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Wednesday
February 25, 1998

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Presidential Documents

Title 3—

The President

Presidential Determination No. 98–14 of February 9, 1998

U.S. Contribution to the Korean Peninsula Energy Development Organization (KEDO)

Memorandum for the Secretary of State

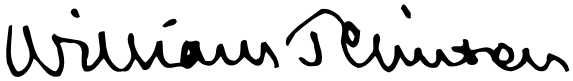
Pursuant to the requirements set forth under the heading ''Nonproliferation, Anti-Terrorism, Demining and Related Programs'' in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118), I certify that:

(1)(A) the parties to the Agreed Framework are taking steps to assure that progress is made on the implementation of the January 1, 1992, Joint Declaration on the Denuclearization of the Korean Peninsula and the implementation of the North-South dialogue, and (B) North Korea is complying with the other provisions of the Agreed Framework between North Korea and the United States and with the Confidential Minute;

(2) North Korea is cooperating fully in the canning and safe storage of all spent fuel from its graphite-moderated nuclear reactors and that such canning and safe storage is scheduled to be completed by April 1, 1998; and

(3) North Korea has not significantly diverted assistance provided by the United States for purposes for which it was not intended.

You are authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, February 9, 1998.

[FR Doc. 98–4977
Filed 2–24–98; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
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Wednesday, February 25, 1998

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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 842, 870, and 890

RIN 3206–AI12

Retirement and Insurance—Exemption From Continuity of Coverage Requirements for Certain Decennial Census Employees With Dual Appointments

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to provide an exemption from continuity of coverage requirements for Federal retirement, health insurance, and life insurance benefits, for certain Federal employees who accept a second appointment to perform intermittent decennial census duties. The purpose of this exemption is to facilitate hiring Federal employees for the decennial census by eliminating administrative complexities that would otherwise result under current regulations. Employees will retain the retirement and insurance benefits to which they are entitled under their primary Federal jobs, while earning additional wages in their second jobs with the Census Bureau.

EFFECTIVE DATE: March 27, 1998.

FOR FURTHER INFORMATION CONTACT: For Parts 831 and 842: Robert Girouard, (202) 606–0299; and for Parts 870 and 890: Karen Leibach, (202) 606–0004.

SUPPLEMENTARY INFORMATION: On December 24, 1997, we published (at 62 FR 67295) a proposed rule to provide an exemption from continuity of coverage requirements for Federal retirement, health insurance, and life insurance benefits, for certain Federal employees who accept a second appointment to perform intermittent decennial census duties. We received no comments on the proposed rule.

Continuity of coverage rules for retirement and insurance make it difficult for the Bureau of the Census, U.S. Department of Commerce (''Census Bureau'') to hire Federal employees for second appointments. While each Federal employee retains benefit coverage under his or her primary position with little or no additional benefits accruing from the intermittent Census employment, the Census Bureau would be required to coordinate closely with each employee's agency to determine the amount of additional retirement deductions and insurance premiums that would have to be withheld as a result of continuity of coverage. The administrative complexities resulting from week by week coordination with the employee's primary agency would be highly susceptible to error and would make large-scale hiring from the pool of Federal employees administratively prohibitive. Placing Federal employees hired to perform short term decennial census service on the same benefit footing as persons hired from outside the Government will significantly reduce the coordination burden, and assist the Census Bureau in meeting its unique staffing requirements. Accordingly, we are amending the continuity of coverage rules to exempt Federal employees hired by the Census Bureau under temporary, intermittent appointments to perform decennial census duties.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement and insurance benefits of Government employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects

5 CFR Parts 831 and 842

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending Title 5 of the Code of Federal Regulations as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(1) also issued under 5 U.S.C. 8347(g); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.201(g) also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; § 831.204 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.663 also issued under 5 U.S.C. 8339(j) and (k)(2); §§ 831.663 and 831.664 also issued under section 11004(c)(2) of Pub. L. 103–66, 107 Stat. 412; § 831.682 also issued under section 201(d) of Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388–328.

Subpart B—Coverage

2. In § 831.201, paragraph (b)(1) is revised to read as follows:

§ 831.201 Exclusions from retirement coverage.

