mg extended-release capsules, OTC (Sudafed 12-Hour Capsules) were the subject of approved NDA 17–941 held by Burroughs Wellcome Co. Burroughs Wellcome

notified FDA in writing that Sudafed 12-Hour Capsules (pseudoephedrine hydrochloride 120-mg extended-release capsules, OTC) were no longer being marketed under NDA 17–941 and requested that approval of the application be withdrawn. In the **Federal Register** of September 29, 1995 (60 FR 50626), FDA withdrew approval of NDA 17–941.

FDA has reviewed its records and, under §§ 314.161 and 314.162(c), has determined that pseudoephedrine hydrochloride 120-mg extended-release capsules (OTC) were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will maintain pseudoephedrine hydrochloride 120-mg extended-release capsules (OTC) in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to pseudoephedrine hydrochloride 120-mg extended-release capsules (OTC) may be approved by the agency.

Dated: October 23, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–28672 Filed 10–28–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on November 19 and 20, 1997, 8 a.m. to 5 p.m., and on November 21, 1997, 8 a.m. to 3 p.m.

Location:

November 19, 1997: Bethesda Ramada Inn, Embassy Ballroom, 8400 Wisconsin Ave., Bethesda, MD.

November 20 and 21, 1997: Holiday Inn Bethesda, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Kathleen R. Reedy or Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12536. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 19, 1997, the committee will discuss new drug application (NDA) 20–741, Prandin™ or Actulin™ (repaglinide, Novo Nordisk) for the treatment of type 2 diabetes in patients whose hyperglycemia cannot be controlled satisfactorily by diet and exercise alone. On November 20, 1997, the committee will discuss NDA 20–815, Evista™ (raloxifene hydrochloride, Eli Lilly and Co.) for the prevention of postmenopausal osteoporosis. On November 21, 1997, the committee will meet in closed session to permit discussion and review of trade secret and/or confidential information.

Procedure: On November 19 and 20, 1997, from 8 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 14, 1997. Oral presentations from the public will be scheduled between approximately 8 a.m. and 8:30 a.m. on November 19 and 20, 1997. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 14, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On November 21, 1997, 8 a.m. to 3 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). The investigational new drug (IND) and Phase I and II drug products in process will be presented and recent action on selected NDA's will be discussed.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 22, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–28556 Filed 10–28–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Identification of a Viral Etiology for B-Precursor Acute Lymphoblastic Leukemia of Childhood

MA Smith (NCI)
Serial No. 60/036,991 filed 30 Jan 97
Licensing Contact: Joseph Contrera, 301/496–7056 ext. 244.

The present invention claims that the possible etiologic agent for some cases of acute lymphoblastic leukemia (ALL) in children is JC virus (a human polyomavirus), and that infection in utero can lead to subsequent development of ALL during childhood. JC virus was identified as a possible etiologic agent based on specific properties associated with the virus, including: (1) Specificity for B-lymphocytes as compared to T-lymphoctyes; (2) the ability to induce genomic instability via its T antigen, which interacts with cellular p53; and (3) epidemiological data showing concordance between the frequency of ''susceptible'' (i.e. previously not exposed to JC virus and therefore

susceptible to a primary infection) women of reproductive age in a population and the rate of ALL in the population.

Since women at risk for JV virus infection that might result in ALL in their child during pregnancy are those who have not yet had a primary infection, methods to achieve immunization are disclosed in the application. Since immunization could be specifically targeted to women who have never been exposed to JC virus, the application also discloses methods of screening women for prior exposure to the virus. In addition, methods for diagnosis of susceptibility are disclosed which can be applied to cord blood samples which may allow identification of children at high risk and allow early intervention. These methods of screening can be performed using either serological or molecular methods of analysis and both types are claimed in the application.

raf Protein Kinase Therapeutics

U Rapp, H App, SM Storm (NCI)
Serial No. 08/207,954 filed 18 Mar 94 (priority to 23 Aug 91)
Licensing Contact: Ken Hemby, 301/496–7735 ext. 265.

Novel *raf* protein kinases may be valuable for the treatment of cancers. *raf* protein kinases are enzyme that stimulate cell growth in a variety of cell systems and, when expressed in specifically altered forms, can initiate malignant cell growth. These novel *raf* protein kinases, which are mutant constructs or are transcribed from *raf* antisense DNA, can be used to inhibit the activity of cellular *raf* protein kinases and prevent or reverse malignant cell growth. Other potential areas of application include proliferation diseases such as psoriasis and restenosis, and inflammatory diseases.

This research has been described in *Trends in Biochem. Sci.* 19: 474–480, 1994.

Main advantages of invention: raf is by now a verified cancer target; *raf* directed drugs promise to be widely applicable and nontoxic based on clinical studies with antisense ODN.

Stage of development: Ready to be used for drug screens, application in gene therapy. Further development required: Use of inhibitory *raf* mutants in gene therapy requires clinical studies.

Dated: October 21, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–28623 Filed 10–28–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, at 8 a.m. on December 8–10, 1997, National Institutes of Health, Building 10, Rooms 433 and 413, 9000 Rockville Pike, Bethesda, Maryland.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S.C. and Section 10(d) of Public Law 92–463, the entire meeting will be closed to the public for the review, discussion, and evaluation of individual programs and projects by the National Institutes of Health, including consideration of personal qualifications and performing, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Thomas J. Kindt, Executive Secretary, Board of Scientific Counselors, NIAID, NIH, Building 10, Room 4A31, telephone 301–496–3006, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93–301, National Institutes of Health)

Dated: October 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–28626 Filed 10–28–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.
Date: November 14, 1997.
Time: 9:00 a.m.
Place: Capitol Holiday Inn, Washington, DC.
Contact Person: Dr. Sam Rawlings, Scientific Review Administrator, 6701 Rockledge Drive, Room 5160, Bethesda, Maryland 20892, (301) 435–1243.

Name of SEP: Microbiological and Immunological Sciences.
Date: November 18, 1997.
Time: 12:00 p.m.
Place: Holiday Inn-National Airport, Crystal City, VA.
Contact Person: Dr. Gerald Liddel, Scientific Review Administrator, 6701 Rockledge Drive, Room 4186, Bethesda, Maryland 20892, (301) 435–1150.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Behavioral and Neurosciences.
Date: November 7, 1997.
Time: 9:00 a.m.
Place: Capitol Holiday Inn, Washington, DC.
Contact Person: Dr. Sam Rawlings, Scientific Review Administrator, 6701 Rockledge Drive, Room 5160, Bethesda, Maryland 20892 (301) 435–1243.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.
Date: November 20, 1997.
Time: 8:30 a.m.
Place: Doubletree Hotel, Rockville, MD.
Contact Person: Dr. Michael Micklin, Scientific Review Administrator, 6701 Rockledge Drive, Room 5198, Bethesda, Maryland 20892, (301) 435–1258.

Name of SEP: Biological and Physiological Sciences.
Date: November 24, 1997.
Time: 8:00 a.m.
Place: Ramada Inn, Rockville, MD.
Contact Person: Dr. Abubakar Shaikh, Scientific Review Administrator, 6701 Rockledge Drive, Room 6166, Bethesda, Maryland 20892, (301) 435–1042.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93–837–93.844, 93.846–93.878, 93.892, 93–893, National Institutes of Health, HHS)

Dated: October 22, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–28625 Filed 10–28–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of Actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).

SUMMARY: This notice sets forth actions to be taken by the Director, National Institutes of Health (NIH), under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496, amended 59 FR 40170, 60 FR 20726, 61 FR 1482, 61 FR 10004, 62 FR 4782).

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities (ORDA), National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839. The ORDA web site is located at http://www.nih.gov/od/orda/ for further information about the office.

SUPPLEMENTARY INFORMATION: Today's actions are being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines). The proposed actions were published for comment in the **Federal Register** of August 20, 1997 (62 FR 44387), and reviewed by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on September 12, 1997.

I. Background Information and Decisions on Actions Under the NIH Guidelines

Amendment to the Submission Requirements—Human Gene Transfer Experiments Under Appendix M of the NIH Guidelines

During the June 12–13, 1997, RAC meeting, the following motions were approved by the RAC: (1) A motion was made to eliminate the point-by-point responses to Appendix M–II through M–V, Description of the Proposal, Informed Consent, Privacy and Confidentiality, and Special Issues; however, the questions raised in Appendix M–II through M–V must be addressed in the clinical protocol. The motion passed by a vote of 8 in favor, 0 opposed, and 1 abstention. (2) A motion was made to amend the Appendix M–I, Submission Requirements—Human Gene Transfer Proposals of the NIH Guidelines with regard to: (i) The clinical protocol (including discussion of issues in Appendix M–II through M–V), and (ii) deletion of the requirement of three 3½ inch diskettes with the complete vector nucleotide sequence in ASCII format. The motion passed by a vote of 7 in favor, 0 opposed, and 1 abstention.

The RAC recommendations were published as proposed actions in the **Federal Register** of August 20, 1997, for public comment. A letter dated September 8, 1997, was received in response to the **Federal Register** notice from Alexander E. Kuta, Ph.D., Director, Regulatory Affairs, Genzyme Corporation, Framingham, Massachusetts. Genzyme disagreed with the motion to incorporate the responses to Appendix M–II through M–V into the clinical protocol stating that ''this action would compromise the integrity of the clinical protocol without sufficiently addressing industry's concerns regarding Appendix M. * * * The clinical protocol * * * should be 'directed primarily at providing an outline of the investigation.' ''At the September 12, 1997, RAC meeting, the RAC considered the comment from Genzyme and agreed to give the investigators or the sponsors the option to provide the discussion of all pertinent issues raised in Appendix M–II through M–V either in the clinical protocol or as an appendix to the clinical protocol.

A motion was made to eliminate the point-by-point responses to Appendix M–II through M–V, and discussion of all pertinent issues raised in Appendix M–II through M–V must be provided either in the clinical protocol or as an appendix to the clinical protocol. The motion passed by a vote of 10 in favor, 2 opposed, and 0 abstention.

No comments were received from the public in response to the proposed actions in the **Federal Register** of August 20, 1997, with regard to the RAC recommendation to delete the requirement of three 3½ inch diskettes with the complete vector nucleotide sequence in ASCII format from Appendix M–I, Submission Requirements—Human Gene Transfer Proposals of the NIH Guidelines.

The actions are detailed in Section II—Summary of Actions. I accept the RAC recommendations, and the NIH Guidelines will be amended accordingly.

II. Summary of Actions

Appendix M–I, Submission Requirements—Human Gene Transfer Proposals of the *NIH Guidelines*, is amended to read:

''Appendix M–I. Submission Requirements—Human Gene Transfer Proposals

Investigators must submit the following material to the Office of Recombinant DNA Activities, National Institutes of Health/MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, (301) 496–9838 (see exemption in Appendix M–IX–A, Footnotes of Appendix M). Proposals will be submitted in the following order: (1) Scientific abstract—1 page; (2) non-technical abstract—1 page; (3) Institutional Biosafety Committee (IBC) and Institutional Review Board (IRB) approvals and their deliberations pertaining to your protocol (the IBC and IRB may, at their discretion, condition their approval on further specific deliberation by the RAC); (4) Responses to Appendix M–II through M–V, Description of the Proposal, Informed Consent, Privacy and Confidentiality, and Special Issues (the pertinent responses can be provided in the protocol or as an appendix to the protocol); (5) protocol (as approved by the local IBC and IRB)—20 pages; (6) Informed Consent document—approved by IRB (see Appendix M–III, Informed Consent); (7) appendices (including tables, figures, and manuscripts); and (8) curricula vitae—2 pages for each key professional person in biographical sketch format.''

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Effective Date: October 20, 1997.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 97–28624 Filed 10–28–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 62 FR 51474 and 51479, dated October 1, 1997) is amended to reflect organizational changes within the National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the functional statement for the *Scientific Resources Program (CRL)* and insert the following:

(1) Provides animals, animal blood products, glassware, mammalian tissue cultures, microbiological media, special reagents, and other laboratory materials in support of research and service activities to NCID laboratories and other CDC organizations; (2) installs, fabricates, modifies, services, and maintains laboratory equipment used in the research and service activities of CDC; (3) develops and implements applied research programs to expand and enhance the use of animal models necessary to support research and diagnostic programs and to improve breeding and husbandry procedures; (4) conducts both basic and applied research in cell biology and in the expansion of tissue culture technology as a research and diagnostic tool for infectious disease activities; (5) provides services for NCID investigators in protein and DNA synthesis and sequencing; (6) maintains a bank of serum specimens of epidemiological and special significance to CDC's research and diagnostic activities; (7) obtains and distributes experimental vaccines and drugs, antisera and antitoxins, and immune globulins; (8) for reagents prepared at CDC, maintains a computerized inventory; provides dispensing, lyophilization, capping, and labeling; and retrieves from storage and ships to requesters; (9) provides support for liquid nitrogen freezers; (10) maintains an international hemoglobinometry reference laboratory; (11) produces, maintains, and distributes national and international hemoglobin reference standard preparations; (12) administratively and technically supports the CDC Animal Policy Board and the Atlanta Area Animal Care and Use Committee; (13) provides computer support services for the Program's activities.

Delete the title and functional statement for the *Molecular Pathology and Ultrastructure Activity (CRUE)* and insert the following:

Infectious Disease Pathology Activity (CRUE)

(1) Serves as a scientific and technical resource to NCID by providing expertise in molecular pathology, histopathology, and ultrastructural analysis for detecting infectious disease agents and studying the interactions between microbial agents and host cells; (2) develops, improves, evaluates, and applies special ultrastructural, immunohistologic, and/or nucleic acid probe technologies for detecting microbial agents and/or expressed gene products in tissue specimens or tissue culture; (3) conducts basic and applied research into the pathogenesis of infectious diseases; (4) provides intramural and extramural technical and professional expertise for assistance in training in infectious disease pathology and molecular approaches to the identification of specific nucleic acid sequences and specific antigens in tissue specimens; (5) provides for tracking, distribution, and testing of reference /diagnostic pathology specimens submitted through the data and special handling system; (6) provides molecular pathology, histopathology, and ultrastructure reference/diagnostic support and epidemic aid to state and local health departments, other federal agencies, and national and international health organizations.

Dated: October 16, 1997.

David Satcher,

Director.

[FR Doc. 97–28598 Filed 10–28–97; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration (SAMHSA) 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 SAMHSA Reports Clearance Officer on (301) 443–8005.

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 or other forms of information technology.

PROPOSED PROJECT: Obligated Service for Mental Health.

Traineeships: Regulations and Forms—Extension—SAMHSA's Center for Mental Health Services (CMHS) awards grants to institutions for training instruction and traineeships in mental health and related disciplines. Graduate student recipients of these clinical traineeships must perform service, as determined by the Secretary to be appropriate in terms of the individual's training and experience, for a length of time equal to the period of support. The clinical trainees are required to submit the SMA 111, which ensures agency receipt of a termination notice prior to the end of support, and the SMA 111–2, which is an annual report on employment status and any changes in name and/or address, to SAMHSA.

The annual burden estimates are as follows:

	Number of respondents	Number of responses per respondent	Average burden per response	Annual burden hours
Termination Notice (Form SMA 111)	50	1	0.10	5
Annual Payback Activities Certification (Form SMA 111–2)	500	1	.18	90

Send comments to Beatrice Rouse, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 22, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–28596 Filed 10–28–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–47]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public Development and Research.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The department is soliciting public comments on the subject proposal.

DATES: Comments are due December 29, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development & Research, The Department of Housing & Urban Development, 451–7th Street, SW, Room 8226, Washington, D.C. 20410–6000.

FOR FURTHER INFORMATION CONTACT: Laurent Hodes, 202–708–5537, ext. 106 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also Lists the Following Information:

Title of Proposal: Housing-Condition-Survey of Households Living in Federally-Assisted Units.

OMB Control Number: 2528–0170 (exp. 04/30/98).

Description of the Need for the Information and Proposed Use: HUD recently developed and tested a cost-effective mail survey instrument for assessing the condition of housing units assisted through HUD programs. This survey, which elicits renters' ratings of their housing, provided high response rates and high levels of agreement with independent condition ratings by professional inspectors. HUD plans to implement this survey as an ongoing tool to assess customer ratings of the condition of housing assisted through Federal programs including the Section 8, FHA, and public housing programs. This survey will help HUD focus its monitoring and enforcement resources on property owners and housing authorities whose performance most need improvement. It will also provide policy and program managers with improved measures for tracking national housing conditions over time and across assistance programs.

Agency Form Numbers: None.

Members of the Affected Public: Households residing in Federally-assisted housing, including FHA assisted-housing public housing, or units receiving assistance from the Section 8 Certificate or Vouchers Programs.

Estimation of the Total Number of Hours Needed to Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response: Information will be collected by an annual mail survey of 500,000 of the 4.7 million households who live in housing units assisted through Federal programs. The survey will take approximately 15 minutes to complete. This means a total of 125,000 hours of response time annually for the information collection.

Status of the Proposed Information Collection: Pending submission to the Office of Management and Budget (OMB) for review and clearance.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 21, 1997.

Paul A. Leonard,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 97–28584 Filed 10–28–97; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Environmental Impact Statement on the Proposed Expansion of the Big Muddy National Fish and Wildlife Refuge in Missouri

ACTION: Notice of Availability.

SUMMARY: This notice advises the public that a draft Environmental Impact Statement on the Proposed Expansion of the Big Muddy National Fish and Wildlife Refuge in Missouri will be available for public review on October 31, 1997. Comments and suggestions are requested.

DATES: Written comments are requested by January 7, 1998. Public ''open house'' meetings will be held on November 13, 14, 17, 18, and 19, 1997.

WRITTEN COMMENTS SHOULD BE ADDRESSED TO: Ms. Judy McClendon, U.S. Fish and Wildlife Service, 24385 State Highway 51, Puxico, Missouri 63960.

FOR FURTHER INFORMATION CONTACT: Judy McClendon at the address listed above or by telephone at 573/222–6001

or Toll-free 800/686–8339. Individuals with speech or hearing impairments may call the Missouri Relay Services at 800/735–2966 (TTY). Fax: 573/222–6150. E-Mail: R3planning@fws.gov.

SUPPLEMENTARY INFORMATION: Public meetings will be held at the following locations from 1 p.m. until 7 p.m. Meetings are: *11/13/97*—Concordia Community Center, 802 Gordon Street, Concordia, Missouri; *11/14/97*—Holiday Inn Sports Complex, 4011 Blue Ridge Cut-off (Exit 9 off I–70), Kansas City, Missouri; *11/17/97*—The Columns Banquet/Conference Center, 711 Fairlane (5th Street exit South off I–70), St. Charles, Missouri; *11/18/97*—Holiday Inn Select (Executive Center), 2200 I–70 Drive S.W. (Stadium Exit 124 off I–70), Columbia, Missouri; and *11/19/97*—Lewis and Clark Hotel, Upper Banquet Room, 6054 Highway 100, Washington, Missouri. During the public meetings, information may be obtained by calling 573–718–7304.

Ms. Judy McClendon, Wildlife Biologist, is the primary author of this document. The U.S. Fish and Wildlife Service (Service), Department of the Interior, has prepared a draft Environmental Impact Statement (EIS) on its proposal to expand the Big Muddy National Fish and Wildlife Refuge in Missouri from its currently authorized 16,628 acres to a total of 60,000 acres.

The Big Muddy National Fish and Wildlife Refuge expansion would be accomplished by acquiring from willing sellers an additional 43,372 acres along the Missouri River floodplain from Kansas City, Missouri, to St. Louis, Missouri, and the lower 10 miles of major tributaries. Proposed additions could be located in any of the twenty counties that lie along this stretch of the Missouri River. Selection criteria based on values related to proposed management goals will be used to determine specific sites for acquisition. Management goals of the Big Muddy project are to restore acquired acreage to a natural floodplain condition, including bottomland forests, improve and restore wetland values, improve fishery and wildlife resources, and provide additional public use areas for fish and wildlife dependent recreation.

This action is designed to preserve and restore natural river floodplain, allow for management of viable and diverse fish and wildlife habitats, and provide for compatible fish and wildlife dependent recreation.

The major alternatives under consideration that were analyzed and evaluated during planning are: (A) No Action. The Refugee would not be expanded beyond the currently authorized 16,628 acres. This acreage figure amounts to 2.7 percent of the 800,000 acre floodplain in this reach of the Missouri River and is insufficient to protect the health of the Missouri River ecosystem; (B) Expand the Big Muddy National Fish and Wildlife Refuge to 60,000 acres by acquisition of 43,372 acres dispersed along the Missouri River corridor from its confluence with the Kansas River, near Kansas City, to its confluence with the Mississippi River, near St. Louis, Missouri. Expansion under Alternative B (Preferred) would allow approximately 8 percent of riverine habitat losses of the Missouri River and its floodplain from Kansas City to St. Louis, Missouri to be restored. Three other alternatives were considered but not analyzed. They include: (C) Seek permanent protection of fish, wildlife, and habitats through cooperative agreements with landowners and other agencies with no acquisition of lands; (D) encourage private land programs to preserve or restore fish, wildlife, and their habitats without further acquisition; and (E) acquire the entire Missouri River floodplain from Kansas City to St. Louis, Missouri, about 800,000 acres. Alternatives C, D, and E were rejected because they did not have the capacity to address the Service's mandated responsibilities, did not provide permanent resource protection and restoration opportunities, and/or failed to meet the purpose and need for which the Big Muddy Refuge was established.

Other government agencies and members of the general public contributed to the planning and evaluation of the proposal and to the preparation of this EIS. The Notice of Intent to prepare this EIS was published in the **Federal Register** on November 28, 1995. Public scoping meetings were held in five locations in January 1996, with over 300 comments received from interested parties. The Service gave presentations to county officials, conservation groups, and other interested parties as well as the media and informed the public through intermittent distribution of the Big Muddy Update. The Service's mailing list has over 1,000 names.

All agencies and individuals are urged to provide comments and suggestions for improving this EIS by January 7, 1998. All comments received by the above date will be considered in preparation of the final EIS for this proposed action.