* * * * *

(b) * * *

(1) Employment in an excluded category follows employment subject to subchapter III of chapter 83 of title 5, United States Code, without a break in service or after a separation from service of 3 days or less, except in the case of:

(i) An alien employee whose duty station is located in a foreign country; or

(ii) An employee hired by the Census Bureau under a temporary, intermittent appointment to perform decennial census duties.

* * * * *

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

3. The authority citation for part 842 is revised to read as follows:

Authority: 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; § 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of Pub. L. 101–508; § 842.707 also issued under section 6001 of Pub. L. 100–203; § 842.708 also issued under section 4005 of Pub. L. 101–239 and section 7001 of Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

Subpart A—Coverage

4. In § 842.105, paragraph (b) is revised to read as follows:

§ 842.105 Regulatory exclusions.

* * * * *

(b) When an employee who is covered by FERS moves to a position listed in paragraph (a) of this section without a break in service or after a separation of 3 days or less, his or her FERS coverage will continue, except in the case of an employee hired by the Census Bureau under a temporary, intermittent appointment to perform decennial census duties.

* * * * *

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

5. The authority citation for part 870 is revised to read as follows:

Authority: 5 U.S.C. 8716; subpart J also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 870.302 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251.

6. In § 870.301, add paragraph (c) to read as follows:

§ 870.301 Eligibility for life insurance.

* * * * *

(c) Notwithstanding any other provision in this part, the hiring of a Federal employee, whether in pay status or nonpay status, for a temporary, intermittent position with the decennial census has no effect on the amount of his/her Basic or Option B insurance, the withholdings or Government contribution for his/her insurance, or the determination of when 12 months in nonpay status ends.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

7. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251.

8. In § 890.102, paragraph (g) is added to read as follows:

§ 890.102 Coverage.

* * * * *

(g) Notwithstanding any other provision in this part, the hiring of a Federal employee, whether in pay status or nonpay status, for a temporary, intermittent position with the decennial census has no effect on the withholding or Government contribution for his/her coverage or the determination of when 365 days in nonpay status ends.

[FR Doc. 98–4781 Filed 2–24–98; 8:45 am]

BILLING CODE 6325–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 70

RIN 3150–AF87

Criticality Accident Requirements; Withdrawal of Direct Final Rule and Revocation of Regulatory Text

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Nuclear Regulatory Commission is withdrawing a direct final rule that would have amended the Commission's regulations to provide light-water nuclear power reactor licensees with greater flexibility in meeting the requirement that licensees authorized to possess more than a small amount of special nuclear material (SNM) maintain a criticality monitoring system in each area where the material is handled, used, or stored. The NRC is taking this action because it has received significant adverse comments in response to an identical proposed rule which was concurrently published in the **Federal Register**. Because the effective date for the direct final rule has passed, the NRC is removing the regulatory text codified in that action.

EFFECTIVE DATE: February 25, 1998.

FOR FURTHER INFORMATION CONTACT: Stan Turel, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6234 (E-mail: spt@nrc.gov).

SUPPLEMENTARY INFORMATION: On December 3, 1997 (62 FR 63825), the Nuclear Regulatory Commission published in the **Federal Register** a direct final rule amending its regulations to provide persons licensed to construct or operate light-water nuclear power reactors with the option of either meeting the criticality accident requirements of paragraph (a) of 10 CFR 70.24 in handling and storage areas for SNM, or electing to comply with requirements that would be incorporated into 10 CFR part 50 at § 50.68. The direct final rule was to become effective on February 17, 1998. The NRC also concurrently published an identical proposed rule on December 3, 1997 (62 FR 63911). In these documents, the NRC indicated that if it received significant adverse comments in response to this action, the NRC would withdraw the direct final rule and would consider the comments received as in response to the proposed rule and address these comments in a subsequent final rule. Therefore, the Commission is withdrawing the December 3, 1997, direct final rule. The public comments received will be addressed in a subsequent final rule issued in either a notice of final rulemaking or in a notice of withdrawal of the proposed rule.