Dated: October 23, 1997.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 97–28597 Filed 10–28–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Sport Fishing and Wildlife Service, Interior

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: As provided in section 10(a)(2) of the Federal Advisory Committee Act, the Service announces a meeting designed to foster partnerships to enhance recreational fishing and boating in the United States. This meeting, sponsored by the Sport Fishing and Boating Partnership Council (Council), is open to the public and interested persons may participate in a facilitated, interactive discussion of issues affecting public participation in recreational fishing and boating activities.

DATES: November 19, 1997, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Ramada Plaza Hotel, 901 N. Fairfax Street, Alexandria, Virginia, 22314, telephone (703) 683–6000.

Summary minutes of the conference will be maintained by the Coordinator for the Council at 1033 North Fairfax Street, Suite 200, Arlington, VA 22314, and will be available for public inspection during regular business hours within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

FOR FURTHER INFORMATION CONTACT: Doug Alcorn, Council Coordinator, at 703/836–1392.

SUPPLEMENTARY INFORMATION: The Sport Fishing and Boating Partnership Council will convene representatives for recreational fishing and boating organizations, industry, federal and state resource agencies, and other interested parties to identify issues affecting public participation in recreational fishing and boating activities. Meeting participants will asked to provide their insights on the reasons why people never begin or no longer participate in recreational fishing and boating. Participants will identify and rank problems facing resource managers, service providers, and industry in maintaining an active recreational fishing and boating

constituency. Input from the meeting participants will be used to complete a situation analysis (Phase I) in a three-phase process to develop a national outreach/marketing strategy to increase public participation in recreational fishing and boating.

Dated: October 17, 1997.

Jamie Rappaport Clark,

Director.

[FR Doc. 97–28628 Filed 10–28–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated July 21, 1997, and published in the **Federal Register** on August 26, 1997, (62 FR 45271), Applied Science Labs, Inc., A Division of Altech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Heroin (9200)	I
Morphine (9300)	II

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Applied Science Labs to import listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: October 17, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–28558 Filed 10–28–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA #171I]

Controlled Substances: 1997 Aggregate Production Quota

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Interim notice establishing a 1997 aggregate production quota and request for comments.

SUMMARY: This interim notice establishes a revised 1997 aggregate production quota for codeine (for sale), a Schedule II controlled substance, as required under the Controlled Substances Act of 1970.

DATES: This is effective on October 29, 1997. Comments must be received on or before November 28, 1997.

ADDRESSES: Send comments or objections to the Acting Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537, Attn.: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826), requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Acting Deputy Administrator of the DEA pursuant to Section 0.014 of Title 28 of the Code of Federal Regulations.

The DEA established revised 1997 aggregate production quotas for controlled substances in Schedules I and II, including codeine (for sale), in a **Federal Register** notice published on August 15, 1997 (62 FR 43750). Since publication of the revised 1997 aggregate production quotas, DEA has received information which necessitates an immediate increase in the revised 1997 aggregate production quota for codeine (for sale). The increase for codeine (for sale) is necessary to meet additional and unforeseen domestic manufacturing needs and export requirements. For these reasons, an interim notice is being published.

Therefore, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Acting Deputy Administrator, pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, the Acting Deputy Administrator hereby orders that the revised aggregate production quota for the following controlled substance, expressed in grams of anhydrous base, be established as follows:

Basic class	Established revised 1997 quota
Codeine (for sale)	58,140,000

All interested persons are invited to submit their comments in writing regarding this interim notice.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Acting Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of annual aggregate production quotas for Schedule I and II controlled substances is mandated by law and by international treaty obligations. Aggregate production quotas apply to approximately 200 DEA registered bulk and dosage from manufacturers of Schedule I and II controlled substances. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Acting Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: October 22, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–28557 Filed 10–28–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 97–56; Exemption Application No. D–10437, et al.]

Grant of Individual Exemptions; UNUM Life Insurance Company of America

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, 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 proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

UNUM Life Insurance Company of America (UNUM), Located in Portland, Maine

[Prohibited Transaction Exemption 97–56; Exemption Application No. D–10437]

Exemption

Section I—Exemption for Certain Transactions Involving the Management of Investments Shared by Two or More Accounts Maintained by UNUM

The restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions if the conditions set forth in Section IV are met:

(a) *Transfers Between Accounts*

(1) The restrictions of section 406(b)(2) of the Act shall not apply to the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between two or more Accounts (except the General Account), provided that each ERISA-Covered Account pays no more, or receives no less, than fair market value for its interest in a shared investment.

(2) 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 the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between ERISA-Covered Accounts and the General Account, provided that such transfer is made pursuant to stalemate procedures, described in the notice of proposed exemption, adopted by the independent fiduciary for the ERISA-Covered Account, and provided further that the ERISA-Covered Account pays no more or receives no less than fair market value for its interest in a shared investment.

(b) *Joint Sales of Property*—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 the sale to a third party of the entire interest in a shared investment (including a shared joint venture interest) by two or more Accounts, provided that each ERISA-Covered Account receives no less than fair market value for its interest in the shared investment.

(c) *Additional Capital Contributions*—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 either to the making of a pro rata equity capital contribution by one or more of the Accounts to a shared investment; or to the making of a Disproportionate [as defined in Section V(e)] equity capital contribution by one or more of such Accounts which results in an adjustment in the equity ownership interests of the Accounts in the shared investment on the basis of the fair market value of such interests subsequent to such contribution, provided that each ERISA-Covered Account is given an opportunity to make a pro rata contribution.

(d) *Lending of Funds*—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 the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to participating plans,

(B) Bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) Is not callable at any time by the General Account, and

(D) Is prepayable at any time without penalty.

Section II—Exemption for Certain Transactions Involving the Management of Joint Venture Interests Shared by Two or More Accounts Maintained by UNUM

The restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions resulting from the sharing of an investment in a real estate joint venture between two or more Accounts, if the conditions set forth in Section IV are met:

(a) *Additional Capital Contributions*—(1) 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 the making of additional pro rata equity capital contributions by one or

more Accounts participating in the joint venture.

(2) 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 the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata capital contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to the participating plans,

(B) Bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) Is not callable at any time by the General Account, and

(D) Is prepayable at any time without penalty.

(3) 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 the making of Disproportionate [as defined in section V(e)] additional equity capital contributions (or the failure to make such additional contributions) in the joint venture by one or more Accounts which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis of the fair market value of such joint venture interests subsequent to such contributions, provided that each ERISA-Covered Account is given an opportunity to provide its proportionate share of the additional equity capital contributions; and

(4) In the event a co-venturer fails to provide all or any part of its pro rata share of an additional equity capital contribution, 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 the making of Disproportionate additional equity capital contributions to the joint venture by the General Account and an ERISA-Covered Account up to the amount of such contribution not provided by the co-venturer which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis provided in the joint venture agreement, provided that such ERISA-Covered Account is given an opportunity to participate in all additional equity capital contributions on a proportionate basis.

(b) *Third Party Purchase Offers*—(1) In the case of an offer by a third party to purchase any property owned by the joint venture, 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 the acquisition by the Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with a decision on behalf of such Accounts to reject such purchase offer, provided that each ERISA-Covered Account is first given an opportunity to participate in the acquisition on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any acceptance by UNUM on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], of an offer by a third party to purchase a property owned by the joint venture even though the independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved the acceptance of the offer, provided that such declining ERISA-Covered Account[s] are first afforded the opportunity to buy out both the co-venturer and ''selling'' Account's interests in the joint venture.

(c) *Rights of First Refusal*—(1) In the case of the right to exercise a right of first refusal described in a joint venture agreement to purchase a co-venturer's interest in the joint venture at the price offered for such interest by a third party, 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 the acquisition by such Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a right of first refusal, provided that each ERISA-Covered Account is first given an opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by UNUM on behalf of the Accounts not to exercise such a right of first refusal even though the independent fiduciary for one (but not all) of such ERISA-Covered Accounts has approved the exercise of the right of first refusal, provided that none of the ERISA-Covered Accounts that approved the exercise of the right of first refusal decides to buy-out the co-venturer on its own.

(d) *Buy-Sell Options*—(1) In the case of the exercise of a buy-sell option set forth in the joint venture agreement, 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 the acquisition by one or more of the Accounts on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a buy-sell option, provided that each ERISA-Covered Account is first given the opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by UNUM on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], to sell the interest of such Accounts in the joint venture to a co-venturer even though the independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved such sale, provided that such disapproving ERISA-Covered Account is first afforded the opportunity to purchase the entire interest of the co-venturer.

Section III—Exemption for Transactions Involving a Joint Venture or Persons Related to a Joint Venture

The restrictions of section 406(a) 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 (D) of the Code shall not apply, if the conditions in Section IV are met, to any additional equity capital contributions to a joint venture by an ERISA-Covered Account that is participating in an interest in the joint venture, where the joint venture is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture.

Section IV—General Conditions

(a) Each contractholder or prospective contractholder in an ERISA-Covered Account which shares or proposes to share real estate investments is provided with a written description of potential conflicts of interest that may result from the sharing, a copy of the notice of pendency, and a copy of this exemption.

(b) An independent fiduciary must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary shall be either

(1) A business organization which has at least five years of experience with respect to commercial real estate investments, or

(2) A committee composed of three to five individuals who each have at least five years of experience with respect to commercial real estate investments.

(c) The independent fiduciary or independent fiduciary committee member shall not be or consist of UNUM or any of its affiliates.

(d) No organization or individual may serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (other than fixed, non-discretionary retirement income) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from UNUM, its affiliates and the ERISA-Covered Accounts for that fiscal year exceeds five percent of its or his or her annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary.

The income limitation will include income for services rendered to the Accounts as independent fiduciary under any prohibited transaction exemption(s) granted by the Department.

In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from, UNUM, its affiliates, or any Account maintained by UNUM or its affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiate any such transaction during the period that such organization or individual serves as independent fiduciary.

(e) The independent fiduciary will approve the initial allocation of a shared investment to an ERISA-Covered Account. In addition, the independent fiduciary acting on behalf of an ERISA-Covered Account shall have the responsibility and authority to approve or reject recommendations made by UNUM or its affiliates for each of the transactions in this exemption. In the case of a possible transfer or exchange of any interest in a shared investment between the General Account and an ERISA-Covered Account, the independent fiduciary shall also have full authority to negotiate the terms of the transfer. UNUM shall involve the independent fiduciary in the consideration of contemplated transactions prior to the making of any decisions, and shall provide the independent fiduciary with whatever information may be necessary in making its determinations.

In addition, the independent fiduciary shall review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

(f) UNUM maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (g) of this Section to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of UNUM or its affiliates, the records are lost or destroyed prior to the end of the six-year period.

(g)(1) Except as provided in paragraph (2) of this subsection (g) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (f) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an ERISA-Covered Account who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an ERISA-Covered Account or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an ERISA-Covered Account, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this subsection (g) shall be authorized to examine trade secrets of UNUM, any of its affiliates, or commercial or financial information which is privileged or confidential.

Section V—Definitions

For the purposes of this exemption:

(a) An ''affiliate'' of UNUM includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with UNUM,

(2) Any officer, director or employee of UNUM or person described in section V(a)(1), and

(3) Any partnership in which UNUM is a partner.

(b) An ''Account'' means the General Account (including the general accounts of UNUM affiliates), any separate account of UNUM or its affiliate, or any investment advisory account, trust, limited partnership or other investment account or fund managed by UNUM.

(c) The ''General Account'' means the general asset account of UNUM and any of its affiliates which are insurance companies licensed to do business in at least one State as defined in section 3(10) of the Act.

(d) An ''ERISA-Covered Account'' means any Account (other than the General Account) which consists solely of the UNUM Plan or other plans maintained by UNUM or its affiliates.

(e) ''Disproportionate'' means not in proportion to an Account's existing equity ownership interest in an investment, joint venture or joint venture interest.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 1, 1997 at 62 FR 41441.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

NatWest Securities Corporation, NatWest Securities Limited, Located in New York, New York

[Prohibited Transaction Exemption 97–57; Exemption Application Nos. D–10464, D–10465]

Exemption

Section I—Transactions

A. Effective May 22, 1997, the restrictions of section 406(a)(1) (A) through (D) of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of section 4975 (c)(1) (A) through (D) of the Code, shall not apply to any purchase or sale of a security between an employee benefit plan and a broker-dealer affiliated with NatWest Securities Corporation and subject to British law

(NatWest/UK Affiliate), if the following conditions, and the conditions of Section II, are satisfied:

(1) The NatWest/UK Affiliate customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer.

(2) Such transaction is on terms at least as favorable to the plan as those which the plan could obtain in an arm's length transaction with an unrelated party.

(3) Neither the NatWest/UK Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, and the NatWest/UK Affiliate is a party in interest or disqualified person with respect to the plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections. For purposes of this paragraph, the NatWest/UK Affiliate shall not be deemed to be a fiduciary with respect to a plan solely by reason of providing securities custodial services for a plan.

B. Effective May 22, 1997, the restrictions of section 406(a)(1) (A) through (D) 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 lending of securities that are assets of an employee benefit plan to an NatWest/UK Affiliate if the following conditions, and the conditions of Section II, are satisfied:

(1) Neither the NatWest/UK Affiliate (the Borrower) nor an affiliate of the Borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(2) The plan receives from the Borrower, either by physical delivery or by book entry in a securities depository located in the United States, by the close of business on the day on which the securities lent are delivered to the Borrower, collateral consisting of U.S. currency, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable United States bank letters of credit issued by a person other than the Borrower or an affiliate thereof, or any combination thereof, having, as of the close of business on the preceding business day, a market value (or, in the case of letters of credit, a stated amount) equal to not less than 100 percent of the then market value of the securities lent. The collateral referred to in this Section I(B)(2) must be held in the United States;

(3) Prior to the making of any such loan, the Borrower shall have furnished the following items to the fiduciary for the plan who is making decisions on behalf of the plan with respect to the lending of securities (the Lending Fiduciary): (1) the most recent available audited statement of the Borrower's financial condition, (2) the most recent available unaudited statement of the Borrower's financial condition (if more recent than such audited stated), and (3) a representation that, at the time the loan is negotiated, there has been no material adverse change in the Borrower's financial condition since the date of the most recent financial statement furnished to the plan that has not been disclosed to the Lending Fiduciary. Such representation may be made by the Borrower's agreement that each such loan shall constitute a representation by the Borrower that there has been no such material adverse change;

(4) The loan is made pursuant to a written loan agreement, the terms of which are at least as favorable to the plan as those which the plan could obtain in an arm's-length transaction with an unrelated party. Such agreement may be in the form of a master agreement covering a series of securities-lending transactions;

(5) The plan (1) receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (2) has the opportunity to derive compensation through the investment of cash collateral. Where the plan has that opportunity, the plan may pay a loan rebate or similar fee to the Borrower, if such fee is not greater than the plan would pay an unrelated party in an arm's-length transaction;

(6) The plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities;

(7) If the market value of the collateral on the close of trading on a business day is less than 100 percent of the market value of the borrowed securities at the close of trading on that day, the Borrower shall deliver, by the close of business on the following business day, an additional amount of collateral (as described in paragraph (2)) the market value of which, together with the market value of all previously delivered collateral, equals at least 100 percent of the market value of all the borrowed securities as of such preceding day. Notwithstanding the foregoing, part of the collateral may be returned to the Borrower if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, as long as the market value of the remaining collateral equals at least 100 percent of the market value of the borrowed securities;

(8) The loan may be terminated by the plan at any time, whereupon the Borrower shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the plan within (1) the customary delivery period for such securities, (2) three business days, or (3) the time negotiated for such delivery by the plan and the Borrower, whichever is lesser; and

(9) In the event the loan is terminated and the Borrower fails to return the borrowed securities or the equivalent thereof within the time described in paragraph (8) above, then (i) the plan may, under the terms of the loan agreement, purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the Borrower under the agreement, and any expenses associated with the sale and/or purchase, and (ii) the Borrower is obligated, under the terms of the loan agreement, to pay, and does pay to the plan, the amount of any remaining obligations and expenses not covered by the collateral plus interest at a reasonable rate. Notwithstanding the foregoing, the Borrower may, in the event the Borrower fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided such replacement is approved by the Lending Fiduciary.

(10) If the Borrower fails to comply with any condition of this exemption, in the course of engaging in a securities-lending transactions, the plan fiduciary who caused the plan to engage in such transaction shall not be deemed to have caused the plan to engage in a transaction prohibited by section 406(a)(1) (A) through (D) of the Act solely by reason of the Borrower's failure to comply with the conditions of the exemption.

C. Effective May 22, 1997, the restrictions of sections 406(a)(1) (A)

through (D) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code shall not apply to any extension of credit to an employee benefit plan by an NatWest/UK Affiliate to permit the settlement of securities transactions or in connection with the writing of options contracts provided that the following conditions are met:

(a) The NatWest/UK Affiliate is not a fiduciary with respect to any assets of such plan, unless no interest or other consideration is received by such fiduciary or any affiliate thereof in connection with such extension of credit; and

(b) Such extension of credit would be lawful under the Securities Exchange Act of 1934 and any rules or regulations thereunder if such act, rules or regulations were applicable.

Section II—General Conditions

A. The NatWest/UK Affiliate is registered as a broker-dealer with the Securities and Futures Authority of the United Kingdom (the S.F.A.);

B. The NatWest/UK Affiliate is in compliance with all requirements of Rule 15a–6 (17 CFR 240.15a–6) under the Securities and Exchange Act of 1934, which provides for foreign broker-dealers a limited exemption from U.S. registration requirements;

C. Prior to the transaction, the NatWest/UK Affiliate enters into a written agreement with the plan in which the NatWest/UK Affiliate consents to the jurisdiction of the courts of the United States with respect to the transactions covered by this exemption;

D. (1) The NatWest/UK Affiliate maintains or causes to be maintained within the United States for a period of six years from the date of such transaction such records as are necessary to enable the persons described in this section to determine whether the conditions of this exemption have been met; except that a party in interest with respect to an employee benefit plan, other than the NatWest/UK Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975 (a) or (b) of the Code, if such records are not maintained, or are not available for examination as required by this section, and a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the NatWest/UK Affiliate, such records are lost or destroyed prior to the end of such six year period;

(2) The records referred to in subsection (1) above are unconditionally available for examination during normal business hours by duly authorized employees of (a) the Department of Labor, (b) the Internal Revenue Service, (c) plan participants and beneficiaries, (d) any employer of plan participants and beneficiaries, and (e) any employee organization any of whose members are covered by such plan; except that none of the persons described in (c) through (e) of this subsection shall be authorized to examine trade secrets of NatWest Securities Corporation or the NatWest/UK Affiliate or any commercial or financial information which is privileged or confidential.

Section III—Definitions

''Affiliate'' of a person shall include: (i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (ii) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (iii) any corporation or partnership of which such other person is an officer, director or partner. For purposes of this definition, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

''Security'' shall include equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term ''security'' does not include swap agreements or other notional principal contracts.

EFFECTIVE DATE: This exemption is effective as of May 22, 1997.

For a more complete statement of the summary of facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on September 5, 1997 at 62 FR 47060.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Carl M. Callaway Individual Retirement Account (IRA), Located in Huntington, West Virginia; [Prohibited Transaction Exemption No. 97–58; Application No. D–10469]

Exemption

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 transaction involving a sale or exchange of certain securities (the Sale) by the IRA to Carl M. Callaway and his wife, Marianna F. Callaway, both disqualified persons with respect to the IRA; provided the following conditions are satisfied: (a) the sale or exchange is a one-time transaction constituting an exchange of securities approximately equal in value and any difference in value occurring is immediately eradicated with cash payments by either the Callaways or the IRA, in order to equalize the value of the exchanged assets, (b) the IRA incurs no commissions or other expenses in connection with the transaction, (c) the transaction involves only securities that have a fair market value on the date of the exchange which is objectively determinable through independently and regularly published market prices and quotations, and (d) the IRA tenders as consideration stock valued at an amount equal to the reported closing price of the stock on the date of the Sale and the IRA receives U. S. Treasury notes valued at the reported closing bid on the date of the Sale, plus the accrued interest the notes earned to the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on September 5, 1997 at 62 FR 47604.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver 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 or disqualified person from certain other provisions to which the exemptions 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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional 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

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 23rd day of October, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–28593 Filed 10–28–97; 8:45 am]

BILLING CODE 4510–29–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

October 23, 1997.

TIME AND DATE: 10:00 a.m., Thursday, October 30, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Secretary of Labor* v. *Berwind Natural Resources Corp., et al.,* Docket Nos. KENT 94–574, etc. (Issues include whether the judge correctly determined that to qualify as an ''operator'' under the Mine Act an entity must directly or indirectly substantially participate in the operation, control, or supervision of the day-to-day operations of the mine, or have authority to do so; correctly rejected the Secretary's claim that the cited parent and its cited subsidiaries constituted a ''unitary operator'' under the Mine Act; and correctly determined that one of those subsidiaries was an ''operator,'' while the parent and two other subsidiaries were not).

TIME AND DATE: 2:00 p.m., Thursday, October 30, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of a quorum of the Commission that the Commission consider and act upon the following in closed session:

1. *Secretary of Labor* v. *Berwind Natural Resources Corp., et al.,* Docket Nos. KENT 94–574–R, etc. (*See* oral argument listing, *supra,* for issues).

TIME AND DATE: 10:00 a.m., Thursday, November 6, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission shall consider and act upon the following:

1. *Secretary of Labor* v. *Gouverneur Talc Co.,* Docket No. YORK 95–70–M (Issues include whether the judge erred in determining that the operator did not violate 30 C.F.R. § 57.4362, which requires that, following evacuation of a mine in a fire emergency, only persons wearing and trained in the use of mine rescue apparatus shall participate in rescue and firefighting operations in advance of the fresh air base).

TIME AND DATE: 10:00 a.m., Thursday, November 13, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Secretary of Labor* v. *Extra Energy, Inc.,* Docket No. WEVA 96–13 (Issues include whether the judge erred in finding that the Secretary properly cited the operator for its independent contractor's violation of 30 C.F.R. § 77.404(a)'s requirement that mobile equipment and machinery be maintained in safe operating condition and properly found that the operator violated 50 C.F.R. § 50.10's requirement that the Mine Safety and Health Administration be notified of accidents).