Because this notice of withdrawal is being published after the February 17, 1998, effective date for the direct final rule, the regulatory text presented in the December 3, 1997, direct final rule must be removed from the Code of Federal Regulations. Therefore, the provisions added to part 50 at § 50.68 are removed and the text of § 70.24(d) is being restored to the text of the paragraph that was in effect before the December 3, 1997, amendment to that paragraph.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C 553, the NRC is adopting the following amendments to 10 CFR parts 50 and 70.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, and 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

§ 50.68 [Removed]

2. Section 50.68 is removed.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

3. The authority citation for part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(9) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

4. In § 70.24, paragraph (d) is revised to read as follows:

§ 70.24 Criticality accident requirements.

* * * * *

(d) Any licensee who believes that good cause exists why he should be granted an exemption in whole or in part from the requirements of this section may apply to the Commission for such exemption. Such application shall specify his reason for the relief requested.

Dated at Rockville, Maryland, this 20th day of February, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–4830 Filed 2–24–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–29–AD; Amendment 39–10359; AD 98–04–48]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 332L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS 332L2 helicopters. This action requires modifying the main rotor blade vibration absorber (vibration absorber) by replacing the weight support assemblies with reinforced weight support assemblies. This amendment is prompted by a report of the failure of a weight support assembly in-flight. The actions specified in this AD are intended to prevent failure of a vibration absorber weight support assembly, which could lead to adverse vibrations, contact between the fuselage and a main rotor blade or loss of a main rotor blade; and subsequent loss of control of the helicopter.

DATES: Effective March 12, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 12, 1998.

Comments for inclusion in the Rules Docket must be received on or before April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–29–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model AS 332L2 helicopters with vibration absorbers, part number (P/N) 332A11–0460–01, installed. The DGAC advises that failure of a vibration absorber can result in adverse vibrations, contact between the fuselage and a main rotor blade or loss of a main rotor blade; and subsequent loss of control of the helicopter.

Eurocopter France has issued Eurocopter Service Bulletin No.

62.00.43, dated February 13, 1997, which specifies converting the vibration absorbers, P/N 332A11–0460–01, to vibration absorbers, P/N 332A11–0460–02, by replacing the weight support assemblies, P/N 332A11–0470–00, with reinforced weight support assemblies, P/N 332A11–0474–00. The DGAC classified this service bulletin as mandatory and issued French AD 97–026–005(B) R2, dated March 12, 1997, applicable to Eurocopter France Model AS 332L2 helicopters with vibration absorbers, P/N 332A11–0460–01, in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS 332L2 helicopters of the same type design registered in the United States, this AD is being issued to prevent failure of a vibration absorber weight support assembly, which could lead to adverse vibrations, contact between the fuselage and a main rotor blade or loss of a main rotor blade; and subsequent loss of control of the helicopter. This AD requires modifying the main rotor blade vibration absorber by replacing the weight support assemblies with reinforced weight support assemblies. The actions are required to be accomplished in accordance with the service bulletin described previously.

None of the Eurocopter France Model AS 332L2 helicopters affected by this action are on the U.S. Register. All helicopters included in the applicability of this rule are currently operated by non-U.S. operators under foreign registry; therefore; they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register in the future, it would require approximately 8 work hours to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts would cost $11,300 per helicopter. Based on these figures, the cost impact of this AD would be $11,780 per helicopter.

Since this AD action does not affect any helicopter that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

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 should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended 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 No. 97–SW–29–AD.'' The postcard will be date stamped and returned to the commenter.

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 notice and prior public comment are unnecessary in promulgating this regulation and therefore, it can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters are registered in the United States, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–04–48 Eurocopter France: Amendment 39–10359. Docket No. 97–SW–29–AD.

Applicability: Model AS 332L2 helicopters with main rotor blade vibration absorbers (vibration absorbers), part number (P/N) 332A11–0460–01, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For

helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 25 hours time-in-service (TIS) after the effective date of this AD, unless accomplished previously.

To prevent failure of a vibration absorber weight support assembly, which could lead to adverse vibrations, contact between the fuselage and a main rotor blade or loss of a main rotor blade; and subsequent loss of control of the helicopter, accomplish the following:

(a) Convert the vibration absorbers, P/N 332A11–0460–01 into P/N 332A11–0460–02 by replacing the weight support assemblies, P/N 332A11–0470–00, with weight support assemblies, P/N 332A11–0474–00, in accordance with the Accomplishment Instructions of Eurocopter France Service Bulletin No. 62.00.43, dated February 13, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

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

(c) Special flight permits will not be issued.