TIME AND DATE: 2:00 p.m., Thursday, November 13, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of a quorum of the Commission that the Commission consider and act upon the following in closed session:

1. *Secretary of Labor* v. *Extra Energy, Inc.,* Docket No. WEVA 96–13 (*See* oral argument listing, *supra,* for issues).

TIME AND DATE: 10:00 a.m., Thursday, November 20, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission shall consider and act upon the following:

1. *Secretary of Labor* v. *REB Enterprises, Inc.* Docket No. CENT 95–29–M, etc. (Issues include whether the judge erred in concluding that the operator's violations of 30 C.F.R. 57.14107(a), 57.14130(g), and 57.14131(a) were not the result of unwarrantable failure based on his refusal to assign any probative weight to hearsay testimony adduced by the Secretary; erred in concluding that two individuals were not personally liable for violations of 30 C.F.R. 57.14130(g); erred in concluding that a violation of 30 C.F.R. 14130(a)(3) was not established because it was not demonstrated that a backhoe unequipped with a seat belt was a ''wheel loader'' or ''wheel tractor'' within the meaning of that standard; and erred in dismissing an order on the basis that it alleged a violation of the wrong standard, even though it was amended prior to hearing to allege a violation of the correct standard).

Any person attending oral argument or an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 97–28711 Filed 10–24–97; 4:03 pm]

BILLING CODE 6735–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemistry; Notice of Meeting

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 Chemistry (1191) will be holding panel meetings for the purpose of reviewing proposals submitted to the Faculty Early Career Development (CAREER) Program. In order to review the large volume of proposals, panel meetings will be held on November 13–14, November 17–18, November 20–21, and December 8–9. All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA from 8:30 AM to 5:00 PM each day.

Contact Person: Dr. Margaret A. Cavanaugh, Program Director, Inorganic, Bioinorganic and Organometallic program, Chemistry Division, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1842.

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 23, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28546 Filed 10–28–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering: 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: Advisory Committee for Engineering (#1170).

Date and Time: November 4, 1997/8:30 am–5:00 p.m., November 5, 1997/8:30 am–12:30 p.m.

Place: November 4 and 5, Room 1235, (National Science Board Meeting Room), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Open.

Contact Person: Dr. Joseph E. Hennessey, Acting Deputy Assistant Director for Engineering, National Science Foundation, Suite 505, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1301.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to Engineering programs and activities.

Agenda: Discussion on issues, opportunities and future directions for the Engineering Directorate; discussion of Engineering Directorate budget situation as well as other items. Reason for Late Notice: Difficulty in arranging an acceptable meeting date for the members.

Dated: October 23, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–28545 Filed 10–28–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. IA 97–070, ASLBP No. 98–734–01–EA]

Atomic Safety and Licensing Board; In the Matter of Magdy Elamir, M.D., Newark, New Jersey; Order Superseding Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately); Notice of Hearing

Before Administrative Judges: Charles Bechhoefer, Chairman, Dr. Jerry R. Kline, Dr. Peter S. Lam.

October 23, 1997.

Notice is hereby given that, by Memorandum and Order (Request for Hearing and Stay of Proceeding), dated October 23, 1997, the Atomic Safety and Licensing Board has granted the request of Magdy Elamir, M.D., Newark, New Jersey, for a hearing in the above-titled proceeding. The hearing concerns the Order Superseding Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) (hereinafter, Superseding Order), issued by the NRC Staff on September 15, 1997 (published at 62 FR 49536 (September 22, 1997). The parties to the proceeding are Dr. Elamir and the NRC Staff. The issue to be considered at the hearing is whether the Superseding Order should be sustained.

Materials concerning this proceeding are on file at the Commission's Public Document Room, 2120 L St. N.W., Washington, D.C. 20555, and at the Commission's Region I office, 475 Allendale Road, King of Prussia, Pennsylvania 19406–1415.

During the course of this proceeding, the Licensing Board, as necessary, will conduct one or more prehearing conferences and evidentiary hearing sessions. The time and place of these sessions will be announced in Licensing Board Orders. Members of the public are invited to attend any such sessions.

For the Atomic Safety and Licensing Board.

Rockville, Maryland, October 23, 1997.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 97–28621 Filed 10–28–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an exemption from certain requirements of its regulations to Florida Power Corporation (the licensee), holder of Facility Operating License No. DPR–72 for operation of the Crystal River Unit 3 Nuclear Generating Plant (CR3) located in Citrus County, Florida.

Environmental Assessment

Identification of Proposed Action

The proposed action is in accordance with the licensee's application dated June 21, 1996 as supplemented November 22, 1996, for exemption from certain requirements of Section III, Paragraph G, ''Fire protection of safe shutdown capability,'' of Appendix R, ''Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979,'' to Title 10 of the Code of Federal Regulations part 50 (10 CFR part 50). Specifically, the licensee requests an exemption from the requirements of Section III.G.2.c of Appendix R, to allow the use of the existing fire barrier material, Thermo-Lag, with less than 1-hour fire rating, for protecting one train of certain redundant safe shutdown cables located in the auxiliary building elevations 95 and 119, and intermediate building elevation 119.

This environmental assessment does not address the licensee's request relating to the requirements for battery powered lighting in areas for the operation of safe shutdown equipment.

The Need for the Proposed Action

10 CFR part 50, Appendix A, ''General Design Criteria for Nuclear Power Plants,'' Criterion 3 ''Fire Protection,'' specifies that ''Structures, systems, and components important to safety shall be designed and located to minimize, consistent with other safety requirements, the probability and effect of fires and explosions.'' 10 CFR part 50, Appendix R, sets forth the fire protection features required to satisfy the General Design Criterion 3 of the Commission's regulations. Pursuant to 10 CFR part 50, Appendix R, Section III, Paragraph G, design features shall be established that are capable of limiting fire damage so that one train of systems necessary to achieve and maintain hot shutdown conditions is free of fire damage. Specifically, 10 CFR part 50, Appendix R, Paragraph III. G.2.c, in part, requires (if Paragraphs III.G.2.a or b are not applicable) enclosure of cable and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating; in addition, fire detectors and an automatic

fire suppression system shall be installed in the fire area.

The current CR3 design includes Thermo-Lag fire barriers which do not provide the level of fire endurance required by NRC regulations. As part of its program for resolving Thermo-Lag issues, the licensee has determined that the Thermo-Lag material used as a fire barrier for the protection of certain safe shutdown cables located in certain elevations of the auxiliary and intermediate buildings does not qualify as 1-hour fire rated barriers. In lieu of upgrading the existing Thermo-Lag fire barriers to satisfy the 1-hour fire rating requirement, the licensee proposed to implement an enhanced automatic fire suppression system coverage for these specific fire zones. The licensee indicates that its proposed enhanced automatic fire suppression system coverage coupled with the existing Thermo-Lag barriers and other defense-in-depth features will ensure that one train of equipment necessary to achieve hot shutdown remains free of fire damage. An exemption from 10 CFR part 50, Appendix R, Section III, Paragraph G. 2. c. is required to allow the use of existing Thermo-Lag material that has less than a 1-hour fire rating, for the specific cables and equipment located in certain elevations of the auxiliary and intermediate buildings. By letter dated June 21, as supplemented November 22, 1996, the licensee submitted the exemption request.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's application.

The exemption request is for the following fire zones: auxiliary building elevations 95 and 119 (fire area AB–95–3B and G, AB–119–6A) and the intermediate building elevation 119 (fire area IB–119–201A). A fire in the 95 or 119 elevations of the auxiliary building could cause the loss of the redundant divisions of the makeup system, heating ventilation and air conditioning (HVAC), instrumentation, battery charging or essential power supplies. A fire on the 119 elevation of the intermediate building could cause the loss of redundant divisions of instrumentation needed to achieve and maintain safe shutdown following a fire.

These four fire zones contain fire detectors and an automatic fire suppression system. To enhance the sprinkler coverage in these zones, the licensee proposes to upgrade the existing sprinkler protection in the vicinity of the Thermo-Lag fire barriers. The additional sprinkler protection, coupled with the existing automatic detection, manual fire suppression capability and the administrative controls provided in these fire zones, would provide reasonable assurance that an exposure fire from in-situ or transient combustible materials in the vicinity of the existing Thermo-Lag fire barriers will not challenge the barriers, such that damage to redundant divisions of systems and instrumentation needed to achieve and maintain safe shutdown following a fire will not occur. Based on data obtained from industry sponsored fire test programs, the staff estimates that the existing Thermo-Lag barriers would provide a minimum of 20 minutes of fire resistance. The licensee is also committed to maintain the Thermo-Lag fire barriers that are the subject of this request in place. Automatic wet pipe sprinkler protection that is designed, installed and maintained in accordance with NFPA 13, ''Installation of Sprinkler Systems,'' have historically demonstrated a high reliability in controlling fires during the incipient stage, thereby limiting fire damage and propagation until extinguishment can be achieved through manual actions. Further, the licensee has administrative controls that are designed to control the type, amount, use and location of combustibles. Proper control of combustibles minimizes the possibility of starting, spreading, or contributing to a fire.

4.0 Conclusion

On the basis of this evaluation, the NRC staff concluded that protection provided for the fire zones, auxiliary building elevations 95 and 119 (fire area AB–95–3B and G, AB–119–6A) and the intermediate building elevation 119 (fire area IB–119–201A) would provide reasonable assurance that a level of safety equivalent to that specified by the regulation would be met, and, therefore, is acceptable.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of CR3, dated May 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on October , 1997 the staff consulted with the Florida State Official, Mr. Bill Passetti of the Florida Department of Health and Rehabilitative Services, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated June 21, as supplemented November 22, 1996, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the local public document room located at Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida.

Dated at Rockville, Maryland, this 22nd day of October 1997.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–28619 Filed 10–28–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22865; 812–10522]

Federated Investors, et al.; Notice of Application

October 22, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1), and under sections 6(c) and 17(b) for an exemption from section 17(a).

Summary of Application: Applicants seek an order to permit certain open-end investment companies to invest a portion of their assets in other open-end investment companies in the same group of investment companies as well as to invest in securities of other issuers.

Applicants: Managed Series Trust (''MST''), Fixed Income Securities, Inc. (''FIS''), Investment Series Funds, Inc. (''ISF''), Federated Total Return Series, Inc. (''FTRS''), Federated Stock and Bond Fund, Inc. (''FSBF'') (collectively, ''Federated Funds''); Federated Core Trust (''Core Trust''); and Federated Investors (''Federated''), as the parent company for Federated Advisers, Federated Management, Federated Research Corp., Federated Administrative Services, Federated Investment Counseling, Federated Research, Passport Research, Ltd., and Federated Global Research Corp. (collectively, ''Advisers''). All existing investment companies that currently intend to rely on the requested order are named as applicants. The requested order also would extend to (i) any other registered open-end investment company or series thereof (except Core Trust and the Portfolios, as defined below) advised by the Advisers, or any entity controlling, controlled by, or under common control with the Advisers (together with Federated Funds, the ''Funds'') that wishes to invest in another registered open-end investment company in the same group of investment companies as the Funds and advised by the Advisers, or any entity controlling, controlled by, or under common control with the Advisers (together with Core Trust, the ''Portfolios''), and (ii) any such Portfolio.

Filing Dates: The application was filed on February 5, 1997, and amended on August 14, 1997. Applicants have also agreed to file an additional amendment during the notice period. The substance of the additional amendment is incorporated in this notice.

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 17, 1997, 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, Federated Investors Tower, Pittsburgh, PA 15222–3779.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. FIS and ISF, organized under Maryland law, are registered under the Act as open-end management investment companies. FIS and ISF are advised by Federated Advisers. FIS currently offers three portfolios, including Federated Strategic Income Fund. ISF currently offers two portfolios, including Federated Bond Fund.

2. FTRS and FSBF, organized under Maryland law, are registered under the Act as open-end management investment companies. FTRS and FSBF are advised by Federated Management. FTRS currently offers four portfolios, including Federated Total Return Bond Fund, and Federated Total Return Limited Duration Fund. FSBF currently is not a series investment company.

3. MST, organized under Massachusetts law, is registered under the Act as an open-end management investment company. MST is advised by Federated Management. MST currently offers four portfolios, including Federated Managed Aggressive Growth Fund, Federated Managed Growth Fund, Federated Managed Growth & Income Fund, and Federated Managed Income Fund.

4. Core Trust, organized under Massachusetts law, will be registered as an open-end management investment company under the Act. Core Trust is advised by Federated Research Corp. Core Trust currently has one series, High-Yield Bond Portfolio (''Bond Core Portfolio''), which invests in high-yield bonds.[1]

5. Federated Managed Aggressive Growth Fund, Federated Managed Growth Fund, Federated Managed Growth & Income Fund, Federated Managed Income Fund, Federated Strategic Income Fund, Federated Bond Fund, Federated Total Return Bond Fund, Federated Total Return Limited Duration Fund, and FSBF (the ''Blended Funds'') would like to be able to invest in securities directly as well as to invest a portion of assets that they allocate for investment in the high-yield bond asset class in the Bond Core Portfolio. The Funds also would like to be able to invest in other Portfolios.

6. Bond Core Portfolio currently is intended to be offered only to the Blended Funds. However, Bond Core Portfolio may, in the future, be offered to funds relying on any order granting this application, or to other investors.

7. A Blended Fund's investment in the Bond Core Portfolio will be consistent with the Blended Fund's investment objective as described in its prospectus. If a Blended Fund allocates its assets to an asset class not represented by Bond Core Portfolio, or pursues a different investment strategy or style with respect to the asset class than Bond Core Portfolio, it will invest in those securities directly and/or through another Portfolio.

8. Federated Management and Federated Advisers, as investment advisers to the Blended Funds, will charge an annual investment advisory fee based upon a percentage of each Blended Fund's average daily net assets. Federated Research Corp. currently will not charge Bond Core Portfolio an advisory fee. Applicants currently anticipate that sales charges and service fees will be incurred only at the Blended Fund level and that Bond Core Portfolio will be sold without any such sales charge or service fee.

9. Applicants expect Bond Core Portfolio to provide broad diversity and exposure to all aspects of the high-yield

[1] Core Trust will not register under the Securities Act of 1933; its shares will be offered only in private placement transactions to registered investment companies and other institutional investors.

bond sector of the market while at the same time providing greater liquidity than the Blended Funds would provide separately. Applicants state that the Bond Core Portfolio likely will own more issuers in the high-yield bond sector than any single Blended Fund would own. As a result, events that affect the price of a single issuer in this sector can be expected to have less impact on Bond Core Portfolio than they would have on the high-yield bond sector of a Blended Fund that was less diversified. Applicants represent that this diversification can be expected to benefit both Bond Core Portfolio and its shareholders, the Blended Funds, by providing greater price stability and lower volatility, while at the same time capturing the performance benefits of exposure to the high-yield bond sector.

10. Applicants anticipate that the efficiencies resulting from the use of the Bond Core Portfolio will result in cost savings to the Blended Funds. Applicants expect that the cost savings will occur because Bond Core Portfolio will experience trading costs that will be substantially less than the trading costs that would be incurred if high-yield bonds were purchased separately for each of the Blended Funds.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, 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 12(d)(1)(G) of the Act exempts from the above limitations certain ''funds of funds,'' subject to conditions stated in that section. Applicants state that section 12(d)(1)(G) is not available to them because the Blended Funds will continue to invest directly in corporate bonds, other investment grade securities, and other instruments, in addition to investing in the Portfolios.

3. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants request relief from the limitations of section 12(d)(1) to permit: (a) A Fund to (i) purchase in excess of 3% of the total outstanding voting shares of a Portfolio; (ii) purchase securities of a Portfolio having an aggregate value in excess of 5% of the value of the total assets of a Fund; and (iii) purchase securities of a Portfolio having an aggregate value in excess of 10% of the assets of a Fund; (b) a Portfolio to sell more than 3% of its total outstanding shares to any Fund; and (c) a Portfolio to sell more than 10% of its total outstanding voting stock to the Funds. Applicants believe that none of the concerns underlying section 12(d)(1) are present in the proposed arrangement.

4. Applicants also request an exemption from section 17(a) of the Act, which prohibits certain purchases and sales of securities between investment companies and their affiliated persons, as defined in section 2(a)(3) of the Act. Because the Federated Funds and Core Trust have common trustees, directors, and officers, and are advised by commonly controlled Advisers, the Blended funds and the Bond Core Portfolio could be deemed affiliated persons of one another. Accordingly, purchases or sales between the Blended Funds and the Bond Core Portfolio could be deemed to be principal transactions between affiliated persons under section 17(a).

5. Applicants submit that the terms of their proposed arrangement satisfy the standards for relief under sections 6(c) and 17(b). Applicants state that the terms of the proposed transactions are reasonable and fair and do not involve overreaching. Applicants state that there are sufficient protections in the proposed arrangement against duplicative or excessive advisory fees and sales loads. Applicants state that a Fund's investment in a Portfolio will be in accordance with the Fund's investment restrictions and will be consistent with its policies as recited in its registration statement.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each Fund and each Portfolio will be part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act.

2. A fund will not invest in any Portfolio if the Portfolio may acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except for securities received as a dividend or as a result of a plan of reorganization of any company.

3. Prior to approving any advisory contract under section 15 of the Act, the directors or trustees of each Fund, including a majority of the individuals who are not ''interested persons'' of the Fund, as that term is defined in section 2(a)(19) of the Act (''Independent Trustees''), shall find that the advisory fees charged under such contract, if any, are based on services that will be in addition to, rather than duplicative of, the services provided under the contracts of any Portfolio in which the Fund ;may invest; provided that no such findings will be necessary if the Adviser to a Portfolio waives all advisory fees that may be imposed for serving as investment adviser to the Portfolio or, if only a portion of such advisory fees are waived, the Adviser or another party reimburses the Fund for any advisory fee or portion thereof that is not waived. These findings and their basis will be recorded fully in the minute books of the Fund.

4. Any sales charges and service fees, as such terms are defined under Rule 2830 of the NASD's Conduct Rules, and may be charged with respect to securities of a Fund, when aggregated with any such sales charges and service fees borne by the Fund with respect to the shares of a Portfolio, shall not exceed the limits set forth in Rule 2830 of the NASD's Conduct Rules.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28567 Filed 10–28–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39267; File No. SR–CBOE–97–33]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Suspensions for Failure to Pay Debts Owed to the Exchange

October 22, 1997.

On July 24, 1997, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] a proposed rule change to amend its rule relating to the suspension of members and associated persons who fail to pay debts owed to the Exchange.

The proposed rule change was published for comment in Securities Exchange Act Release No. 39026 (Sept. 8, 1997), 62 FR 48123 (Sept. 12, 1997). No comments were received on the proposal. This order approves the proposal.

Rule 2.23 presently requires that members or associated persons who fail to pay any debts owed to the Exchange within 30 days after they become due may be suspended from membership or association with a member by the Chairman of the Executive Committee until payment is made.

The Exchange proposes to amend this rule to clarify the application of Rule 2.23 to former members and persons associated with members by providing expressly that such persons who fail to pay debts owed to the Exchange may be barred from becoming a member and associated person by the Chairman of the Executive Committee until payment is made.

The Exchange also proposes to add new Interpretation .02 to provide that the Exchange will report any suspension or bar imposed pursuant to Rule 2.23 to the Central Registration Depository (''CRD''). This new paragraph is similar to CBOE Rule 17.14 which provides for the reporting by the Exchange to the CRD of information concerning pending formal Exchange disciplinary proceedings. The Exchange also proposes to delete references to a regular membership and special membership in the current Rule 2.23, as CBOE no longer has any special memberships, and to add language clarifying that if a member fails to pay an Exchange debt within 6 months, the Chairman of the Executive Committee may dispose of any memberships owned by that member in accordance with Rule 3.41(b).

Finally, the proposed rule change also includes several nonsubstantive language changes.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities, and, in particular, with the requirements of Section 6(b).[3] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[4] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[5] In this regard, the Commission believes that the proposed rule change will enhance the public's access to information concerning suspensions and bars imposed by the CBOE upon its members and associated persons.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–CBOE–97–33) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28571 Filed 10–28–97; 8:45 am]

BILLING CODE 8010–01–M

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39268; File No. SR–CSE–97–10]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to Listing and Trading Standards for Portfolio Depositary Receipts

October 22, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 14, 1997,[3] the Cincinnati Stock Exchange, Inc. (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Commission is also granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to adopt new Exchange rule 11.9(v), to provide listing standards for, and trading in Portfolio Depositary Receipts (''PDRs''). The text of the proposed rule change is available at the Office of the Secretary, CSE 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 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 III 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

a. Listing Requirements for Portfolio Depositary Receipts. The Exchange proposes to adopt new Rule 11.9(v) to accommodate the trading of PDRs, i.e., securities that are interests in a unit investment trust (''Trust'') holding a portfolio of securities linked to an index. Each Trust will provide investors with an instrument that (1) closely tracks the underlying portfolio of securities, (2) trades like a share of common stock, and (3) pays holders of the instrument periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses (as described in the Trust prospectus).

Under the proposal, the Exchange may list and trade, or trade pursuant to unlisted trading privileges, PDRs based on one or more stock indices or securities portfolios. PDRs based on each particular stock index or portfolio will be designated as a separate series and identified by a unique symbol. The stocks that are included in an index or portfolio on which PDRs are based will be selected by the Exchange, or by another person having a proprietary interest in and authorized use of such index or portfolio, and may be revised as may be deemed necessary or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed Amendment No. 1 to the proposed rule change on October 20, 1997, the substance of which is incorporated into this release. See letter from Adam Gurwitz, Vice President Legal, CSE, the Heather Seidel, Attorney, Market Regulation, Commission, dated October 17, 1997 (''Amendment No. 1'').

appropriate to maintain the quality and character of the index or portfolio.

In connection with an initial listing, the Exchange proposes that, for each Trust of PDRs, the Exchange will establish a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading, and such minimum number will be filed with the Commission in connection with any required submission under Rule 19b–4 for each Trust. If the Exchange trades a particular PDR pursuant to unlisted trading privileges, the Exchange will follow the listing exchange's determination of the appropriate minimum number.

Because the Trust operates on an open-end type basis, and because the number of PDR holders is subject to substantial fluctuations depending on market conditions, the Exchange believes it would be inappropriate and burdensome on PDR holders to consider suspending trading in or delisting a series of PDRs, with the consequent termination of the Trust, unless the number of holders remains severely depressed during an extended time period. Therefore, twelve months after the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of, a Trust when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) If the Trust on which the PDRs are based has more than 60 days remaining until termination and there have been fewer that 50 record and/or beneficial holders of the PDRs for 30 or more consecutive trading days; or

(b) If the index on which the Trust is based is no longer calculated; or

(c) If such other event occurs or condition exists which, in the opinion of the Exchange, makes further dealings in such securities on the Exchange inadvisable.

A Trust will terminate upon removal from Exchange listing and its PDRs will be redeemed in accordance with provisions of the Trust prospectus. A Trust may also terminate under such other conditions as may be set forth in the Trust prospectus. For example, the sponsor of the Trust (the ''Sponsor''), following notice to PDR holders, will have discretion to direct that the Trust be terminated if the value of securities in such Trust falls below a specified amount.

B. *Trading of PDRs.* Dealing in PDRs on the Exchange will be conducted pursuant to the Exchange's general agency-auction trading rules. The Exchange's general dealing and settlement rules would apply, including its rules on clearance and settlement of securities transactions and its equity margin rules. Other generally applicable Exchange equity rules and procedures would also apply including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of specialists.[4]

The CSE has represented that the Exchange understands that SPDRs and MidCap SPDRs will both become ITS System securities on October 24, 1997. The Exchange intends to trade both SPDRs and MidCap SPDRs when they become ITS System securities, but does not intend to trade them before that time.

With respect to trading halts, the trading of PDRs would be halted, along with trading of all other listed or traded stocks, in the event the ''circuit breaker'' thresholds are reached.[5] In addition, for PDRs tied to an index, while the triggering of futures price limits for the S&P 500 Composite Price Index (''S&P 500 Index''), S&P Composite Price Stock Index (''S&P 100 Index'') or Major Market Index (''MMI'') futures contracts will not, in themselves, result in a halt in PDR trading or a delayed opening, such an event could be considered by the Exchange, along with other factors, such as a halt in trading in S&P 100 Index Options (''OEX''), S&P 500 Index Options (''SPX''), or Major Market Index Options (''XMI''), in deciding whether to halt trading in PDRs.

The Exchange will issue a circular to its Members and Member Organizations informing them of Exchange policies regarding trading halts in such securities. For a PDR based on an index, these factors would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value; or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

c. *Disclosure.* Proposed Rule 11.9(v) requires that Members and Member Organizations provide to all purchasers of each series of PDRs a written description of the terms and characteristics of such securities, in a form approved by the Exchange, not later than the time a confirmation of the first transaction in such series of PDRs is delivered to such purchaser. In this regard a Member or Member Organization carrying an omnibus account for a non-member broker-dealer will be required to inform such non-member that execution of an order to purchase PDRs for such omnibus account will be deemed to constitute an agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to Members and Member Organizations. The written description must be included with any sales material on that series of PDRs that a Member provides to customers or the public. Moreover, other written materials provided by a Member or Member Organization to customers or the public making specific reference to a series of PDRs as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of [the series of PDRs] is available from your broker. It is recommended that you obtain and review such circular before purchasing [the series of PDRs]. In addition, upon request you may obtain from your broker a prospectus for [the series of PDRs].'' Additionally, as noted above, the Exchange requires that Members and Member Organizations provide customers with a copy of the prospectus for a series of PDRs upon request.

Two existing PDRs, Standard & Poor's Depository Receipts (''SPDRs'') and Standard & Poor's MidCap 400 Depository Receipts (''MidCap SPDRs''), are traded on the American Stock Exchange (''Amex'').[6] The Exchange is not asking for permission to list SPDRs or MidCap SPDRs pursuant to unlisted trading privileges once the generic listing standards set forth herein are approved.

Pursuant to SEC Rule 12f–5, in order to trade a particular class or type of security pursuant to unlisted trading privileges, the Exchange must have rules providing for transactions in such class or type of security. The Amex has enacted listing standards for PDRs, and the Exchange's proposed rule change is

[4] CSE Rule 3.7, Recommendations to Customers, will also apply to transactions in PDRs, including SPDRs and MidCap SPDRs. That rule provides that when recommending to a customer the purchase, sale or exchange of any security, a member or member organization shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts disclosed by such customer, after reasonable inquiry by the member or member organization, as to the customer's other securities holdings and as to the customer's financial situation and needs. Telephone conversation between Adam Gurwitz, Vice-President Legal, CSE, and Heather Seidel, Attorney, Market Regulation. Commission, on October 17, 1997.

[5] See Securities Exchange Act Release No. 38221 (January 31, 1997), 62 FR 5871 (February 7, 1997) and note 7 therein.

[6] SPDRs and MidCap SPDRs are defined and discussed more fully below.

designed to create similar standards for PDR listing and/or trading on the CSE. As stated above, the Exchange proposes to trade SPDRs and MidCap SPDRs pursuant to unlisted trading privileges upon approval of this rule filing.

If at a later time the Exchange and the issuer of the product desires to list SPDRs and MidCap SPDRs or any other PDRs on the Exchange, the Exchange will request SEC approval for that listing in a separate proposed rule change filed pursuant to Section 19(b) of the Act. Additionally, in the event a new PDR is listed on another exchange using listing standards that are different than current Exchange listing standards or the Exchange listing standards proposed in this filing, the Exchange will file a proposed rule change pursuant to Section 19(b) of the Act to adopt the listing standards before it trades that PDR pursuant to unlisted trading privileges.

With respect to disclosure, because SPDRs and MidCap SPDRs will be traded pursuant to unlisted trading privileges and will not be listed on the Exchange at this time, the Exchange does not intend to create its own product description to satisfy the requirements of proposed Rule 11.9(v), which requires members to provide to purchasers, a written description of the terms and characteristics of SPDRs and MidCap SPDRs in a form approved by the Exchange. Instead, the Exchange will deem a member or member organization to be in compliance with this requirement if the member delivers either (i) the current product description produced by the Amex from time to time, or (ii) the current prospectus for the SPDR or MidCap SPDR, as the case may be.[7] It will be the member's responsibility to obtain these materials directly from Amex for forwarding to purchasers in the time frames prescribed by Exchange and Commission rules. The Exchange will notify members and member organizations of this requirement in a notice to members.

The remainder of this section of the proposed rule change provides background information on SPDRs and MidCap SPDRs. The information, requested by CSE to have been copied from SR–AMEX–94–52 and SR–AMEX–92–18, describes the structure and mechanics of SPDRs and MidCap SPDRs.

d. SPDRs and MidCap SPDRs Generally. On December 11, 1992, the Commission approved Amex Rules 1000 et seq.[8] to accommodate trading on the Amex of PDRs generally. The Sponsor of each series of PDRs traded on the Amex is PDR Services Corporation, a wholly-owned subsidiary of the Amex. The PDRs are issued by a Trust in a specified minimum aggregate quantity (''Creation Unit'') in return for a deposit consisting of specified numbers of shares of stock plus a cash amount.

The first Trust to be formed in connection with the issuance of PDRs was based on the S&P 500 Index, known as Standard & Poor's Depositary Receipts (''SPDRs''). SPDRs have been trading on the Amex since January 29, 1993. The second Trust to be formed in connection with the issuance of PDRs was based on the S&P MidCap 400 Index,[9] known as Standard & Poor's MidCap 400 Depositary Receipts (''MidCap SPDRs'').[10] The sponsor of the two Trusts has entered into trust agreements with a trustee in accordance with Section 26 of the Investment Company Act of 1940. PDR Distributors, Inc. (''Distributor'') acts as underwriter of both SPDRs and MidCap SPDRs on an agency basis. The Distributor is a registered broker-dealer, a member of the National Association of Securities Dealers, Inc., and a wholly-owned subsidiary of Signature Financial Group, Inc.[11]

E. SPDRs. The Trustee of the SPDR Trust will have the right to vote any of the voting stocks held by the Trust, and will vote such stocks of each issuer in the same proportion as all other voting shares of that issuer voted.[12] Therefore, SPDR holders will not be able to directly vote the shares of the issuers underlying the SPDRs.

The Trust will issue SPDRs in exchange for ''Portfolio Deposits'' of all of the S&P 500 Index securities weighted according to their representation in the Index.[13] An Investor making a Portfolio Deposit into the Trust will receive a ''Creation Unit'' composed of 50,000 SPDRs.[14] The price of SPDRs will be based on a current bid/offer market. The Amex has designated 1/64's as the minimum increment for trading in SPDRs. The Exchange has proposed this same minimum variation for trading of SPDRs on the CSE. SPDRs will not be redeemable individually, but may be redeemed in Creation Unit size (i.e., 50,000 SPDRs). Specifically, a Creation Unit may be redeemed for an in-kind distribution of securities identical to a Portfolio Deposit.[15] PDR Distribution Services, Inc. a registered broker-dealer, will act as underwriter of SPDRs on an agency basis.

F. MidCap SPDRs. All orders to create MidCap SPDRs in Creation Unit size aggregations (which has been set at 25,000) must be placed with the Distributor, and it will be the responsibility of the Distributor to transmit such orders to the Trustee.

To be eligible to place orders to create MidCap SPDRs as described below, an entity or person either must be a participant in the Continuous Net Settlement (''CNS'') system of the National Securities Clearing Corporation (''NSCC'') or a Depository Trust Company (''DTC'') participant. Upon acceptance of an order to create a MidCap SPDRs, the Distributor will instruct the Trustee to initiate the book-entry movement of the appropriate number of MidCap SPDRs to the account of the entity placing the order. MidCap SPDRs will be maintained in book-entry form at DTC.

Payment with respect to creation orders placed through the Distributor

[7] CSE plans to notify its members in a regulatory circular that members must comply with Rule 3.7, Recommendations to Customers, prior to recommending the purchase of SPDRs or MidCap SPDRs to customers. The circular will also state that members must deliver a SPDR or MidCap SPDR product description to all purchasers of the products and that they must provide the prospectus upon the request.

[8] See Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992).

[9] The S&P MidCap 400 Index is a capitalization-weighted index of 400 actively traded securities that includes issues selected from a population of 1,700 securities, each with a year-end market-value capitalization of between $200 million and $5 billion. The issues included in the Index cover a broad range of major industry groups, including industrials, transportation, utilities, and financials.

[10] See Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995).

[11] The Commission has recently approved a rule change proposal covering the trading and listing of PDRs on CHX, including SPDRs and MidCap SPDRs. See Securities Exchange Act Release No. 39076 (September 15, 1997), 62 FR 49270 (September 19, 1997) (''CHX Approval Order'').

[12] The Trustee will abstain from voting if the stocks held by the Trust cannot be voted in the same proportion as all other shares of the securities are voted.

[13] A Portfolio deposit also will include a cash payment equal to a pro rata portion of the dividends accrued on the Trust's portfolio securities since the last dividend payment by the Trust plus or minus an amount designed to compensate for any difference between the net asset value of the Portfolio Deposit and the S&P 500 Index caused by, among other things, the fact that a Portfolio Deposit cannot contain fractional shares.

[14] The Trust is structured so that the net asset value of an individual SPDR should equal one-tenth of the value of the S&P 500 Index.

[15] An investor redeeming a Creation Unit will receive Index securities and cash identical to the Portfolio Deposit required of an investor wishing to purchase a Creation Unit on that particular day. Since the Trust will redeem in kind rather than for cash, the Trustee will not be forced to maintain cash reserves for redemptions. This should allow the Trust's resources to be committed as fully as possible to tracking the S&P 500 Index, enabling the Trust to track the Index more closely than other basket products that must allocate a portion of their assets for cash redemptions.

will be made by (1) the ''in-kind'' deposit with the Trustee of a specified portfolio of securities that is formulated to mirror, to the extent practicable, the component securities of the underlying index or portfolio, and (2) a cash payment sufficient to enable the Trustee to make a distribution to the holders of beneficial interests in Trust on the next dividend payment date as if all the securities had been held for the entire accumulation period for the distribution (''Dividend Equivalent Payment''), subject to certain specified adjustments. The securities and cash accepted by the Trustee are referred to, in the aggregate, as a ''Portfolio Deposit.''

G. Issuance of MidCap SPDRs. Upon receipt of a Portfolio Deposit in payment for a creation order placed through the Distributor as described above, the Trustee will issue a specified number of MidCap SPDRs, which aggregate number is referred to as a ''Creation Unit.'' A Creation Unit is made up of 25,000 MidCap SPDRs.[16] Individual MidCap SPDRs can then be traded in the secondary market like other equity securities. Portfolio Deposits are expected to be made primarily by institutional investors, arbitrageurs, and Exchange specialists.

The Trustee or Sponsor will make available (1) on a daily basis, a list of the names and required number of shares for each of the securities in the current Portfolio Deposit; (2) on a minute-by-minute basis throughout the day, a number representing the value (on a per MidCap SPDR basis) of the securities portion of a Portfolio Deposit in effect on such day; and (3) on a daily basis, the accumulated dividends, less expenses, per outstanding MidCap SPDR.

The Amex has set the minimum fractional trading variation for MidCap SPDRs at 1/64 of $1.00. The Exchange is proposing this same minimum variation for MidCap SPDRs.

H. Redemption of MidCap SPDRs. MidCap SPDRs in Creation Unit size aggregations will be redeemable in kind by tendering them to the Trustee. While holders may sell MidCap SPDRs in the secondary market at any time, they must accumulate at least 25,000 (or multiples thereof) to redeem them through the Trust. MidCap SPDRs will remain outstanding until redeemed or until the termination of the Trust. Creation Units will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust identical in weighting and composition to the securities portion of a Portfolio Deposit in effect on the date a request is made for redemption, together with a ''Cash Component'' (as defined in the Trust prospectus), including accumulated dividends, less expenses, through the date of redemption. The number of shares of each of the securities transferred to the redeeming holder will be the number of shares of each of the component stocks in a Portfolio Deposit on the day a redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees may be charged in connection with the creation and redemption of Creation Units. The Trustee will cancel all tendered Creation Units upon redemption.

I. Distributions for MidCap SPDRs. The MidCap SPDR Trust will pay dividends quarterly. The regular quarterly ex-dividend date for MidCap SPDRs will be the third Friday in March, June, September, and December, unless that day is a New York Stock Exchange holiday, in which case the ex-dividend date will be the preceding Thursday. Holders of MidCap SPDRs on the business day preceding the ex-dividend date will be entitled to receive an amount representing dividends accumulated through the quarterly dividend period preceding such ex-dividend date net of fees and expenses for such period. The payment of dividends will be made on the last Exchange business day in the calendar month following the ex-dividend date (''Dividend Payment Date''). On the Dividend Payment Date, dividends payable for those securities with ex-dividend dates falling within the period from the ex-dividend date most recently preceding the current ex-dividend date will be distributed. The Trustee will compute on a daily basis the dividends accumulated within each quarterly dividend period. Dividend payments will be made through DTC and its participants to all such holders with funds received from the Trustee.

The MidCap SPDR Trust intends to make the DTC DRS available for use by MidCap SPDR holders through DTC participant brokers for reinvestment of their cash proceeds. The DTC DRS is also available to holders of SPDRs. Because some brokers may choose not to offer the DTC DRS, an interested investor would have to consult his or her broker to ascertain the availability of dividend reinvestment through that broker. The Trustee will use cash proceeds of MidCap SPDR holders participating in the reinvestment to obtain the Index securities necessary to create the requisite number of SPDRs.[17] Any cash remaining will be distributed pro rata to participants in the dividend reinvestment.

The Exchange requests accelerated approval of the proposed rule change pursuant to Section 19(b)(2) of the Act. The Exchange believes that accelerated approval is appropriate because the listing standards proposed in the proposed rule change closely mirror both the listing standards of the primary market for SPDRs and Mid-Cap SPDRs, Amex, and the standards proposed by two other regional exchanges that have announced their intention to trade PDRs, the CHX and the Pacific Exchange. The Exchange believes its proposed rule change should be granted accelerated approval for the same reasons the Commission determined to approve the standards of those other exchanges.

2. Statutory Basis

The CSE believes that the proposed rule change is consistent with Section 6(b) of the Act[18] in general, and furthers the objectives of Section 6(b)(5) of the Act[19] in particular in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposed rule change will increase competition in PDR markets by permitting Exchange members to compete for PDR order flow. By adopting the proposed rule change, the Exchange will bring the benefits of competition, including increased efficiency and price competition, to those markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

[16] PDRs may be created in other than Creation Unit size aggregations in connection with the DTC Dividend Reinvestment Service (''DRS'').

[17] The Creation of PDRs in connection with DTC DRS represents the only circumstances under which PDRs can be created in other than Creation Unit size aggregations.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

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–CSE–97–10 and should be submitted by November 19, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[20] The Commission believes that providing for the exchange-trading on CSE of PDRs, in general, and SPDRs and MidCap SPDRs, in particular, will offer investors an efficient way of participating in the securities markets. Specifically, the Commission believes that the trading on CSE of PDRs, in general, and SPDRs and MidCap SPDRs pursuant to unlisted trading privileges, in particular, will provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a low-cost security replicating the performance of a broad portfolio of stocks at negotiated prices throughout the business day, and by increasing the availability of SPDRs and MidCap SPDRs as an investment tool. The Commission also believes that PDRs will benefit investors by allowing them to trade securities based on unit investment trusts in secondary market transactions.[21] Accordingly, as discussed below, the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act that Exchange rules facilitate transactions in securities while continuing to further investor protection and the public interest.[22]

As the Commission noted in the orders approving SPDRs and MidCap SPDRs for listing and trading on Amex,[23] the Commission believes that the trading on CSE of a security like PDRs in general, and SPDRs and MidCap SPDRs in particular, which replicate the performance of a broad portfolio of stocks, could benefit the securities markets by, among other things, helping to ameliorate the volatility occasionally experienced in these markets. The Commission believes that the creation of one or more products where actual portfolios of stocks or instruments representing a portfolio of stocks, such as PDRs, can trade at a single location in an auction market environment could alter the dynamics of program trading, because the availability of such single transaction portfolio trading could, in effect, restore the execution of program trades to more traditional block trading techniques.[24]

An individual SPDR has a value approximately equal to one-tenth of the value of the S&P 500 Index, and an individual MidCap SPDR has a value of approximately one-fifth of the value of the S&P MidCap 400 Index, making them more available and useful to individual retail investors desiring to hold a security replicating the performance of a broad portfolio of stocks. Accordingly, the Commission believes that trading of SPDRs and MidCap SPDRs on CSE will provide retail investors with a cost efficient means to make investment decisions based on the direction of the market as a whole and may provide market participants several advantages over existing methods of effecting program trades involving stocks.

The Commission also believes that PDRs, in general, and SPDRs and MidCap SPDRs, in particular, will provide investors with several advantages over standard open-end S&P 500 Index and S&P MidCap 400 Index mutual fund shares. In particular, investors will have the ability to trade PDRs continuously throughout the business day in secondary market transactions at negotiated prices.[25] In contrast, pursuant to Investment Company Act Rule 22c–1,[26] holders and prospective holders of open-end mutual fund shares are limited to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the fund as designated by the board of directors.[27] Accordingly, PDRs in general, and SPDRs and MidCap SPDRs in particular, will allow investors to (1) respond quickly to changes in the market; (2) trade at a known price; (3) engage in hedging strategies not currently available to retail investors; and (4) reduce transaction costs for trading a portfolio of securities.

Although PDRs in general, and SPDRs and MidCap SPDRs in particular, are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will still be derived and based upon the securities held in their respective Trusts. In essence, SPDRs are equity securities that are priced off a portfolio of stocks based on the S&P 500 Index and MidCap SPDRs are equity securities that are price off a portfolio of stocks based on the S&P MidCap 400 Index. Accordingly, the level of risk involved in the purchase or sale of a SPDR or MidCap SPDR (or PDR in general) is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that

[20] 15 U.S.C. 78f(b)(5).

[21] The Commission notes, however, that unlike open-end funds where investors have the right to redeem their fund shares on a daily basis, investors could only redeem PDRs in creation unit share sizes. Nevertheless, PDRs would have the added benefit of liquidity from the secondary market and PDR holders, unlike holders of most other open-end funds, would be able to dispose of their shares in a secondary market transaction.

[22] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] See *supra* notes 8 and 10.

[24] Program trading is defined as index arbitrage or any trading strategy involving the related purchase or sale of a ''basket'' or group of fifteen or more stocks having a total market value of $1 million or more.

[25] Because of potential arbitrage opportunities, the Commission believes that PDRs will not trade at a material discount or premium in relation to their net asset value. The mere potential for arbitrage should keep the market price of a PDR comparable to its net asset value, and therefore, arbitrage activity likely will be minimal. In addition, the Commission believes the Trust will tract the underlying index more closely than an open-end index fund because the Trust will accept only in-kind deposits, and, therefore, will not incur brokerage expenses in assembling its portfolio. In addition, the Trust will redeem in kind, thereby enabling the Trust to invest virtually all of its assets in securities comprising the underlying index.

[26] Investment Company Act Rule 22c–1 generally requires that a registered investment company issuing a redeemable security, its principal underwriter, and dealers in that security, may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem, or resell. The net asset value of a mutual fund generally is computed once daily Monday through Friday as designated by the investment company's board of directors. The Commission granted SPDRs and MidCap SPDRs an exemption from this provision in order to allow them to trade at negotiated prices in the secondary market. The Commission notes that CSE would need to apply for a similar exemption in the instance that it wishes to list and trade a new PDR because the exemptions are specific to SPDRs and MidCap SPDRs.

[27] *Id*.

the pricing mechanism for SPDRs and MidCap SPDRs (and PDRs in general) is based on a basket of stocks. Nonetheless, the Commission has several specific concerns regarding the trading of these securities. In particular, PDRs raise disclosure, market impact, and secondary market trading issues that must be addressed adequately. As discussed in more detail below, and in the Amex Approval Order,[28] the Commission believes CSE adequately addresses these concerns.