(d) The modification shall be done in accordance with the Accomplishment Instructions of Eurocopter France Service Bulletin No. 62.00.43, dated February 13, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641-3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 12, 1998.

Note 3: The subject of this AD is addressed in Direction De L'Aviation Civile (France) AD 97–026–005(B) R2, dated March 12, 1997.

Issued in Fort Worth, Texas, on February 13, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–4409 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–04–AD; Amendment 39–10351; AD 98–04–39]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT8D series turbofan engines. This action requires a one-time borescope inspection of the combustion chamber outer case (CCOC) for cracks on engines identified by serial number that were ultrasonically inspected in accordance with AD 96–23–14 with defective probes. In addition, this AD requires an ultrasonic probe functional check at PW prior to using the probe to perform an ultrasonic inspection if the probe was overhauled, repaired, or otherwise altered since original manufacture and not subsequently functionally checked by PW. This amendment is prompted by reports of defective probes discovered in the field. The actions specified in this AD are intended to prevent uncontained engine failure, inflight engine shutdown, engine cowl release, and airframe damage.

DATES: Effective February 25, 1998.

The incorporation by reference of Pratt & Whitney Alert Service Bulletin No. A6202, Revision 1, dated January 4, 1996, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 2, 1997 (61 FR 63707, December 2, 1996).

Comments for inclusion in the Rules Docket must be received on or before April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–04–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On November 7, 1996, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 96–23–14, Amendment 39–9820 (61 FR 63707, December 2, 1996), which supersedes ADs 87–11–07 R1 and 95–08–15, to require repetitive eddy current, fluorescent penetrant, fluorescent magnetic particle, or visual inspections for cracks in the rear flange, and ultrasonic, fluorescent penetrant, or fluorescent magnetic particle inspections for cracks in the PS4 boss, and drain bosses of the combustion chamber outer case (CCOC); and an additional inspection of the CCOC rear flange for intergranular cracking. In addition, AD 96–23–14 reduces the rear flange inspection interval for CCOCs when only the aft face of the rear flange has been inspected, and introduces an improved ultrasonic probe assembly. Also, AD 96–23–14 introduces a rotating eddy current probe for shop inspections in which the case is removed from the engine. Finally, AD 96–23–14 eliminates fluorescent penetrant inspection (FPI), fluorescent magnetic particle inspection (FMPI), and visual inspections from hot section disassembly level inspection procedures. That action was prompted by reports of crack origins in the forward face of the rear flange that could not be detected by the inspection methods for installed CCOCs that were mandated in the superseded ADs 87–11–07 R1 and 95–08–15. That condition, if not corrected, could result in uncontained engine failure, inflight engine shutdown, engine cowl release, and airframe damage.

Since the issuance of AD 96–23–14, the FAA has received reports of 13

defective ultrasonic inspection probes used to accomplish the ultrasonic inspections required by AD 96–23–14. Those 13 defective probes have been identified and removed from the field, but the engines inspected with the defective probes must be reinspected. Other ultrasonic inspection probes were either overhauled, repaired, or otherwise altered since original manufacture and were not subsequently functionally checked to insure that they met the necessary inspection sensitivity requirements. The calibration check contained in the ultrasonic inspection procedure does not serve as an adequate check to insure that the probe meets inspection sensitivity requirements. Currently, only PW has the capability to perform the necessary functional check to the proper standard.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. A6202, Revision 1, dated January 4, 1996, that describes procedures for a borescope inspection of the CCOC rear flange for cracks. This ASB identifies applicability to engines installed on McDonnell Douglas DC–9 and Boeing 737 series engines only; however, the inspection requirements of paragraph 2.A.(5) of PW ASB No. A6202, Revision 1, dated January 4, 1996, are applicable to engines installed on Boeing 727 series aircraft as well.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent an uncontained engine failure. This AD requires a borescope inspection of engines, identified by serial number (S/N) that were ultrasonically inspected in accordance with AD 96–23–14 with defective probes. In addition, this AD requires a functional check at PW of all ultrasonic inspection probes that were overhauled, repaired, or otherwise altered since original manufacture and not subsequently functionally checked. The borescope inspection is required to be accomplished in accordance with the ASB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended 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 notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–04–AD.'' The postcard will be date stamped and returned to the commenter.

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 is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–04–39 Pratt & Whitney: Amendment 39–10351. Docket 98–ANE–04–AD.

Applicability: Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines, with combustion chamber outer case (CCOC) part numbers (P/Ns) 490547, 542155, 616315, 728829, 728829–001, 730413, 730413–001, 730414, 730414–001, 767197, 767279, 767279–001 installed. These engines are installed on but not limited to Boeing 737 and 727 series, and McDonnell Douglas DC–9 series aircraft.

NOTE 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect 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 uncontained engine failure, inflight engine shutdown, engine cowl release, and airframe damage, accomplish the following:

(a) For engines identified by serial number (S/N) in Table 1 of this AD, perform a one-time borescope inspection of the CCOC rear flange in accordance with paragraph 2.A.(5) of PW Alert Service Bulletin (ASB) No. A6202, Revision 1, dated January 4, 1996, as follows:

TABLE 1

648796	653799	655969	665370	674333	695297	702602
648859	653876	655987	665372	674370	696555	702648
649077	653904	656036	665382	674513	696573	702699
649135	654043	656084	665393	674564	696645	702712
649157	654115	656121	665520	674580	696668	702772
649212	654428	656948	665529	674611	696757	707158
649262	654557	656964	665744	687407	700037	707200
649331	654804	657064	665992	687457	700053	707405
649354	654860	657119	666004	687634	700103	707922
649406	654877	657386	666019	687851	700140	708332
649451	654915	657418	666076	687891	700145	708921
649675	654949	657584	666331	687893	700156	709002
653316	654986	657613	666682	688029	700223	709168
653329	655108	657677	666715	688051	700243	709209
653363	655310	657739	666948	688054	700248	
653495	655437	665410	667042	688103	700261	
653514	655821	665412	667045	688161	700334	
653545	655842	665461	667059	688470	700383	
653574	655857	665468	667068	688491	700398	
653609	655870	665489	667110	688499	700404	
653622	655898	665497	674193	689934	700665	
653789	655900	665364	674251	695290	700133	

(1) For engines installed on McDonnell Douglas DC–9 series aircraft, inspect within 1,000 cycles in service (CIS) since the last ultrasonic inspection of the CCOC rear flange performed in accordance with AD 96–23–14, or within 100 CIS after the effective date of this AD, whichever occurs later.

(2) For engines installed on Boeing 737 series aircraft, inspect within 1,500 CIS since the last ultrasonic inspection of the CCOC rear flange performed in accordance with AD 96–23–14, or within 100 CIS after the effective date of this AD, whichever occurs later.

(3) For engines installed on Boeing 727 series aircraft, inspect within 2,500 CIS since the last ultrasonic inspection of the CCOC rear flange performed in accordance with AD 96–23–14, or within 100 CIS after the effective date of this AD, whichever occurs later.

(b) If the ultrasonic probe assembly, PWA 47942, used to inspect the CCOC rear flange in accordance with AD 96–23–14 was overhauled, repaired, or otherwise altered since original manufacture and not subsequently functionally checked at PW, within 30 days after the effective date of this AD return ultrasonic probes to PW to perform a functional check of the ultrasonic probe assembly.

Note 2: Operators should note that future inspections performed using the probe must be performed with a probe that has passed a functional check at PW since overhaul, repair, or alteration.

(1) If the ultrasonic probe assembly does not pass the functional check, PW must inform the operator, within 24 hours after the probe fails the functional check.

(2) If the ultrasonic probe assembly does not pass the functional check at PW, all engines that were ultrasonically inspected with that probe in accordance with AD 96–23–14 must be borescope inspected in accordance with paragraph 2.A.(5) of PW ASB No. A6202, Revision 1, dated January 4, 1996. Perform the inspections as follows:

(i) For engines installed on McDonnell Douglas DC–9 series aircraft, inspect within 1,000 cycles in service (CIS) since the last ultrasonic inspection of the CCOC rear flange performed in accordance with AD 96–23–14, or within 100 CIS after determining the probe is defective, whichever occurs later.