The Commission believes that the CSE proposal contains several provisions that will ensure that investors are adequately apprised of the terms, characteristics, and risks of trading PDRs. As noted above the proposal contains four aspects addressing disclosure concerns. First, CSE members must provide their customers trading PDRs with a written explanation of any special characteristics and risks attendant to trading such PDR securities (such as SPDRs or MidCap SPDRs), in a form approved by CSE. As discussed above, CSE's filing states that SPDRs and MidCap SPDRs product descriptions should be obtained from Amex.[29] The Commission believes that it is reasonable under the Act to allow CSE to require its members to obtain the product description for SPDRs and MidCap SPDRs from Amex.[30] Amex might decide to impose a reasonable charge for this service.[31]

Second, members and member organizations must include this written product description with any sales material relating to the series of PDRs that is provided to customers or the public. Third, any other written materials provided by a member or member organization to customers or the public referencing PDRs as an investment vehicle must include a statement, in a form specified by CSE, that a circular and prospectus are available from a broker upon request. Fourth, a member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of PDRs for such omnibus account will be deemed to constitute agreement by the non-member to make the written product description available to its customers on the same terms as member firms. Accordingly, the Commission believes that investors in PDR securities, in general, and SPDRs and MidCap SPDRs, in particular, will be provided with adequate disclosure of the unique characteristics of the PDR instruments and other relevant information pertaining to the instruments. Finally, CSE's Rule 3.7, Recommendations to Customers, will apply to the trading of PDRs, including transactions in SPDRs and MidCap SPDRs.[32]

The Commission believes CSE has adequately addressed the potential market impact concerns raised by the proposal. First, CSE's proposal permits listing and trading of specific PDRs only after review by the Commission. Second, CSE has developed policies regarding trading halts in PDRs. Specifically, the Exchange would halt PDR trading if the circuit breaker parameters under CSE Rule 12.11 were reached.[33] In addition, in deciding whether to halt trading or conduct a delayed opening in PDRs, in general, and SPDRs and MidCap SPDRs, in particular, CSE represents that it will be guided by, but not necessarily bound to, whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The Commission believes that the trading of PDRs in general on CSE should not adversely impact U.S. securities markets. As to the trading of SPDRs and MidCap SPDR pursuant to UTP, the Commission notes that the corpus of the SPDR Trust is a portfolio of stocks replicating the S&P 500 Index, a broad-based capitalization-weighted index consisting of 500 of the most actively-traded and liquid stocks in the U.S. The corpus of the MidCap SPDR Trust is a portfolio of stocks replicating the S&P MidCap 400 Index, also a broad-based, capitalization-weighted index consisting of 400 actively traded and liquid U.S. stocks. In fact, as described above, the Commission believes SPDRs and MidCap SPDRs may provide substantial benefits to the marketplace and investors, including, among others, enhancing the stability of the markets for individual stocks.[34] Accordingly, the Commission believes that SPDRs and MidCap SPDRs do not contain features that will make them likely to impact adversely the U.S. securities markets, and that the addition of their trading on CSE pursuant to UTP could produce added benefits to investors through the increased competition between other market centers trading the product.[35]

[28] See *supra* note. 8.

[29] The Commission notes that, in the context of a proposed rule change by CHX to add rules for listing and trading of PDRs in general, and to trade SPDRs and MidCap SPDRs pursuant to UTP, Amex commented on CHX's proposed method regarding the delivery of the SPDR and MidCap SPDR product descriptions, and reserved the right to charge CHX members for supplying the product description should the task become burdensome to Amex. Amex did not object to the underlying policy of CHX members obtaining the product description from Amex. See CHX Approval Order, *supra* note 11.

[30] The Commission notes that the exemptions granted by the Commission under the Investment Company Act that permit the secondary market trading of SPDRs and MidCap SPDRs are specifically conditioned upon the customer disclosure requirements described above. Accordingly, CSE rules adequately ensure its members must delivery the current product description to all investors in SPDRs and MidCap SPDRs.

[31] The Commission notes that Amex would need to file a proposed rule change under Section 19(b) of the Act in the event it decides to charge a fee for supplying the SPDR or MidCap SPDR product descriptions. The Commission notes that reasonable fees would have to be imposed on the member firms rather than the customers entitled to receive the prospectus or the product description.

[32] See *supra* note. 4.

[33] In addition, for PDRs tied to an index, the triggering of futures price limits for the S&P 500 Index, S&P 100 Index, or MMI futures contracts will not, in itself, result in a halt in PDR trading or a delayed opening. However, the Exchange could consider such an event, along with other factors, such as a halt in trading in OEX, SPX, or MMI options, in deciding whether to halt trading in PDRs.

[34] Even though PDR transactions may serve as substitutes for transactions in the cash market, and possibly make the order flow in individual stocks smaller than would otherwise be the case, the Commission acknowledges that during turbulent market conditions the ability of large institutions to redeem or create PDRs could conceivably have an impact on price levels in the cash market. In particular, if a PDR is redeemed, the resulting long stock position could be sold into the market, thereby depressing stock prices further. The Commission notes, however, that the redemption or creation of PDRs likely will not exacerbate a price movement because PDRs will be subject to the equity margin requirements of 50% and PDRs are non-leveraged instruments. In addition, as noted above, during turbulent market conditions, the Commission believes PDRs and SPDRS and MidCap SPDRs, in particular, will serve as a vehicle to accommodate and ''bundle'' order flow that otherwise would flow to the cash market, thereby allowing such order flow to be handled more efficiently and effectively. Accordingly, although PDRs and SPDRs and MidCap SPDRs could, in certain circumstances, have an impact on the cash market, on balance we believe the product will be beneficial to the marketplace and can actually aid in maintaining orderly markets.

[35] As mentioned earlier, CSE has represented that it will not begin to trade SPDRs and MidCap SPDRs until they are eligible to trade over ITS. The Commission also reiterates its belief, expressed in the CHX Approval Order, that Amex's statements in its comment letter regarding the trading of SPDRs and MidCap SPDRs through ITS should be resolved, as the Amex letter suggests, through the proper ITS committee, not through Commission action on the CHX (or this) proposal. The Commission does not want to suggest that Amex's concerns are unfounded, but only that the proper venue for their resolution is the proper ITS committee, not the Rule 19b–4 process. See *supra* note 11.

Finally, the Commission notes that CSE has submitted surveillance procedures for the trading of PDRs, specifically SPDRs and MidCap SPDRs, and believes that those procedures, which incorporate and rely upon existing CSE surveillance procedures governing equities, are adequate under the Act.

The Commission finds that CSE's proposal contains adequate rules and procedures to govern the trading of PDR securities, including trading SPDRs and MidCap SPDRs pursuant to UTP. Specifically, PDRs are equity securities that will be subject to the full panoply of CSE rules governing the trading of equity securities on CSE, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of specialists. In addition, CSE has developed specific listing and delisting criteria for PDRs that will help to ensure that the markets for PDRs will be deep and liquid. As noted above, CSE's proposal provides for trading halt procedures governing PDRs. Finally, the Commission notes that CSE has stated that Rule 3.7, Recommendations to Customers, will apply to the trading of PDRs in general, and SPDRs and MidCap SPDRs, in particular.

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate because it is very similar to CHX's previously approved proposal covering the listing and trading of PDRs in general, and SPDRs and MidCap SPDRs, in particular.[36] As such, the Commission believes that the proposed rule change does not raise any new regulatory concerns or issues.

It is therefore ordered, pursuant to Section 19(b)(2)[37] that the proposed rule change is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

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[36] *See supra* note 11.

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39266; File No. SR–NASD–97–42)]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change to Amend NASD Rule 2320(g) to Provide Authority to the Staff of NASD Regulation to Grant Exemptions From Such Provision

October 22, 1997.

I. Introduction

On June 17, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') submitted to the Securities and Exchange commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 2320(g) to provide the staff of NASD Regulation authority to grant exemptions from such provision.

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 38936 (August 14, 1997), 62 FR 44503 (August 21, 1997). Two comment letters were received on the proposal.[3]

II. Description

NASD Rule 2320(g) (''The Three Quote Rule'' or ''Rule'') was adopted on May 2, 1998[4] as an amendment to the NASD's best execution interpretation[5] under Article III, Section 1 of the NASD's Rules of Fair Practice.[6] The Three Quote Rule was adopted in connection with the NASD's efforts to develop a nationwide automated market surveillance program for non-Nasdaq, over-the-counter (''OTC'') securities, commonly referred to as ''pink sheet'' stocks, and was designed to create a standard to help assure that members would fulfill their best execution responsibilities to customers in non-Nasdaq securities, especially transactions involving relatively illiquid securities with non-transparent prices.

The Rule expanded a member's best execution obligation to customers by setting forth additional requirements for customer transactions in non-Nasdaq securities. In particular, the Rule requires members that execute transactions in non-Nasdaq securities on behalf of customers to contact a minimum of three dealers (or all dealers if there are three or less) to obtain quotations to enable them to determine the best inter-dealer market. Each member is generally required to use reasonable diligence to ascertain this best inter-dealer market for a security, and to buy or sell in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions.[7]

Concurrent with these activities, the Commission also approved Schedule H to the NASD's By-Laws, which established an electronic system of mandatory price and volume reporting for the OTC non-Nasdaq securities.[8] On May 1, 1990, the Commission issued an order approving the operation of the NASD's OTC Bulletin Board Display Service (''OTC Bulletin Board'') for a pilot term of one year.[9] The NASD introduced the OTC Bulletin Board to allow NASD eligible members to enter, update and retrieve quotation information on a real-time basis in non-Nasdaq securities.[10]

Since the establishment of the OTC Bulletin Board, significant market, regulatory and technology related improvements have occurred in the non-Nasdaq marketplace.[11] In

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] See letter from Leonard Mayer, President, Mayer & Schweitzer, Inc., to Jonathan G. Katz, Secretary, Commission, dated September 12, 1997 (''Mayer letter''), and letter from Paul Chalmers, Senior Vice President, International Trading, Canaccord Capital, to Jonathan G. Katz, Secretary, Commission, dated September 17, 1997 (''Canaccord letter'').

[4] See Securities Exchange Act Release No. 25637 (May 2, 1988), 53 FR 16488 (May 9, 1988).

[5] ''Interpretation of the Board of Governors—Execution of Retail Transactions in the Over-the-Counter Market.''

[6] The best execution interpretation in Article III, Section 1 of the NASD's Rules of Fair Practice was converted into NASD Rule 2320 in connection with the NASD's Manual revision project. See Securities Exchange Act Release No 36698 (January 11, 1996), 61 FR 1419 (January 19, 1996.)

[7] See NASD Rule 2320(a).

[8] Schedule H of the By-laws required NASD members executing principal transactions in non-Nasdaq securities to report price and volume data for the days on which their sales or purchases exceeded 50,000 shares or $10,000. In 1993, member obligations under Schedule H were modified or eliminated as a result of the NASD adopting real-time reporting of transactions for non-Nasdaq securities. See Securities Exchange Act Release No. 32647 (July 16, 1993), 58 FR 39262 (July 22, 1993).

[9] On March 31, 1997, the SEC granted permanent approval of the OTC Bulletin Board. See Securities Exchange Act Release No. 38456 (March 31, 1997), 62 FR 16635 (April 7, 1997).

[10] See Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19123 (May 8, 1990).

[11] These changes include: requiring that all priced quotations entered by market makers in domestic securities be firm for at least one trading unit (see Securities Exchange Act Release No. 29261 (May 31, 1991), 56 FR 29297 (June 26, 1991)); calculating inside quotes for individual securities and disseminating this information through vendors;

Continued

particular, the NASD has implemented enhancements to the OTC Bulletin Board to increase the reliability of information contained therein. Most recently, in July 1993, the Commission approved an NASD rule change to implement real-time trade reporting for members' OTC transactions in certain non-Nasdaq equity securities,[12] and in April 1994, the NASD commenced realtime dissemination of transaction reports through the Nasdaq network and the networks of commercial vendors, providing member firms and their customers access to last-sale price and volume information for these securities throughout the business day.

The OTC Bulletin Board meets the requirements of an ''automated quotation system'' as the characteristics of such system Ware described in Section 17B of the Exchange Act.[13] As such, the OTC Bulletin Board has assisted NASD broker-dealers in complying with certain disclosure regulations under Section 15(g) of the Exchange Act (''the Penny Stock Rules'').[14] The OTC Bulletin Board was also designed to help deter fraudulent and manipulative trading practices in penny stocks, [15] in part through real-time transaction reporting. Technological improvements to the OTC Bulletin Board have enhanced the NASD's surveillance capabilities to, among other things, permit computerized analyses of market markers' quotation entries and reported transactions.

The proposed change to Rule 2320(g) will provide for general exemptive authority under the Rule. The NASD Regulation staff, upon written request and taking into consideration all relevant factors, will be able to exempt from Rule 2320 any transaction or class of transactions, either unconditionally or on specified terms, if the exemption is consistent with the purposes of the Rule, protection of investors and the public interest. The decision may be appealed to the National Business Conduct Committee (''NBCC''). NASD Regulation has not yet determined whether any particular class of transactions should be exempted.

The NASD noted in its filing that the staff could consider, in determining whether to grant an exemptive request: (1) The number of firms publishing firm quotations and the period of time during which such quotations were published; (2) the size of the customer order in relation to the minimum size of the market makers' quotations; (3) the transaction volume of the security in question; and (4) the number of dealers publishing quotations through an electronic quotation medium in comparison to dealers in the security that do not publish such quotes. The NASD also stated that it expects the range of circumstances in which exemptions may be granted would be limited to those circumstances in which it can be shown that the Three Quote Rule would, in fact, hinder a member's best execution obligation.

The Office of the General Counsel of NASD Regulation (''the Office'') will be responsible for strict compliance with discharging this exemptive authority. Member broker-dealers will be instructed to submit all requests for exemptions to the Office and will be required to limit the requests to actual contemplated transactions or situations. The NASD Regulation staff will not provide exemptions in response to hypothetical situations or transactions. The request should be detailed and include all relevant information necessary for the staff to reach a determination on the request. If a particular exemption involves a particular class of transactions or class of customers that may be relevant to other member broker-dealers, the NASD Regulation staff will also publish such results to the membership through a Notice to Members or similar publication or broadcast. NASD Regulation staff determinations will be subject to review by the NBCC.

III. Summary of Comments

The Commission received two comment letters on the proposal, both of which supported the proposal. One commenter supported the ability of the NASD Regulation staff to have discretionary authority to grant, where appropriate, exemptions from the Three Quote Rule both for a particular fact situation or as to a class of securities or transactions.[16] Both commenters agreed that in certain situations the Three Quote Rule may hinder, rather than help, a firm in meeting its best execution obligations. One commenter stated that, in particular, the exemption should be available for foreign securities and agreed with the reasoning in the proposing release.[17]

IV. Discussion

The Commission believes that the proposed rule change is consistent with Sections 15A(b)(6) [18] and 15A(b)(9) [19] of the Exchange Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(9) requires that rules of an association not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[20]

The Commission believes that the proposed rule change is consistent with the Exchange Act because it will give NASD Regulation the authority to grant exemptions from the Three Quote Rule in situations where complying with the rule would hinder, rather than assist, best execution. The Commission believes that providing general exemptive authority under the Rule is appropriate in order to provide flexibility to respond to changing market conditions and to particular fact situations,[21] as well as instances when certain classes of transactions or certain securities on OTC Bulletin Board may warrant an exemption from the Three Quote Rule.

The Commission notes that one situation where exemptive relief might be applied would be trading in certain foreign securities.[22] In some

and establishing larger minimum-size requirements for market makers' quotes in domestic securities.

[12] See Securities Exchange Act Release No. 32647 (July 16, 1993), 58 FR 39262 (July 22, 1993).

[13] On October 15, 1990, the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (''Reform Act'') was signed into law. Among other things, the Reform Act amended the Exchange Act by adding Section 17B, which requires the Commission to facilitate the development of one or more automated quotation systems for the collection and dissemination of information for penny stocks.

[14] See Rules 15g–1 through 15g–9 under the Exchange Act, 17 CFR 240.15g–1 through 240.15g–9.

[15] ''Penny Stock'' is defined under Rule 3a51–1 of the Exchange Act, 17 CFR 240.3a51–1.

[16] See Mayer letter, *supra* note 3.

[17] See Canaccord letter, *supra* note 3.

[18] 15 U.S.C. 78*o*–3(b)(6).

[19] 15 U.S.C. 78*O*–3(b)(9).

[20] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] In its proposal, the NASD stated that some member broker-dealers who are active in the non-Nasdaq market claim that adherence to the three quote requirement may, in certain situations, have a negative impact on a member's ability to satisfy its best execution obligations, due to time delays involved in contacting and collecting quotations from three separate dealers. In addition, the NASD noted that some members question whether the Three Quote Rule should continue to apply to all customer transactions in non-Nasdaq securities in light of the technological and regulatory improvements to the non-Nasdaq marketplace and to the OTC Bulletin Board, over the past seven years. However, there are many non-Nasdaq securities that only trade in the Pink Sheets.

[22] The Three Quote Rule applies to transactions in all non-Nasdaq securities. A non-Nasdaq security is defined in NASD Rule 6710 as ''any equity

circumstances the foreign exchange market may constitute the best market for the securities that are listed on that market, and the time delay involved in contacting three dealers in advance of a customer transaction could hinder obtaining the best execution for the customer.

The Commission believes that the exemptive process provided by the rule change is reasonable under the Exchange Act. The Commission stresses that the NASD Regulation staff would not be able to grant an exemption (either for a particular market maker in a particular security, or for all market makers in a particular security or a class of securities) unless a market maker can demonstrate that adherence to the Rule could serve as an impediment to satisfying its best execution obligations with regard to a particular situation. The NASD Regulation Staff will not provide exemptions in response to hypothetical situations. The Commission also notes that if a particular exemption involves a particular class of transactions or class of customers that may be relevant to other member broker-dealers. The NASD Regulation staff will also publish such results to the membership through a Notice to Members or similar publication or broadcast. Further, the Commission notes that the grant of an exemption to the Three Quote Rule should not in any way limit a member's best execution obligation. Finally, the NASD Regulation staff determinations are subject to review by the NBCC.[23]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[24] that the proposed rule change (SR–NASD–97–42) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

[FR Doc. 97–28627 Filed 10–28–97; 8:45 am]

BILLING CODE 8010–01–M

security that is neither included in the Nasdaq Stock Market nor traded on any national securities exchange * * *. Therefore, the rule by its terms applies to transactions effected on any foreign exchange. The term ''national securities exchange'' is not defined in NASD rules, but the requirements to qualify are set forth in Sections 6(a) and 19(a) of the Exchange Act.

[23] After the NASD gains experience with this exemptive authority, the Commission expects the NASD to codify, to the extent possible, exceptions to the Rule. In particular, the NASD should amend the rule to incorporate exemptions provided to broad classes or types of transactions.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39264; File No. SR–NYSE–97–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Listing Fees for Short-Term Instruments

October 22, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 18, 1997, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is published this notice to solicit comments on the proposed rule change from interested persons. The Commission is also granting accelerated approval to this proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its rule regarding listing fees for short-term instruments contained in Paragraph 902.03 of the Listed Company Manual. Currently, the Exchange charges reduced listing fees for short term instruments with terms of less than five years. Pursuant to the proposed rule change, the Exchange will charge such reduced listing fees for instruments with a term of up to seven years.

The Exchange requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register** because this rule change will benefit issuers and investors by reducing listing fees on certain short-term instruments and that accelerated approval will provide such benefits in an expedited fashion.

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 III 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 has listing standards for a variety of short-term special purpose securities (*e.g.*, index warrants, foreign current warrants, contingent value rights). By their terms, these are instruments that will be listed on the Exchange for only a short period of time. Accordingly, in 1990 the Exchange adopted reduced listing fees for such short-term securities and defined such securities as having a term of less than five years.[1] Issuers now are seeking to list special purpose securities with a life of up to seven years. Thus, the purpose of this filing is to amend the definition of short-term securities to cover securities with a life of seven years or less. This effectively will reduce the listing fees for instruments with a term of five to seven years.

2. *Statutory Basis*

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)[2] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. 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.,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[1] File No. SR–NYSE–91–01.

[2] 15 U.S.C. 78f(b)(4).

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–NYSE–97–26 and should be submitted by November 19, 1997.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the NYSE's proposed rule change is consistent with the requirements of Section 6(b) of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act[3] which provides that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.[4] The Commission believes that the proposed rule change to amend the definition of short-term security, for purposes of listing fees only, is reasonable because it could help benefit issuers and investors by reducing listing fees on certain short-term products. The Commission notes that the NYSE has represented that this proposed change would not effect any other NYSE rules.[5]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate because it will provide benefits to investors in an expedited way. Further, the Commission believes that the proposed rule change does not raise any new regulatory issues.

[3] 15 U.S.C. 78f(b)(4).

[4] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] Telephone conversation between Vincent A. Pattent, Assistant Vice President, NYSE, and Heather Seidel, Attorney, Market Regulation, Commission, on October 7, 1997,

It is therefore ordered, pursuant to Section 19(b)(2)[6] that the proposed rule change is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28569 Filed 10–28–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39262; File No. SR–NYSE–97–29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Subsequent Listing Applications

October 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 17, 1997, the New York Stock Exchange, Inc. (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. 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 NYSE is proposing to amend the form of listing application for companies seeking, among other things, to list additional securities on the Exchange or seeking to make changes in securities already listed. The proposed rule change will change the format of the listing application into that of a memorandum and will remove from the application information not necessary for the Exchange to review in analyzing the transaction and authorizing the listing.

The text of the proposed rule change is available at the Office of the Secretary, NYSE, and at the Commission.

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In this filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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

Under Section 7, ¶ 703.01 of the Listed Company Manual, NYSE-listed companies must apply for Exchange approval to list additional securities (such as additional shares of common stock the company may be issuing), to make changes in a listed security (such as with respect to a company's name change or change in state of incorporations), or to list securities that could be issued upon conversion of other securities. These subsequent listing applications generally are routine in nature. In 1995 and 1996, the Exchange authorized over 1805 and 2160 subsequent listing applications, respectively.