(ii) For engines installed on Boeing 737 series aircraft, inspect within 1,500 CIS since the last ultrasonic inspection of the CCOC rear flange performed in accordance with AD 96–23–14, or within 100 CIS after determining the probe is defective, whichever occurs later.

(iii) For engines installed on Boeing 727 series aircraft, inspect within 2,500 CIS since the last ultrasonic inspection of the CCOC rear flange performed in accordance with AD 96–23–14, or within 100 CIS after determining the probe is defective, whichever occurs later.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(e) The actions required by this AD shall be done in accordance with the following PW ASB:

Document No.	Pages	Revision	Date
A6202	1–10	1	Jan. 4, 1996.
	11	Original	Feb. 20, 1995.
NDIP–835	1–17	A	Oct. 7, 1995.
Total pages: 28.			

This incorporation by reference of Pratt & Whitney Alert Service Bulletin No. A6202, Revision 1, dated January 4, 1996, was approved previously by the Director of the Federal Register as of January 2, 1997 (61 FR 63707, December 2, 1996). Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 25, 1998.

Issued in Burlington, Massachusetts, on February 11, 1998.

James C. Jones,

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

[FR Doc. 98–4408 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–04–AD; Amendment 39–10362; AD 98–02–51]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–02–51 that was sent previously to all known U.S. owners and operators of Boeing Model 737–300, –400, and –500 series airplanes by individual telegrams. This AD requires a one-time general visual inspection to detect any missing fasteners on the top and bottom of the leading edge skin where it attaches to the front spar of the horizontal stabilizer. This AD also requires a one-time detailed visual inspection to detect any loose or missing fasteners of the attachment of the elevator hinge plates to the horizontal stabilizer rear spar fittings. If a loose or missing fastener is detected, this AD requires installation of a new or serviceable fastener. This action is prompted by reports of loose or missing fasteners of the leading edge structure and elevator attachment fitting of the right-hand horizontal stabilizer. The actions specified by this AD are intended to prevent reduced structural integrity of the horizontal stabilizer due to loose or missing fasteners.

DATES: Effective March 2, 1998, to all persons except those persons to whom it was made immediately effective by telegraphic AD T98–02–51, issued on January 8, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before April 27, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–04–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Gregory L. Schneider, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2028 or (425) 227–2557; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On January 8, 1998, the FAA issued telegraphic AD T98–02–51, which is applicable to Boeing Model 737–300, –400, and –500 series airplanes.

On December 9, 1997, a Boeing Model 737–300 series airplane operated by Silkair Airlines was involved in an accident after takeoff from Jakarta Soekarno Hatta Airport in Jakarta, Indonesia. The accident is under investigation by the Indonesian authorities with assistance from the National Transportation Safety Board (NTSB) of the United States, the manufacturer, the operator, and other aviation organizations. Although there has been no determination of the cause of the accident, preliminary reports from the on-site accident investigation indicate that the horizontal stabilizer may have separated from the airplane prior to impact in the Musi River. On-site investigation has revealed that approximately 26 fasteners were missing from certain leading edge structure on the right-hand (RH) horizontal stabilizer (12 from the upper surface, and 14 from the lower surface). Additionally, early reports indicated that at least one fastener may have been missing from an elevator attachment fitting in an outboard section of the RH horizontal stabilizer.

Subsequently, there has been a report of evidence that the fastener was actually installed. However, the FAA has received a report that an operator found one loose fastener during inspection of an in-service airplane. (There have been no reports to date of any fasteners missing from the left-hand (LH) horizontal stabilizer.)

There is, as of yet, no evidence linking these missing or loose fasteners to the cause of the accident.

Loose or missing fasteners on the LH or RH horizontal stabilizer could reduce the structural integrity of the horizontal stabilizer.

Because the airplane had been placed in service a relatively short time ago (February 14, 1997), it is possible that the fasteners were missing because they had not been installed during manufacture. If such a quality control failure occurred on this airplane, it may also have occurred on others produced at approximately the same time.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued telegraphic AD T98–02–51 to require a one-time general visual inspection to detect any missing fasteners on the top and bottom of the leading edge skin where it attaches to the front spar of the horizontal stabilizer.

This AD also requires a one-time detailed visual inspection to detect any loose or missing fasteners of the attachment of the elevator hinge plates to the horizontal stabilizer rear spar fittings. If a loose or missing fastener is detected, this AD requires installation of a new or serviceable fastener.

In addition, this AD requires that operators submit a report of all inspection findings to the FAA. Since the cause of the missing fasteners of the LH and RH horizontal stabilizer is currently unknown, the intent of the required reports is to enable the FAA to determine how widespread such discrepancies may be in the affected fleet. Because the investigation is continuing, further action may be necessary. This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Publication and Effectivity of AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on January 8, 1998, to all known U.S. owners and operators of certain Boeing Model 737–300, –400, and –500 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

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 98–NM–04–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, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–02–51 Boeing: Amendment 39–10362. Docket 98–NM–04–AD.

Applicability: Model 737–300, -400, and -500 series airplanes having line positions 2765 through 2977 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the horizontal stabilizer due to loose or missing fasteners of the left- or right-hand horizontal stabilizer, accomplish the following:

(a) Within 5 flight cycles or 24 clock hours after the effective date of this AD, whichever occurs later, perform the following inspections of the left- and right-hand sides of the horizontal stabilizer:

(1) Perform a general visual inspection to determine if any fasteners are missing on the top and bottom of the leading edge skin where it is attached to the front spar.

(2) Perform a detailed visual inspection to detect loose or missing fasteners of the attachment of the elevator hinge plates to the left- and right-hand sides of the horizontal stabilizer rear spar fittings. Ensure torque sealant has not been broken on the fasteners.

(b) If no discrepancies are found, no further inspections are required by this AD.

(c) If any fastener is loose or missing, or if the torque sealant has been broken on any fastener, prior to further flight, install a new or serviceable fastener.

(d) Within 5 days after accomplishing the inspections required by this AD, report inspection results, positive or negative, to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the paperwork reduction act of 1980 (44 U.S.C. 3501 *et seq.*) have been assigned OMB control number 2120–0056.

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

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

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

(g) This amendment becomes effective on March 2, 1998, to all persons except those persons to whom it was made immediately effective by telegraphic AD T98–02–51, issued on January 8, 1998, which contained the requirements of this amendment.

Issued in Renton, Washington, on February 18, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–4716 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–24]

Amendment of Class D Airspace; Twin Falls, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action changes the name of the airport in the Twin Falls, ID, Class D airspace legal description. During a review of Idaho airspace, it was discovered that the airport name Twin Falls-Sun Valley Regional, Joslin Field needs to be updated and changed

to Joslin Field-Magic Valley Regional. This rule also updates the coordinates for the airport which are contained herein.

DATES: Effective 0901 UTC, May 26, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 27, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ANM–520, Federal Aviation Administration, Docket Number 97–ANM–24, 1601 Lind Avenue S.W., Renton, Washington 98055–4056.

The official docket may be examined in the Office of the Regional Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–24, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION: This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) changes the legal description title of the Class D airspace area at Twin Falls, ID, by updating the name of the airport and by updating the coordinates of the airport. The dimensions and operating requirements of the airspace remain the same.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designated as a surface area for an 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 published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, issues it as a direct final rule. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a docket in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. 97–ANM–24.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules 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

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace

* * * * *

ANM ID D Twin Falls, ID [Revised]

Joslin Field-Magic Valley Regional
(Lat. 42°28′55″N, long. 114°29′16″W)

That airspace extending upward from the surface to and including 6,700 feet MSL within a 4.3-mile radius of the Joslin Field-Magic Valley Regional airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on February 2, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–4770 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–13]

Establishment of Class E Airspace; Hayden, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Hayden, CO, Class E airspace. The airspace is necessary in order to fully encompass the procedures for two new Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) at the Yampa Valley Airport, Hayden, CO.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–13, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On November 19, 1997, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by establishing the Class E airspace area at Hayden, CO (62 FR 61708). This action would provide airspace to fully encompass two SIAP's at Yampa Valley Airport. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E 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 14 CFR part 71 establishes 700 foot Class E airspace at Hayden, CO. The airspace, which overlies the Yampa Valley Airport, would provide the airspace necessary to fully encompass the GPS–A SIAP and GPS–B SIAP to the Yampa Valley Airport, Hayden, CO. This rule establishes a 700-foot Class E area within a 6.9 mile radius around the Yampa Valley Airport, with an extension to the northwest and an extension to the southeast, to meet necessary airspace criteria for aircraft transitioning between the terminal and en route environments. The FAA establishes Class E airspace extending upward from 700 feet AGL, where necessary, to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under IFR at the Yampa Valley Airport and between the terminal and en route transition stages.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, 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.