The NYSE believes that the current listing application format, as provided in Section 9, ¶ 903.02 of the Listed Company Manual, is cumbersome and requires companies to provide information beyond that necessary for the Exchange to analyze the transaction and authorize the listing of the securities. This proposed rule change would simplify the application process by changing the form of the application to a ''memorandum format'' and removing the requirement to provide information beyond that necessary to analyze the transaction and authorize the listing. Companies still would be required to submit all relevant supporting documents, such as a Commission registration statement and an opinion of counsel.

2. Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[3] that an exchange have rules that are designed to prevent fraudulent and

[3] 15 U.S.C. 78f(b)(5).

manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from the date of its filing; and (4) the Exchange provided the Commission with notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[4] of the Act and Rule 19b–4(e)(6)[5] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to 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 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the File No. SR–NYSE–97–29 and should be submitted by November 19, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28570 Filed 10–28–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(e)(6).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34– 39265; File No. SR–PCX–97–22]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Trading of FLEX Index Options and LEAPS on the Dow Jones & Co. Taiwan Index

October 22, 1997

I. Introduction

On June 9, 1997, the Pacific Exchange, Inc. (''PCX '' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend its rules to allow the trading of Flexible Exchange Options (''FLEX Options'') and long-term index option series (''LEAPS'') on the Dow Jones & Co. Taiwan Index (''Taiwan Index'' or ''Index'').[3]

The proposed rule change was published for comment in the **Federal Register** on August 18, 1997.[4] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The Commission previously approved the Exchange's proposal to allow trading in FLEX Options on the Wilshire Small Cap and PSE Technology Indexes.[5] FLEX Options give investors the ability, within specified limits, to designate certain of the terms of the options. In recent years, an over-the-counter (''OTC'') market in customized options has developed which permits participants to designate the basis terms of the options, including size, term to expiration, exercise style, exercise price, and exercise settlement value, in order to meet their individual investment needs. Participants in the OTC market are typically institutional investors, who buy and sell options in large-size transactions through a relatively small number of securities dealers. To compete with this growing OTC market in customized options, the PCX permits FLEX index options trading with the Options Clearing Corporation (''OCC'') as issuer and guarantor.[6]

The PCX now proposed to amend its Rules 8.100 and 8.102[7] to permit the trading of FLEX Options based on the same Dow Jones & Co. Taiwan Index previously approved for standardized non-Flex options trading.[8] The PCX's proposal will allow FLEX Option market participants to designate the following contract terms for FLEX Options on the Taiwan Index: (1) exercise price; (2) exercise style (*i.e.*, American,[9] European,[10] or capped [11]);

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The Commission previously approved the trading of standardized cash-settled, Europeanstyle stock index options on the Taiwan Index on December 23, 1996. See Securities Exchange Act Release No. 38081, 62 FR 138 (January 2, 1997) (order approving File No. SR–PSE–96–40). The Taiwan Index is a broad-based index, comprised of 113 representative stocks traded on the Taiwan Stock Exchange.

[4] See Securities Exchange Act Release No. 38920 (August 11, 1997), 62 FR 44027.

[5] See Securities Act Release No. 34364 (July 13, 1994), 59 FR 36813 (July 19, 1994) (order approving File No. SR–PSE–93–13) (''Wilshire/PSE Technology Order'').

[6] The Commission has previously designated FLEX Index Options as standardized options for the purposes of the options disclosure framework established under Rule 9b-1 of the Act. See Securities Exchange Act Release No. 31910 (February 23, 1993), 58 FR 12056 (March 2, 1993). In addition, the Commission has approved the listing by the PCX of FLEX Index Options on the Wilshire Small Cap and PSE Technology Indexes. See Wilshire/PSE Technology Order, *supra* note 5.

[7] These rules currently allow the Exchange to trade FLEX Index Options on the Wilshire Small Cap Index and the PSE Technology Index. The PCX has proposed to set position and exercise limits for FLEX options on the Index at 200,000 contracts, as set forth in PCX Rule 8.107. This is the same FLEX position and exercise limits established for the Wilshire Small Cap and PSE Technology Indexes.

[8] See *supra* note 3.

[9] An American-style option is one that may be exercised at any time on or before the expiration date.

[10] A European-style option is one that may be exercised only during a limited period of time prior to expiration of the option.

[11] A capped-style index option is one that is automatically exercised prior to expiration when the cap index value is less than or equal to the index value for calls or when the cap index value is greater than or equal to the index value for puts.

(3) Expiration date;[12] (4) option type (put, call, or spread); and (5) form of settlement (A.M., P.M. or average). These terms are identical to the terms that can be designated for the previously approved PCX FLEX Index Options.[13]

The Exchange also proposes to list and trade full-value LEAPS, pursuant to PCX Rule 6.4(d), on the Index.[14] LEAPS on the Index will allow the PCX to list options series with expirations of up to three years from the date of issuance. For LEAPS, the underlying value would be computed by using the same levels as proposed for the Index options.[15]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] Specifically, the Commission believes the proposal is consistent with the requirements of Section 6(b)(5) of the Act [17] because trading of FLEX Options and LEAPS on the Taiwan Index will serve to protect investors, promote the public interest, and help to remove impediments to a free and open securities market. The Commission also believes that the trading of FLEX Options and LEAPS on the Index will provide investors with more flexibility in hedging the risks associated with holding some or all of the securities underlying the Index.[18] By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of FLEX Options and LEAPS on the Index will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets.

In particular, as noted above, FLEX Options on the Index will allow investors to customize certain terms, including size, term to expiration, exercise style, exercise price, and exercise settlement value.[19] LEAPS should also benefit investors by allowing them to hedge positions on the Index on a longer term basis through investment in one options series, rather than having to roll shorter term expirations into new series to remain hedged on a longer basis.

The Commission notes that the Taiwan Index was thoroughly reviewed recently in connection with the Exchange's proposal to list and trade standardized, non-FLEX options based on the Index.[20] At that time, the Commission found that the Exchange had adequately addressed the Commission's concerns arising from issues relating to the design and structure of the Index, customer protection and surveillance. The Commission's findings relied on several factors, including the large capitalizations, substantial trading volume, wide diversity of the component stocks in the Taiwan Index and the size of the market underlying the Index.[21]

The Commission believes that it is reasonable for the Exchange to allow trading in FLEX Options and LEAPS based on this Index given that, to the Commission's knowledge, there have been no significant, adverse changes to the Index to date that would change the Commission's initial findings approving the trading of options on the Index. For the foregoing reasons, the Commission finds that the PCX's proposal to trade FLEX Options and LEAPS based on the Taiwan index is consistent with the requirements of the Act and the rules and regulations thereunder.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–PCX–97–22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28568 Filed 10–28–97; 8:45 am]

BILLING CODE 8010–01–M

[12] The expiration date of a FLEX Option may not fall on a day that is on, or within two business days, of the expiration date of a non-FLEX option.

[13] See *supra* note 5.

[14] The Exchange is not proposing to trade reduced-value LEAPS on the Dow Taiwan Index.

[15] Telephone conversation on October 8, 1997 between Michael Pierson, Senior Attorney, PCX, and Deborah Flynn, Attorney, Division of Market Regulation, Commission.

[16] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[19] The Commission believes that the proposal to trade FLEX Options on the Taiwan Index should also encourage fair competition by allowing the Exchange to compete with the growing OTC market in customized index options to address the demands of sophisticated portfolio managers and other institutional investors who are increasingly relying on the OTC market to satisfy their hedging needs.

[20] See *supra* note 11.

[21] *Id.*

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before November 28, 1997. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Jacqueline White, Small Business Administration 409 3RD Street, S.W., 5th Floor, Washington, D.C. 20416, Telephone: (202) 205–6629.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory, Affairs Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

Title: Procurement Automated Source System (PASS).

Form No's: SBA Forms 1062 and 1395.

Frequency: On Occasion.

Description of Respondents: Small Business Interested in Federal Procurement Opportunities.

Annual Responses: 242,000.

Annual Burden: 47,333.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 97–28677 Filed 10–28–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Actions on Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of actions on exemption applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the actions on exemption applications in January–June 1997. The modes of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions. It should be noted that some of the sections cited were those in effect at the time certain exemptions were issued.

Issued in Washington, DC, on October 14, 1997.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
		MODIFICATION EXEMPTIONS		
3216–M	DOT–E 3216	E.I. DuPont de Nemours & Co., Wilmington, DE.	49 CFR 173.314(C0	Authorizes the use of DOT Specification 110A300W tank car tank for transportation of certain compressed gases. (Modes 1, 3.)
6971–M	DOT–E 6971	Chem Service, Inc., West Chester, PA.	49 CFR Parts 100–199	Authorizes the transport of small quantities of reagent chemicals in inside glass bottles packed in metal boxes overpacked in a strong wooden or fiberboard box. (Modes 1, 2, 3, 4, 5.)
7280–M	DOT–E 7280	U.S. Department of Defense, Falls Church, VA.	49 CFR 176.905(c), 176.905(d).	Authorizes fuel tanks to be ¾ full instead of ¼ full and vehicles to be transported with battery cables connected if the holds or compartments of a vessel in which vehicles are loaded are mechanically ventilated. (Modes 3, 4.)
7657–M	DOT–E 7657	Welker Engineering Co., Sugar Land, TX.	49 CFR 173.119, 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 178.42.	Authorizes the manufacture, marking and sale of non—DOT specification cylinders, for transportation of certain compressed gases. (Modes 1, 2, 3, 4.)
8451–M	DOT–E 8451	U.S. Department of Energy, Washington, DC.	49 CFR 173.3, 173.52, 173.54, 173.60, 174.3, 175.3, 177.801.	Authorizes the transport of not more than 25 grams of high explosives and pyrotechnic materials in a special shipping container. (Modes 1, 2, 4.)
9830–M	DOT–E 9830	Worthing Cylinder Corp., Columbus, OH.	49 CFR 173.302(a), 173.304(a), 173.304(d), 175.3, 178.51–10(a), 178.51–11, 178.51–19, 178.51–20, 178.51–5.	Authorizes manufacture, marking and sale of non-DOT specification stainless steel cylinders to transport those materials authorized in DOT Specification 4BA cylinders. (Modes 1, 2, 4.)
9909–M	DOT–E 9909	Taylor-Wharton, Harrisburg, PA.	49 CFR 173.301(h), 173.302, 173.304, 173.34(a)(1), 175.3, 178.37.	Authorizes the manufacture, marking and sale of non-DOT specification steel cylinder complying in part with DOT–3AA specification for transportation of certain flammable and nonflammable gases. (Modes 1, 2, 3, 4.)
9998–M	DOT–E 9998	Accumulators, Inc., Houston, TX.	49 CFR 173.302(a)(1), 175.3.	Authorizes the shipment of nitrogen in hydraulic accumulators. (Modes 1, 2, 3, 4.)
10131–M	DOT–E 10131	FOMO Products Inc., Norton, OH.	49 CFR 173.1200(a)(8), 173.305(c), 173.306(a)(3), 178.33a.	Authorizes the transport of certain hazardous materials in a container conforming with the DOT Specification 2Q except for size, marking and test. (Modes 1, 2, 3.)
10147–M	DOT–E 10147	EFI Corp., Fremont, CA	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3.	Authorizes the manufacture, marking and sale of non-DOT Specification, fiber reinforced plastic, full composite cylinders for shipment of certain Division 2.1 and Division 2.2 gases. (Modes 1, 2, 3, 4.)
10517–M	DOT–E 10517	Nalco Chemical Co., Naperville, IL.	49 CFR 173.32(e)(1)(ii)	Authorizes the retesting of DOT Specification 57 portable tanks fabricated of stainless steel at five year intervals. (Modes 1, 2, 3.)
10741–M	DOT–E 10741	Northern Natural Gas Co., West Des Moines, IO.	49 CFR 178.36–2 thru 178.36–18.	Authorizes the use of a non-DOT specification cylinder comparable to a 3AX cylinder for use transporting compressed natural gas. (Mode 1.)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10803–M	DOT–E 10803	Westinghouse Electric Corporation, Pittsburgh, PA.	49 CFR 172.203(a), 177.834(1)(2)(i).	Authorizes the use of motor vehicles, equipped with specific diesel-operated heating equipment, engaged in the transportation of certain Class 3 liquids or gases. (Mode 1.)
10929–M	DOT–E 10929	Conrail, Philadelphia, PA	49 CFR 174.67(i) and (j)	Authorizes tank cars, containing various classes of hazardous materials to remain standing with unloading connection attached when no product is being transferred, provided that minimal level of monitoring is maintained. (Mode 2.)
10962–M	DOT–E 10962	International Compliance Center Ltd., Niagara Falls, NY.	49 CFR 172, Subpart E & F, Part 177, Subpart C.	Authorizes the transportation of materials which require the DANGEROUS WHEN WET label in motor vehicles which are not placarded DANGEROUS WHEN WET, subject to the limitation and special requirements. (Mode 1.)
11005–M	DOT–E 11005	Pressure Technology, Inc., Hanover, MD.	49 CFR 173.302(a), 173.304(a) (d), 175.3.	Authorizes the manufacture, marking and sale of non-DOT specification fiber reinforced plastic (FRP) full composite (FC) aluminum cylinders for the transportation of certain compressed gases. (Modes 1, 2, 3, 4, 5.)
11005–M	DOT–E 101005	Pressure Technology, Inc., Hanover, MD.	49 CFR 173.302(a), 173.304(a) (d), 175. 3.	Authorizes the manufacture, marking and sale of non-DOT specification fiber reinforced plastic (FRP) full composite (FC) aluminum cylinders for the transportation of certain compressed gases. (Modes 1, 2, 3, 4, 5.)
11171–M	DOT–E 11171	Dart Container Corp. of PA, Leola, PA.	49 CFR 173.35(b)	To authorize the transport of reused flexible bulk bags, comparable to those presently authorized, for use in transporting polystyrene beads, expandable, Class 9. (Mode 1.)
11180–M	DOT–E 11180	HMT Associates, Washington, DC.	49 CFR 173.24(c), Part 172, Subparts D, E and F, Part 173, Subparts E and F, Part 178.	Authorizes the transportation of metal tubing which contain hazardous materials assigned to Division 4.3, Packaging Group III, or Division 6.1, Packaging Group III, respectively, and excepts them from the packaging, marking, labeling, and placarding requirements of Hazardous Materials Regulations. (Modes 1, 2, 3.)
11186–M	DOT–E 11186	Cryenco, Inc., Denver, CO	49 CFR 173.318	Authorizes the manufacture, mark and sell of a cryogenic portable tank of SA–240 316L construction, comparable to MC–338, equipped with safety relief valve with 250 psig for use in transporting hazardous materials classed in Division 2.1 and 2.2. (Modes 1, 2, 3.)
11267–M	DOT–E 11267	TPOPAZ International Program, Albuquerque, NM.	49 CFR 173.240, 173.241, 173.242, 173.244.	Authorizes the transportation of a Topaz II unit which contains Division 4.3 and 4.1 solid substances together in a specially designed metal container. (Mode 1.)
11298–M	DOT–E 11298	Reilly Industries, Inc., Indianapolis IN.	49 CFR 174.67(i) and (j)	Authorizes tank cars, containing certain hazardous materials, to remain standing with unloading connections attached when no product is being transferred, provided that a minimal level of monitoring is maintained. (Mode 2.)
11321–M	DOT–E 11321	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 172.101 column 7 Special Provision B14 and T38.	To authorize the transportation of uninsulated DOT specification cargo tanks and portable tanks containing titanium tetroachloride which is poisonous by inhalation. (Mode 1.)
11458–M	DOT–E 11458	Creative Products Inc. of Rossville, Rossville, IL.	49 CFR 172.203(a), 173.150(b), 173.152(b), 173.154(b), 173.155(b), 173.306(a) & (h), Part 107, Subpart B, Appendix B, Part 107, Subpart B, Appendix B.	To authorize the transportation in commerce of consumer commodities eligible for reclassification as ORM–D in pallet-sized display packs that exceed the gross weight limit for limited quantity packages. (Mode 1.)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11490–M	DOT–E 11490	Lockheed Martin Corp., Princeton, NJ.	49 CFR 173.31(a)(4), 179.300–15.	Authorizes the one-time transportation of methylhydrazined, Class 8 material in DOT Specification 110A500W multi-unit tank car tanks which are not fitted with a pressure relief device and Class 8 in DOT-specification 110A500W multi-unit tank cars not equipped with pressure relief devices. (Modes 1, 3.)
11504–M	DOT–E 11504	Livonia Avon & Lakeville Railroad Corp., Cohocton, NY.	49 CFR 172.203(a), 172.302–(c), 174.85(d), Part 107, Appendix B, Subpart B.	Authorizes the transportation of certain Class 8 and Division 2.2 materials separated, in train, from an occupied locomotive by a locomotive with batteries disconnected and in tow. (Mode 2.)
11506–M	DOT–E 11506	OEA, Inc., Denver, CO	49 CFR 173.301(h), 173.306(d)(3)(i), 178.65–11(a), 178.65–3(a), 178.65–9(b).	Authorizes the manufacture, marking and sale of non-DOT specification cylinders (pressure vessels) for use as components of automobile vehicle safety systems. The pressure vessel may be charged with non-toxic, non-liquefied gases, or mixtures thereof. Modes 1, 2, 3, 4.)
11650–M	DOT–E 11650	Morton International Inc., Ogden, UT.	49 CFR 178.65–9	Authorizes the emergency transportation in commerce of non-DOT specification non-refillable cylinders charged with pyrotechnic initiating device classed as igniters, Division 1.4G. (Modes 1, 2, 3, 4.)
11666–M	DOT–E 11666	The Carbide/Graphite Group, Inc., Pittsburgh, PA.	49 CFR 173.240(b)	To authorize the transportation of graphite products classified as Miscellaneous Hazardous Class 9 material in bulk packaging strapped to wooden pallets on an open flat truck bed. (Mode 1.)
11791–M	DOT–E 11791	The Coleman Co., Inc., Wichita, KS.	49 CFR 178.33(a)	To authorize the transportation in commerce of a Division 2.1 material in a DOT Specification 2Q nonrefillable inner container which exceeds the authorizing maximum charging pressure. (Modes 1, 2, 3, 4.)
11804–M	DOT–E 11804	Advertising Unlimited, Inc., Red Wing, MN.	49 CFR 173.156, 173.184	Authorizes an emergency exemption for the transportation in commerce of a safety kit containing two highway fusees, one tire inflator, and one fire extinguisher as a consumer commodity, ORM–D. (Modes 1, 2.)
11827–M	DOT–E 11827	Nippon Riku-un Sangyo Co., Ltd., Tokyo, JP.	49 CFR 173.32b(b)(1)	To authorize an emergency exemption to waive a 5-year internal inspection of polytetrafluorethylene lined IM portable tanks for use in transporting various classes of hazardous materials. (Modes 1, 3.)
11854–M	DOT–E 11854	Zarn, Reidsville, NC	49 CFR 172.101 Col. 8(c), 173.197, 178.	To authorize the emergency manufacture, mark and sell of non-DOT specification packaging for use in transporting regulated medical waste classed in Division 6.2 material. (Mode 1.)
11856–M	DOT–E 11856	Olin Corp., Norwalk, CT	49 CFR 173.304(a)(2), 173.34(d), 175.3.	To authorize the emergency transportation in commerce of a satellite system containing Division 2.3 and Class 8 materials. (Modes 1, 4.)
11868–M	DOT–E 11868	United States Enrichment Corporation, Bethesda, MD.	49 CFR 173.420	To authorize the emergency transportation in commerce of uranium hexafluoride cylinders with valves and plugs that contain different alloys. (Modes 1, 2.)
10996–N	DOT–E 10996	AeroTech, Inc. & Industrial Solid Propulsion, Inc., Las Vegas, NV.	49 CFR 173 Subpart C	To authorize the transportation of limited quantities of composite propellant rocket motors as Class 1.4 in specially designed packaging. (Modes 1, 2.)
11344–N	DOT–E 11344	Dupont Co., Wilmington, DE	49 CFR 174.67 (i) and (j)	To authorize tank cars, containing Class 8 material, to remain standing with unloading connections attached when no product is being transferred, provided that a minimal level of monitoring, as specified is maintained. (Mode 2.)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11375–N	DOT–E 11375	Oceaneering Space Systems, Houston, TX.	49 CFR 178.57	To authorize the manufacture, marking and sale of a breathing and cooling system consisting of a non-specification cylinder, comparable to a DOT Specification 4L cylinder containing a Division 2.2 material. (Modes 1, 2, 3, 4, 5.)
11396–N	DOT–E 11396	Laidlaw Environmental Services, LaPorte, TX.	49 CFR 173.306(a)(3)	To authorize the transportation in commerce of certain flammable, non-flammable gases, Division 2.1 and 2.2 in aerosol containers overpacked in strong outside packages with no weight limitations. (Mode 1.)
11458–N	DOT–E 11458	Briston-Meyers Squibb Co., et al., Cranbury, NJ.	49 CFR 172.203(a), 173.150(b), 173.152(b), 173.154(b), 173.155(b), 173.306 (a) & (h), Part 107, Subpart B, Appendix B, Part 107, Subpart B, Appendix B.	To authorize the transportation in commerce of consumer commodities eligible for reclassification as ORM–D in pallet-sized display packs that exceed the gross weight limit for limited quantities packages. (Mode 1.)
11526–N	DOT–E 11526	BOC Gases, Murray Hill, NJ	49 CFR 172.302(c), 173.34(e)	To authorize the use of ultrasonic inspection method in lieu of hydrostatic testing of 3A and 3AA cylinders. (Modes 1, 2, 3.)
11572–N	DOT–E 11572	North American Biologicals, Inc., Miami, FL.	49 CFR 173.196	To authorize the transportation of infectious substances in specially designed packaging. (Mode 1.)
11598–N	DOT–E 11598	Metalcraft, Inc., Baltimore, MD.	49 CFR 173.34(d), 175.3	To authorize the manufacture, mark and sale of fire extinguishers equipped with non-specified pressure relief devices for use in transporting Division 2.2 material. (Modes 1, 4, 5.)
11622–N	DOT–E	Monsanto Co., St. Louis, MO	49 CFR 173.35(b)	To authorize the transportation in commerce of reused flexible intermediate bulk containers (IBC) used to ship up to 1200 lbs. per container of Class 9 granular solids. (Mode 1.)
11626–N	DOT–E 11626	DeVilbiss Health Care, Inc., Ft. Pierce, FL.	49 CFR 178.57–8(b)	To authorize the transportation of non-DOT specification vacuum insulated cylinders similar to 4L for use in transporting oxygen for ambulatory patients. (Modes 1, 2, 3, 4, 5.)
11627–N	DOT–E 11627	Cabot Corporation, Revere, PA.	49 CFR 173.227(a)	To authorize the transportation in commerce of toxic liquid, corrosive inorganic, n.o.s., PIH, Zone B material for shipment in composite packaging. (Mode 1.)
11631–N	DOT–E 11631	Health Care Incinerators, Fargo, ND.	49 CFR 106, 107, 171–180, 171.8, 172.101 Col. 8(c), 173.197.	To authorize the transportation of specially designed containers for use in transporting medical waste in bulk. (Mode 1.)
11663–N	DOT–E 11663	Pfizer, Inc., Groton, CT	49 CFR 173.304(a)(2), 174.67(i) & (j).	To authorize rail cars to remain connected during unloading process without the physical presence of an unloader. (Mode 2.)
11667–N	DOT–E 11667	Weldship Corp., Bethlehem, PA.	49 CFR 173.34(e)	To authorize an alternative retesting method of DOT–3AAX, 3T, 107A, 3A and 3AA compressed gas cylinders. (Mode 1).
11670–N	DOT–E 11670	Oilphase Sampling Services Limited, Dye, Aberdeen, Scotland.	49 CFR 178.36(3A)	To authorize the transportation in commerce of pressurised oil well formation samples from the well site to the analysis laboratory in specially designed non-DOT specification packaging. (Modes 1, 2, 3, 4).
11677–N	DOT–E 11677	Chaparral, Inc., Lubbock, TX	49 CFR 171.11, 172,101, 172.204(c) (3), 173.27, 175.30(a) (1), 175.320(b), Part 107 Appendix B.	To authorize the transportation in commerce of Division 1 explosives presently forbidden or in quantities greater than those authorized for shipment by air. (Mode 4).
11697–N	DOT–E 11697	Department of Defense, Falls Church, VA.	49 CFR 176.116	To authorize an alternative stowage method for MSC chartered LASH type vessels to carry Division 1 explosives in LASH barges within 10 feet of machinery spaces under certain conditions. (Mode 3).
11711–N	DOT–E 11711	N.C. Department of Agriculture, Raleigh, NC.	49 CFR 171, 172, 173, 177	To authorize the transportation in commerce of pesticide wastes as essentially non-regulated for residence involved in a pesticide collection program. (Mode 1).

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11736–N	DOT–E 11736	Mapico Inc., St. Louis, MO	49 CFR 171.14(a) (iii)	To authorize the transportation in commerce of black iron oxide, Division 4.2, in FIBCs not to exceed 2,500, lined paper bags meeting UN5M2, repulpable paper bags, and unlined paper bags not to exceed 55 lbs. (Modes 1, 2, 3).
11737–N	DOT–E 11737	Rensselaer Polytechnic Institute, Troy, NY.	49 CFR 173.244	To authorize the transportation in commerce of Division 4.3 material in portable tank similar to the DOT 51 tank. (Mode 2).
11746–N	DOT–E 11746	FMC Corp., Philadelphia, PA	49 CFR 174.67(j)	To authorize rail cars to remain connected during unloading of Division 2.3 material without the physical presence of an unloader. (Mode 2).
11747–N	DOT–E 11747	Monsanto Co., St. Louis, MO	49 CFR 173.31	To authorize an alternative testing method for tank car structural re-certification. (Mode 2).
11749–N	DOT–E 11749	Union Tank Car Co., East Chicago, IN.	49 CFR 180.509	To authorize an alternative testing method for specification tank cars for use in transporting various hazardous materials as presently authorized. (Mode 2.)
11766–N	DOT–E 11766	E.I. Dupont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.32b(b)	To authorize an alternative testing interval for IMO Type 1 ISO portable tanks used exclusively for hydrogen peroxide service. (Modes 1, 2, 3.)
11771–N	DOT–E 11771	Conoco Inc., Billings, MT	49 CFR 173.31, 174.67	To authorize an alternative inspection criteria of rail cars used in transporting Class 2 and 3 material. (Mode 2.)
11777–N	DOT–E 11777	Morton International, Automotive Safety Products, Ogden, UT.	49 CFR 173.301(h), 173.302, 173.306(d)(3).	To authorize the transportation in commerce of certain cartridges, power devices classed as Division 1.4S and airbag inflators or airbag modules classed as Division 4.1 or Class 9 exempt from the marking and labelling requirements. (Modes 1, 4.)
11778–N	DOT–E 11778	National Aeronautics & Space Administration (NASA), Washington, DC.	49 CFR 173.304(a)(2)	To authorize the transportation in commerce of the Faint Object Spectrograph, which contains compressed and liquified gases in non-DOT specification containers. (Modes 1, 4.)
11779–N	DOT–E 11779	Columbia Helicopters, Inc., Portland, OR.	49 CFR 173.302, 173.24(c)	To authorize the transportation in commerce of gasoline, Class 3, in UL approved non-bulk polyethylene containers in support of log-cutting operation. (Mode 1.)
11781–N	DOT–E 11781	USA Jet Airlines, Belleville, MI.	49 CFR 171,11, 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b).	To authorize the transportation in commerce of Class 1 explosives that are not permitted for shipment by air or in quantities greater than those prescribed. (Mode 4.)
11789–N	DOT–E 11789	Mallard Creek Polymers, Inc., Charlotte, NC.	49 CFR 174.67(i) & (j)	To authorize rail cars to remain attached to connectors during the entire unloading process without the physical presence of an unloader. (Mode 2.)
11790–N	DOT–E 11790	U.S. Enrichment Corp., Bethesda, MD.	49 CFR 172.302(c)	To authorize the transportation of uranium hexafluoride in non-DOT 5A specification cylinders without required markings. (Mode 1.)
11791–N	DOT–E 11791	The Coleman Co., Inc., Wichita, KS.	49 CFR 178.33(a)	To authorize the manufacture, mark and sale of non-DOT-Specification 2Q, inner non-refillable metal receptacles with alternative testing criteria and wall thickness (Modes 1, 2, 3, 4.)
11793–N	DOT–E 11793	Bilstein Corp. of America, San Diego, CA.	49 CFR 172.200–204, 172.300, 173.306(f)(2)(iii), 173.306(f)(3)(i), 174.24, 177.817.	To authorize the manufacture, mark and sale of gas-charged shock absorbers, cartridges, and struts containing compressed gas, for transportation in commerce as accumulators shipped without required labels, markings, shipping papers and testing requirements. (Modes 1, 2, 3, 4, 5.)
11794–N	DOT–E 11794	Countrymark Cooperative, Mt. Vernon, IN.	49 CFR 174.67(i) & (j)	To authorize rail cars to remain connected during unloading of certain hazardous materials without the physical presence of an unloader. (Mode 2.)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11795–N	DOT–E 11795	Wellman Inc., Florence, SC ...	49 CFR 174.67(i) & (j)	To authorize rail cars to remain connected during unloading of Class 9 material without the physical presence of an unloader. (Mode 2.)
11799–N	DOT–E 11799	Cryonix, Inc., Rockville, MD ..	49 CFR 173.196	To authorize the transportation in commerce of alternative secondary packaging consisting of heat sealed, plastic sleeve, packed in small quantities with absorbent material to be transported inside commerical freezer, for use in transporting Infectious substances, Division 6.2. (Mode 1.)
11801–N	DOT–E 11801	Wacker Silicones Corp., Adrian, MI.	49 CFR 172.301, 172.400, 173.212(c), 173.213.	To authorize the transportation in commerce of non-authorized packagings that are not properly marked or labeled for use in transporting Toxic Solid, Inorganic, n.o.s., Division 6.1. (Mode 1.)
11803–N	DOT–E 11803	Process Engineering, Plaistow, NH.	49 CFR 173.319, 179.400	To authorize the transportation in commerce of various classes of non-flammable cryogenic liquids in DOT–113A60W tank cars. (Mode 2.)
11804–N	DOT–E 11804	Advertising Unlimited, Inc., Red Wing, MN.	49 CFR 173.156, 173.184	To authorize an emergency exemption for the transportation in commerce of a safety kit containing two highway fuses, one tire inflator, and one fire extinguisher as a consumer commodity, ORM–D. (Modes 1, 2.)
11807–N	DOT–E 11807	Kirby Chemical Co., Longview, TX.	49 CFR 172.407(c)	To authorize the transportation in commerce of a current supply of labels in size smaller than the 3.9 inch minimum required for use in transporting various Class 8 material. (Mode 1.)
11818–N	DOT–E 11818	National Aeronautics & Space Administration, Washington, DC.	49 CFR 173.34(d)	To authorize the transportation in commerce of certain non-DOT specification containers containing certain Division 2.1, 2.2 and 2.3 liquidified and compressed gases not equipped with pressure relief devices to be used in connection with flight project spacecraft containing heat pipes. (Modes 1, 3, 4.)
11820–N	DOT–E 11820	Grief Bros. Corp., Springfield, NJ.	49 CFR 173.23(g), 173.8(b)(4)(1).	To authorize the transportation and reuse or reconditioning of drums with ends thinner than 1.1 mm for use in transporting various hazardous materials. (Modes 1, 2, 3, 4, 5.)
11832–N	DOT–E 11832	Air Liquide Corp., Houston, TX.	49 CFR 172.203, 173.318, 173.320.	To authorize the manufacture, mark and sale of a non-DOT specification portable tank for use in the transportation of helium, refrigerated liquid, Division 2.2. (Mode 1.)
11840–N	DOT–E 11840	TRW Vehicle Safety Systems, Inc., Queen Creek, AZ.	49 CFR 172 Subparts D&E, 173.51(a), 173.62(c).	To authorize the transportation in commerce of passenger air bag inflator classed in Division 1.4 and Division 4.1, to be transported without required marking and labeling in reusable plastic trays banded or strapped to pallets. (Mode 1.)
11842–N	DOT–E 11842	Maine State Ferry Service, Augusta, MA.	49 CFR 176.89(a)(6)	To authorize the transportation in commerce of tank trucks carrying fuel oil, Class 3 to be transported in ferry service without an operator staying with the vehicle. (Mode 3.)
11844–N	DOT–E 11844	Evergreen International Airlines, Inc., McMinnville, OR.	49 CFR 172.101, Col. 9B, 172.204(a) and (c), 173.27, 173.54(j), 175.30(a)(1) App. B to subpart B of part 107.	To authorize the transportation in commerce of explosives, Division 1, that are forbidden or exceed the quantity limitation for transportation by air. (Mode 4.)
11847–N	DOT–E 11847	Energy & Environmental Tech. Co., Southfield, MI.	49 CFR 173.188(a)(2)	To authorize the transportation in commerce of Division 4.2 material contained in hermetically sealed warheads overpacked in 55 gallon 1A2 drums instead of 30 gallon steel drums. (Mode 1.)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11849–N	DOT–E 11849	Boeing North American, Inc., Downey, CA.	49 CFR 173.302, 306, 173.304, 173.314, 173.315, 173.421, 173.62.	To authorize the transportation in commerce of a P91–ARGOS satellite, containing eight experiments containing several hazardous materials, which will be attached to a transport dolly with an aluminum cover enclosure. (Mode 1.)
11861–N	DOT–E 11861	Polymet Alloys, Inc. Saginaw, AL.	49 CFR 172.302(c), 173.24a(b)(2).	To authorize the emergency transportation in commerce of UN1A2 drums, containing a Division 4.3 material, which are overloaded by 20%. (Modes 1, 2.)
11864–N	DOT–E 11864	Boliden Intertrade, Inc., Atlanta, GA.	49 CFR 173.31(D)(1)(vi)	To authorize the transportation in commerce of tank cars containing the residue of a Class 9 material when the inspection required by 173.31(d)(1)(vi) does not include removing the rupture disk. (Mode 2.)
11876–N	DOT–E 11876	Portland General Electric Co., Rainer, OR.	49 CFR 173.427(b)	To authorize the transportation in commerce of reactor coolant pumps to be transported as DOT 7A Type A package. (Mode 1.)
		EMERGENCY EXEMPTIONS		
EE 6293–P	DOT–E 6293	PRIMEX Technologies, Inc., St. Marks, FL.	49 CFR 173.248, 173.51(f)	To become a party to exemption 6293. (Mode 1.)
EE 7616–P	DOT–E 7616	Sault Ste. Marie Bridge Company (SSAM), Stevens Point, WI.	49 CFR 172.203(a), 172.204(a), 172.204(d), 174.24(a), 174.25(b)(2), 174.3, Part 107, Appendix B, Subpart B.	To become a party to exemption 7616. (Mode 2.)
EE 10798–P	DOT–E 10798	Arco Chemical Company, Newtown Square, PA.	49 CFR 174.67(i) and (j)	To become a party to exemption 10798. (Mode 2.)
EE 11588–P	DOT–E 11588	Mid America Environmental Waste Protection Svc, Inc., Boonville, IN.	49 CFR 173.134, 173.196, 173.197.	To become a party to exemption 11588. (Mode 1.)
EE 11730–M	DOT–E 11730	USMX, Inc., Lakewood, CO ..	.....	To authorize an emergency exemption from the quantity limitations applicable to packages carried by cargo aircraft for Class 5.1, 6.1 and 8 hazardous materials for air transportation in cargo only aircraft. (Mode 4.)
EE 11785–M	DOT–E 11785	Chilton Products, Chilton, WI	49 CFR 178.65(1)(2)(iii)(b)	To authorize the emergency manufacture, marking and sale of DOT Specification 39 cylinders with a marking deviation to be used for the transportation in commerce of Division 2.1 and 2.2 materials authorized for DOT-Specification 39 cylinders. (Modes 1, 2, 3, 4.)
EE 11819–N	DOT–E 11819	Van Waters & Rogers, Anchorage, AK.	49 CFR 172.101	To authorize the one-time emergency transportation of cylinders of hydrogen peroxide by cargo aircraft in quantities greater than those presently authorized. (Mode 4.)
EE 11827–N	DOT–E 11827	Nippon Riku-un Sangyo Co., Ltd., Tokyo 102, JA.	49 CFR 173.32b(b)(1)	To authorize an emergency exemption to waive a 5-year internal inspection of polytetrafluorethylene lined IM portable tanks for use in transporting various classes of hazardous materials. (Modes 1, 3.)
EE 11828–N	DOT–E 11828	Vulcan Chemicals, Birmingham, AL.	49 CFR 173.315	To authorize the transportation in commerce of a chlorine one ton container that developed a leak around the fusible plugs which has been sealed using a B-kit. (Mode 0)
EE 11829–N	DOT–E 11829	TRW Vehicle Safety Systems, Inc., Queen Creek, AZ.	49 CFR 172.102(a) SP B 28, 172.102(a) SP B28, IMDG Code; Amendment 28–96, Section 26, Special, IMDG Code, Amendment 28–96, Section 26, Special, Requirements 3, 4 & 6.	To authorize the manufacture, mark and sale of non-DOT specification collapsible, nonreusable woven polypropylene bulk bags for use in transporting sodium azide, Division 6.1. (Modes 1, 3.)
EE 11831–N	DOT–E 11831	National Starch and Chemical Co., Bridgewater, NJ.	49 CFR 123, 123	To authorize the emergency transportation of DOT–57 portable tanks that contain flammable liquids, Class 3, that were filled after the prescribed retest date. (Mode 1.)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 11836–N	DOT–E 11836	HCI USA Distribution Companies, Inc., Greensboro, NC.	49 CFR 173.203, 173.24	To authorize the emergency transportation of polyethylene drums for use in transportation non-bulk quantities of ammonia solutions, Class 8. (Mode 1.)
EE 11838–N	DOT–E 11838	Van Waters & Rogers, Inc., Beaumont, TX.	49 CFR 173.314	To authorize the transportation in commerce of chlorine in a DOT specification 106A500X cylinder which developed a leak during storage. A Chlorine Institute Emergency Kit B was applied to the cylinder to contain the leak until it may be transported to an appropriate facility to be evacuated and repaired on destroyed. (Mode 1.)
EE 11845–N	DOT–E 11845	Bayer Corp., Kansas City, MO.	49 CFR 173.234(c)	To authorize the emergency bulk transportation in commerce of organophosphorus pesticides, flammable toxic, Division 6.1 im IM–101 portable tanks. (Modes 1, 2.)
EE 11846–N	DOT–E 11846	ShipMate, Inc., Redondo Beach, CA.	49 CFR 176.83(d)	To authorize the transport of various gases not subject to the segregation requirements in 173.83(d). (Mode 3.)
EE 11853–N	DOT–E 11853	Reckitt Colman, Inc., Montvale, NJ.	49 CFR 107, Subpart B, Appendix B, 172.203(a), 173.306(a)(3)(ii), 178.33.	To authorize the transportation in commerce of consumer commodities eligible for reclassification as ORM–D in aerosol containers overfilled with propellant packaged in DOT 2P metal containers with internal pressures that exceed the limitations. (Mode 1.)
EE 11856–N	DOT–E 11856	Olin Corp., Norwalk, CT	49 CFR 173.304(a)(2), 173.34(d), 175.3.	To authorize the emergency transportation in commerce of a satellite system which contain a thermal transport system containing anhydrous ammonia. (Modes 1, 4.)
EE 11868–N	DOT–E 11868	United States Enrichment Corp., Bethesda, MD.	49 CFR 173.420	To authorize the emergency transportation in commerce of uranium hexafluoride cylinders with valves and plugs that contain different alloys (Modes 1, 2.)
EE 11874–N	DOT–E 11874	Indiana Dept. of Environment	49 CFR Parts 171 through 180.	To authorize the emergency transportation of hazardous materials in flood affected areas. (Modes 1, 2, 3.)
EE 11875–N	DOT–E 11875	Northwestern Airlines	49 CFR 171 through 180	To authorize the emergency transportation in commerce of hazardous materials in flood affected areas as necessary for delivery to staging areas. (Mode 4.)
EE 11878–N	DOT–E 11878	Hickson Corporation, Conley, GA.	49 CFR 172.322(a)(2)	To authorize the transportation in commerce of arsenic trioxide in 55–gallon drums without required markings. (Mode 1.)
EE 11887–N	DOT–E 11887	Reilly Industries, Inc., Indianapolis, IN.	49 CFR 179.3	To authorize the emergency transportation in commerce of rail cars that have non-approved modification made to the external heater coils to be used in transporting Class 3 material. (Mode 2.)
EE 11888–N	DOT–E 11888	Day & Zimmermann, Parsons, KS.	49 CFR 172.101, 172.101	Request for an emergency exemption in order to transport an explosive 1.1A in a solution of ethanol and water. (Mode 1.)
EE 11889–N	DOT–E 11889	Airgas, Inc., and Airgas Management, Inc., Radnor, PA.	49 CFR 173.3, 173.304	Request for an emergency exemption on behalf of Airgas entities to transport cylinders of refrigerant gas containing tetrafluoroethane. The cylinders appear to meet the requirements of the DOT spec. 39, except for the markings which incorrectly identify the cylinder contents as dichlorodifluoromethane. (Mode 1.)
EE 11890–N	DOT–E 11890	BetzDearborn, Trevose, PA ...	49 CFR 173.243(d)(2)(i)1	Request for an emergency exemption to transport a material that was recently determined to be a class 8, pgI materials in composite IBCs. (Mode 1.)
EE 11904–N	DOT–E 11904	Vulcan Chemicals, Birmingham, AL.	49 CFR 173.24(b),173.31(b)(1), 179–300–12(b), 179.300–13.	Request for an emergency exemption for the one-time transportation of chlorine in a DOT specification tank car tank which developed a leak near the valve. (Mode 1.)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 11906–N	DOT–E 11906	Phone–Poulenc Ag Co., Research Triangle Park, NC.	49 CFR 178.503(a)	Request for an emergency exemption to make ongoing shipments both domestically and internationally of carbamate pesticide, solid in incorrectly marked UN 4G boxes. (Mode 1, 3.)

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
3095–X	Dow Chemical Company, Midland, MI	49 173.119(a), (b), 173.245(a), 173.249(a), 173.263(a), 173.264, 173.283, 173.289, 178.342–5, 178.343–5.	Authorizes the use of a privately owned and operated steel non-DOT specification cargo tank motor vehicle designed and constructed in full conformance with DOT Specification MC–300, MC–306, MC–307 or MC–311, MC–312 for shipment of corrosive and flammable liquids. (Modes 1, 3.)
3126–X	Alliant Techsystems, Inc., New Brighton, MN.	49 CFR 173.62, 177.821, 177.822(b), 177.835(k).	Authorizes the transport of Division 1.1 explosives in DOT Specification 5 metal drums, or in DOT Specification 42B aluminum drums. (Mode 1.)
3600–X	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.101, 192.300, 173.87	Authorizes the shipment of Lance rocket engines in specific configurations which contain Division 1.3 or 1.4 explosives. (Modes 1, 2.)
6369–X	E.I. du Pont de nemours & Company, Inc., Wilmington, DE.	49 CFR 173.346(a)(10), 173.347(a)(2), 173.352(a)(4), 173.374(a).	Authorizes the use of DOT Specification 105A400W, 112A400W, 114A400W, 120A300W, and proposed 120A400W tank car tanks for shipment of certain Class B poisonous liquids. (Mode 2.)
6929–P	Lockheed Martin Energy Systems, Inc., Oak Ridge, TN.	49 CFR 172.101, 173.54(1), 173.62(c)	To become a party to exemption 6929. (Modes 1, 3.)
6929–P	Lockheed Martin Energy Research Corporation, Oak Ridge, TN.	49 CFR 172.101, 173.54(1), 173.62(c)	To become a party to exemption 6929. (Modes 1, 3.)
7536–X	U.S. Department of Defense Falls, Church, VA.	49 CFR 146.29–41	Authorizes an increase to the maximum allowable draft weights for five and ten ton rated booms for shipment of military explosives. (Mode 3.)
7909–X	The Dow Chemical Company, Midland, MI	49 CFR 172.203, 172.400, 172.402(a)(2), 172.504(a), 175.30, 175.33.	Authorizes the transport of limited quantities of Division 6.1 liquids and solids in non-DOT specification plastic, metal or plastic-coated glass containers. (Modes 1, 2, 4.)
8432–X	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.101, 173.202, 175.3	Authorizes the transport of plastic bottles containing an aqueous solution of sodium perchlorate and plastic bottles containing aluminum powder together in the same outside packaging. (Modes 1, 2, 3, 4.)
8645–X	Austin Powder Company, Cleveland, OH	49 CFR 173.154(a)(18)	Authorizes the shipment of a viscous oxidizing material in DOT Specification MC–307/311 insulated tank motor vehicles at ambient temperature. (Mode 1.)
8986–X	Cook Slurry Company, Salt lake City, UT	49 CFR 173.114a(h)(3)	Authorizes the transport of slurry blasting agent in non-DOT specification stainless steel cargo tanks. (Mode 1.)
9108–X	Austin Powder Company, Cleveland, OH	49 CFR 173.62	Authorizes the transportation of PETN wet with 25% water in 4 mil polyethylene bags placed in DOT Specification 12H65 fiberboard boxes. (Modes 1, 3.)

WITHDRAWAL EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9377–X	Austin Powder Company, Cleveland, OH	49 CFR 173.65(a)(5)	Authorizes the transport of Division 1.1 explosives containing more than 5 percent moisture in packagings without inner plastic bags or other linings. (Modes 1, 2, 3.)
9579–X	Intermountain Ireco, Inc., Gillette, WY	49 CFR 173.154(a)(18)	Authorizes the use of a non-DOT specification motor vehicle for bulk shipment of Division 5.1 materials. (Mode 1.)
9677–X	Allied Universal Corporation, Miami, FL	49 CFR 173.263(a)(15)	Authorizes the shipment of hydrochloric acid in non-DOT specification bottles of one-gallon capacity, overpacked no more than 60 to a specially-designed, heavy-wall cart, molded of high density polyethylene. (Mode 1.)
9723–X	Environmental Options, Inc., Rocky Mount, VA.	49 CFR 177.848	Authorizes the shipment of ''lab-packs'' containing cyanides and cyanide mixture with ''lab-packs'' containing acids and corrosive liquids in the same transport vehicle. (Modes 1, 2.)
9876–X	Amrex Chemical Co., Inc., Binghamton, NY	49 CFR 173.304(a)(2), 173.34(d)	Authorizes the manufacture, marking, and sale of DOT Specification 39 cylinders equipped with a pressure relief device system other than prescribed. (Modes 1, 3.)
9956–X	Dolphin Commercial Chemical, Inc. d/b/a DCC, Inc. DeSoto, TX.	49 CFR 173.277(a)(9), 178.340, 178.343	Authorizes the shipment of hypochlorite solution in an unlined non-DOT specification cargo tank constructed of titanium. (Mode 1.)
10032–X	MCM, Management Control & Maintenance, S.A., Geneva, Switzerland.	49 CFR 173.315, 178.245	Authorizes the shipment of Division 2.1 Division 2.2 gases in non-DOT specification IMO Type 5 steel portable tanks. (Modes 1, 2, 3.)
10032–X	Eurotainer SA, Paris, France	49 CFR 173.315, 178.245	Authorizes the shipment of Division 2.1 Division 2.2 gases in non-DOT specification IMO Type 5 steel portable tanks. (Modes 1, 2, 3.)
10295–X	Witco Corporation, Dublin, OH	49 CFR 173.134	Authorizes the use of a DOT Specification 17C metal drum with inside non-DOT specification metal containers. (Modes 1, 2, 3, 4, 5.)
10441–X	Clean Harbors Environmental Services, Inc., Braintree, MA.	49 CFR 173.12(b)(6), 177.848(b)	Authorizes the transportation by highway of lab pack quantities of cyanides on the same motor vehicle with non-lab packed acidic materials not to exceed 55 gallons per container. (Mode 1.).
10486–X	Aeropres Corporation, Shreveport, LA	49 CFR 173.302, 173.304, 173.305, 173.315.	Authorizes the transportation of mixtures of Division 2.1 and Division 2.2 gases in DOT Specification MC 330 and MC 331 cargo tanks. (Mode 1.)
10949–X	Clean Harbors Environmental Services, Inc., Braintree, MA.	49 CFR 177.848(d)	Authorizes the transportation of lab pack quantities of cyanides on the same motor vehicle with non-lab packed acidic materials not to exceed 55 gallons per packaging. (Mode 2.).
11199–X	Dexsil Corporation, Hamden, CT	49 CFR 173.4	Authorizes the transportation of very small quantities of a Division 4.3 material, sodium metal dispersions—UN1391, in specially designed packagings to be shipped under the provision of 173.4. (Modes 1, 2, 3, 4, 5.)

WITHDRAWAL EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11346–X	Halliburton Energy Services, Duncan, OK ..	49 CFR 173.61, 173.62(c), 176.166(b), 177.835(g).	Authorizes transportation of certain Division 1.1D and 1.4D charge jet perforating guns with Division 1.1B or 1.4B electric detonators affixed. (Modes 1, 3.).
11346–X	Hitwell Surveys, Inc., Parkersburg, WV	49 CFR 173.61, 173.62(c), 176.166(b), 177.835(g).	Authorizes transportation of certain Division 1.1D and 1.4D charge jet perforating guns with Division 1.1B or 1.4B electric detonators affixed. (Modes 1, 3.)
11346–X	Titan Wireline Services, Inc., Elderton, PA	49 CFR 173.61, 173.62(c), 176.166(b), 177.835(g).	Authorizes transportation of certain Division 1.1D and 1.4D charge jet perforating guns with Division 1.1B or 1.4B electric detonators affixed. (Modes 1, 3.)
11346–X	GOEX International, Inc., Cleburne, TX	49 CFR 173.61, 173.62(c), 176.166(b), 177.835(g).	Authorizes transportation of certain Division 1.1D and 1.4D charge jet perforating guns with Division 1.1B or 1.4B electric detonators affixed. (Modes 1, 3.)
11346–X	Owen Oil Tools, Inc., Fort Worth, TX	49 CFR 173.61, 173.62(c), 176.166(b), 177.835(g).	Authorizes transportation of certain Division 1.1D and 1.4D charge jet perforating guns with Division 1.1B or 1.4B electric detonators affixed. (Modes 1, 3.)
11444–N	BASF Corp., Mount Olive, NJ	49 CFR 173.243	To authorize the emergency transportation of a Corrive, Poisonous NOS in an IMO type 1 tank that is current not permitted under 173.243. (Modes 1, 3.)
11482–N	Trojan Corp., Spanish Fork, UT	49 CFR 173.240	To authorize the emergency transportation of explosive, hazardous waste, in specially designed packaging. (Mode 1.)
11527–N	Technical Service Co., Long Beach, CA	49 CFR 173.201, 173.202, 173.203, 178.253.	To authorize the transportation of Class 3 and 8 material in 60 gallon capacity non-DOT specification portable tanks manifolded together within a frame, having top and bottom opening designed and constructed to DOT specification 57 except for marking and capacity. (Mode 1.)
11586–N	Chem Coast Inc., La Porte, TX	49 CFR 172, 173, Parts 107	To authorize limited quantities of various hazardous materials (test kits) contained in specially designed packagings to be exempt from shipping paper, marking and labeling requirements. (Mode 1.)
11658–M	Arbel Fauvet Rail, Douai, FR	49 CFR 178.245–1(b)	To authorize the emergency transportation in commerce of certain Division 2.1 and 2.2 gases in non-DOT specification IMO Type 5 portable tanks which are comparable to DOT specification 51 except the tank has bottom outlets. (Modes 1, 2, 3.)
11664–N	Breed Technologies, Inc., Lakeland, FL	49 CFR 173.166(e)	To authorize the transportation in commerce of airbag modules, Class 9, in fiberboard intermediate bulk containers. (Modes 1, 2, 3, 5.)
11758–N	E.I. DuPont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 178.345–10(e)	To authorize the transportation of Division 6.1 material in MC–312 cargo tanks equipped with 1.5 inch Crosby JQ relief valves. (Mode 1.)

WITHDRAWAL EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11796–N	Morton International, Inc., Ogden, UT	49 CFR 173.301(h), 173.302, 173.306(d)(3).	To authorize the transportation in commerce of a non-DOT specification cylinder which exceeds the quantity limitation exceptions for compressed gases at a volume of 7.50 in. to be used as a component of a hybrid air bag system. (Modes 1, 2, 3, 4, 5.)
11835–N	Chase Packaging, Inc., Newport News, VA	49 CFR 172.203(a), 172.301(c), 178.503(a)(5)(ii).	To authorize the emergency transportation of DOT UN5H3 water-resistant woven plastic bags which have been improperly marked for shipment of sodium hydroxide, solid, Class 8. (Mode 1.)
11857–N	Kowa American, New York, NY	49 CFR Note 15	To authorize the transportation in commerce of toxic liquids, flammable, organic, n.o.s., Division 6.1 material in ISO tanks in a configuration not presently authorized. (Modes 1, 3.)
11877–N	Monsanto Company, St. Louis, MO	49 CFR 172.302(a)(2), 172.400(a)(2), 172.504(a).	To authorize the transportation in commerce of Class 9 hazardous materials in flexible intermediate bulk containers without required markings or labeling. (Modes 1, 2.)
11898–N	Thiokol Aerospace and Industrial Technologies, Brigham City, UT.	49 CFR 172.101	Request for an emergency exemption that authorizes the transportation by rail (2 flatcars) containing a division 1.3c material. (Mode 2.)

DENIALS

3941–X	Request by GenCorp Aerojet Sacramento, CA to authorize the transport of ammonium perchlorate in non-DOT specification aluminum portable tanks denied June 13, 1997.
8518–X	Request by Denver Truck Sales Denver, CO to authorize the manufacture, marking and sale of non-DOT specification cargo tanks complying with DOT Specification MC–307/312 except for bottom outlet valve variations, for transportation of flammable or corrosive waste liquids or semisolids denied June 13, 1997.
10958–X	Request by International Paper Natchez, MS to authorize Chlorine-filled tank cars to remain attached during unloading without the physical presence of unloader denied June 13, 1997.
11171–X	Request by Dart Container Corporation Leola, PA to authorize the transport of reused flexible bulk bags, comparable to those presently authorized, for use in transporting polystyrene beads, expandable, Class 9 denied January 28, 1997.
11249–P	Request by Ashland Chemical Company Columbus, OH to authorize rail cars to be connected during unloading of various Class 3, 8 and 9 material without the phycical presence of an unloader denied May 29, 1997.
11275–M	Request by Dorbyl Engineering Container Division (DHE) Denver, CO to authorize the manufacture, marking and sale of three designs of non-DOT specification portable tanks, mounted in ISO frames, to be used for the transportation of certain Division 2.1 and 2.2 gases denied June 2, 1997.
11322–N	Request by Hydra Rig, Inc. Ft. Worth, TX to authorize the manufacture, marking and sale of non-DOT specification portable tanks, equipped with safety relief valves and rupture discs, made of type 304 stainless steel for use in transporting nitrogen, refrigerated liquid, Division 2.2 denied March 28, 1997.
11373–M	Request by Environmental Transport Systems Jamestown, ND to authorize the transportation of a Division 4.1 (self-heating) material on the same transport vehicle with Class 8 (corrosive) liquids when the materials are separated denied February 7, 1997.
11491–N	Request by P.M. Industrial Gas Ltd. Georgetown to authorize the manufacture, mark and sale of a refrigerated cargo tank mounted to a ISO flat rack unit for use in transporting liquefied carbon dioxide, Division 2 denied February 28, 1997.
11599–N	Request by Haviland Products Co. Grand Rapids, MI to authorize the transportation in commerce of non-bulk nitric acid, other than red fuming, less than 70%, in 15 gallon and 55 gallon, reusable 1H1 plastic drums denied March 13, 1997.
11609–N	Request by Rubbermaid Commercial Products Inc. Winchester, VA to authorize the manufacture, mark and sale of specially designed trucks for use in transporting regulated medical waste denied March 13, 1997.
11645–N	Request by Chemical Products Corp. Cartersville, GA to authorize the transportation in commerce of various Class 8 material in non-DOT specification multi-ply paper bags in 50 pounds or 100 pounds lots until current inventories are depleted denied March 13, 1997.
11649–N	Request by VTG USA, Inc. West Chester, PA to authorize the manufacture, mark and sale of non-DOT specification containers equipped with man hole openings located in the rear side of the tank and the loading/discharge valve openings grouped on the right hand side of the tanks for use in transporting freon denied February 28, 1997.

DENIALS—Continued

11679–N	Request by Dorbyl Engineering Container Division (DHE) Republic of South Africa to authorize the manufacture, mark and sale of non-DOT specification portable tanks, mounted in ISO frames, to be used for the transportation in commerce of Division 2.1, 2.2 and 2.3 material denied June 2, 1997.
11700–N	Request by Cryodyne Technologies, Inc. Madison, CT to authorize the transportation in commerce of non-flammable, non-toxic compressed gases, Division 2.2, in foreign made cylinders from the port area to a compressed gas company where the materials are repackaged into DOT authorized compressed gas cylinders for shipment to domestic users of the material denied February 19, 1997.
11717–N	Request by Matheson Gas Products, Secaucus, NJ to authorize the transportation in commerce of non-flammable, non-toxic compressed gasses in foreign made cylinders from the port of entry to a compressed gas company where the materials will be repacked into DOT authorized compressed gas cylinders for shipment to domestic users of the material denied March 13, 1997.
11741–N	Request by Park Metallurgical Corp., Detroit, MI to authorize the emergency transportation in commerce of sodium cyanide mixture dry in reused metal drums, UN1A2/X125/S not permanently marked to the minimum thickness criteria denied February 28, 1997.
11805–N	Request by Persons represented by the NPGA, Washington, DC to authorize the transportation in commerce of certain DOT Specification MC–330 and MC–331 cargo tanks, containing Propane, which do not meet the self-closing stop valve and excess flow valve requirements and to continue construction, certification, inspection and testing denied January 13, 1997.
11806–N	Request by Mississippi Tank Co., Hattiesburg, MS to authorize the transportation in commerce of certain DOT Specification MC–330 and MC–331 cargo tanks, containing compressed gases, which do not meet the self-closing stop valve and excess flow valve requirements and to continue construction, certification, inspection and testing denied January 13, 1997.

[FR Doc. 97–28622 Filed 10–28–97; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33473]

Iowa Interstate Railroad, Ltd.; Trackage Rights Exemption; The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant overhead trackage rights to Iowa Interstate Railroad, Ltd. (IAIS), between the connection of the parties at East Moline, IL, at or near milepost 246.17, and the connection of the parties at Rock Island, IL, at or near milepost 253.51, all within Rock Island County, IL. The total distance of the trackage rights is approximately 7.34 miles. The transaction is be consummated on or soon after October 21, 1997, the effective date of the exemption.

The purpose of the proposed trackage rights is for IAIS and BNSF to improve operational and maintenance efficiencies and to combine operations over parallel lines of railroad which BNSF and IAIS have in or near the cities of Rock Island, Moline, and East Moline, IL.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33473, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001 and served on: T. Scott Bannister, Secretary & General Counsel, Iowa Interstate Railroad, Ltd., 1300 Des Moines Building, 405 Sixth Avenue, Des Moines, IA 50309.

Decided: October 20, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–28635 Filed 10–28–97; 8:45 am]
BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–391 (Sub–No. 3X)]

Red River Valley & Western Railroad Company—Abandonment Exemption—in Benson County, ND

Red River Valley & Western Railroad Company (RRVW) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 11.94-mile line of railroad from approximately milepost 16.56, approximately one mile west of state highway 30, near Maddock to approximately milepost 28.5 near Esmond, in Benson County, ND. The line traverses United States Postal Service Zip Code 58332.

RRVW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 28, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve

environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 10, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 18, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Jo A. DeRoche, Esq., Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue., N.W., Suite 800, Washington, DC 20005–4797.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

RRVW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by Novenber 3, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), RRVW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by RRVW's filing of a notice of consummation by October 29, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: October 21, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–28634 Filed 10–28–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. See 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Domestic Finance; Notice of Open Meeting of the Advisory Committee U.S. Community Adjustment and Investment Program

The Department of the Treasury, pursuant to the North American Free Trade Agreement (''NAFTA'') Implementation Act (Pub. L. 103–182), established an advisory committee (the ''Advisory Committee'') for the community adjustment and investment program (the ''Program''). The Program will provide financing to businesses and individuals in communities adversely impacted by NAFTA to create new jobs. The charter of the Advisory Committee has been filed in accordance with the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463), with the approval of the Secretary of the Treasury.

The Advisory Committee consists of nine members of the public, appointed by the President, who collectively represent: (1) Community groups whose constituencies include low-income families; (2) scientific, professional, business, nonprofit, or public interest organizations or associations, which are neither affiliated with, nor under the direction of, a government; and (3) for-profit business interests.

The objectives of the Advisory Committee are to: (1) Provide informed advice to the President regarding the implementation of the Program; and (2) review on a regular basis, the operation of the Program, and provide the President with the conclusions of its review. Pursuant to Executive Order No. 12916, dated May 13, 1994, the President established an interagency committee to implement the Program and to receive, on behalf of the President, advice of the Advisory Committee. The committee is chaired by the Secretary of the Treasury.

A meeting of the Advisory Committee, which will be open to the public, will be held in El Paso, Texas at the Camino Real Hotel, Salon C, 101 El Paso Street, El Paso, Texas 79901, from 9 a.m. to 4 p.m. on Friday, November 21, 1997. The meeting room will accommodate approximately 80 persons and seating is available on a first-come, first-serve basis, unless space has been reserved in advance. Due to limited seating, prospective attendees are encouraged to contact the person listed below prior to November 14, 1997. If you would like to have the Advisory Committee consider a written statement, material must be submitted to the U.S. Community Adjustment and Investment Program, Advisory Committee, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Room 3041, Washington, DC 20220 no later than November 7, 1997. If you have any questions, please call Dan Decena at (202) 622–0637. (Please note that this telephone number is not toll-free.)

Mozelle W. Thompson,

Principal Deputy Assistant Secretary, Government Financial Policy.

[FR Doc. 97–28566 Filed 10–28–97; 8:45 am]

BILLING CODE 4510–25–U

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–27: OTS Nos. H–2020 and 06646]

Lexington First Federal, M.H.C., Lexington, Tennessee; Approval of Convention Application

Notice is hereby given that on October 21, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Lexington First Federal, M.H.C. Lexington, Tennessee, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: October 24, 1997.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–28631 Filed 10–28–97; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–28: OTS No. 4082]

The Salida Building and Loan Association, Salida, Colorado; Approval of Conversion Application

Notice is hereby given that on October 23, 1997, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of The Salida Building and Loan Association, Salida, Colorado, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039–2010.

Dated: October 24, 1997.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 97–28632 Filed 10–28–97; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES INFORMATION AGENCY

Performance Review Board Members

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: This Notice is issued to revise the membership of the United States Information Agency (USIA) Performance Review Board.

DATES: October 29, 1997.

FOR INFORMATION CONTACT:

Ms. Kathleen Kelly (Co-Executive Secretary), Supervisory Personnel Management Specialist, Office of Personnel, International Broadcasting Bureau, U.S. Information Agency, 330 Independence Avenue, SW., Washington, DC 20547, Tel.: (202) 619–2102.

or

Ms. Patricia H. Noble (Co-Executive Secretary), Chief, Civil Service Division, Office of Human Resources, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, Tel.: (202) 619–4617.

SUPPLEMENTARY INFORMATION: In accordance with Section 4314(c) (1) through (5) of the Civil Service Reform Act of 1978 (Pub. L. 95454), the following list supersedes the U.S. Information Agency Notice (62 FR No. 3, January 6, 1997).

Chairperson: Associate Director for Management, Henry Howard, Jr. (Presidential Appointee)

Deputy Chairperson: Director, International Broadcasting Bureau (IBB), Kevin Klose (Non-Career SES)

Career SES Members and Alternates:

Hattie Baldwin, Director, Office of Civil Rights.

Eileen Binns, Director, Office of Administration.

Dr. Rolando E. Bonachea, Deputy Director, Office of Cuba Broadcasting.

Janice H. Brambilla, Director, Office of Human Resources.

Joseph B. Bruns, Assistant to the Director and Chief Information Officer.

Daniel S. Campbell, Director, Office of Technology.

Brian T. Conniff, Director of Evaluations and Analysis, Broadcasting Board of Governors.

Alfred Davidson, Deputy of Network Operations, Office of Engineering.

Bernard C. Dowling, Director, Declassification Unit, Office of the General Counsel.

Eva Jane Fritzman, Director, Office of Personnel and Administration, IBB.

Alan L. Heil, Jr., Deputy Director, VOA, IBB.

James Hulen, Director, Office of Strategic Planning.

Donald M. Jacques, Jr., Chief Negotiator, IBB.

Robert E. Kamosa, Director for Spectrum Management, IBB.

Lisa A. Keathley, Chief, Worldnet Production Directorate, IBB.

Earl Klitenic, Director, Office of Business Development, IBB.

John Lennon, Deputy Director, Office of Worldnet TV and Film Service, IBB.

John A. Lindburg, Legal Counsel, Broadcasting Board of Governors.

Ronald Linz, Deputy, Systems Engineering Directorate, IBB.

Steven C. Munson, Director, Office of Policy, IBB.

Jean Peelen, Chief of Staff, IBB.

Rick Ruth, Deputy Chief of Staff, Office of the Director.

Michael D. Schneider, Special Advisor, Office of the Director.

Judith S. Siegel, Director, Office of Thematic Programs, Bureau of Information.

Stanley Silverman, Director, Office of the Comptroller.

R. Wallace Stuart, Deputy General Counsel.

James D. Whitten, Executive Director, Bureau of Educational and Cultural Affairs.

This supersedes the previous U.S. Information Agency Notice (62 FR No. 3, January 6, 1997)

Henry Howard, Jr.,

Associate Director for Management, U.S. Information Agency.

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**

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