* * * * *

ANM CO E5 Hayden, CO [New]

Yampa Valley Airport, CO
(Lat. 40°28′52″ N, long. 107°13′04″ W)
Hayden VOR/DME
(Lat. 40°31′12″ N, long. 107°18′18″ W)

That airspace extending upward from 700 feet above the surface, within a 6.9-mile radius of the Yampa Valley Airport, and within 4 miles of each side of the Hayden VOR/DME 301° radial extending from the 6.9-mile radius to 10.1 miles northwest of the VOR/DME, and within 4 miles each side of the Hayden VOR/DME 118° radial extending from the 6.9-mile radius to 16.1 miles southeast of the VOR/DME; excluding the Craig, CO Class E airspace area.

* * * * *

Issued in Seattle, Washington, on February 2, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–4772 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–14]

Amendment of Class E Airspace; Big Piney, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Big Piney, WY, Class E airspace. This revision of airspace is necessary in order to fully encompass the procedures for a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at the Big Piney-Marbleton Airport, Big Piney, WY.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No.

97–ANM–14, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On December 5, 1997, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by revising the Big Piney Class E airspace area at Big Piney, WY (62 FR 64323). This action would provide the airspace to fully encompass an SIAP for Big Piney-Marbleton Airport. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E 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 14 CFR part 71 modifies Class E airspace at Big Piney, WY. This modification of airspace is necessary to fully encompass the GPS Runway 31 SIAP and associated missed approach holding pattern for the Big Piney-Marbleton Airport. This revision will add approximately 12 miles of additional airspace to the southeast, thus ensuring that all flight procedures associated with the new SIAP are contained within controlled Class E airspace. The FAA establishes Class E airspace extending upward from 700 feet AGL, where necessary, to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) at the Big Piney-Marbleton Airport and between the terminal and en route transition stages.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, 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.

* * * * *

ANM WY E5 Big Piney, WY [Revised]

Big Piney-Marbleton Airport, WY
(Lat. 42°35′06″N, long. 110°06′40″W)
Big Piney VOR/DME
(Lat. 42°34′46″N, long. 110°06′33″W)

That airspace extending upward from 700 feet above the surface within 4.8 miles southwest and 8.3 miles northeast of the Big Piney VOR/DME 134° AND 314° radius extending from 4 miles northwest to 16.6 miles southeast of the VOR/DME; that airspace extending upward from 1,200 feet above the surface within 7.9 miles southwest and 11.8 miles northeast of the Big Piney 134° and 314° radials extending from 10.1 miles northwest to 33 miles southeast of the VOR/DME.

* * * * *

Issued in Seattle, Washington, on February 2, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–4771 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–04]

Establishment of Class E Airspace; Poplar, MT; and Revision of Class E Airspace; Wolf Point, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Poplar, MT, Class E airspace and revises the Wolf Point, MT, Class E airspace. The airspace is necessary in order to fully encompass the procedures for a new Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) at the Poplar Airport, Poplar, MT.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–04, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On December 5, 1997, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by establishing Class E airspace area at Poplar, MT, and revising Class E airspace at Wolf Point, MT (62 FR 64322). This action would provide the airspace to fully encompass a SIAP at Poplar Airport. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

This action is the same as the proposal except for a typographical error discovered (and corrected herein) in the coordinates for the Poplar Airport, the Wolf Point, L M Clayton Airport, and the Wolf Point NDB. The coordinates for this airspace docket are based on North American Datum 83. Class E 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 14 CFR part 71 establishes Class E airspace at Poplar, MT, and revises adjacent airspace at Wolf Point, MT. This airspace is necessary to fully encompass the GPS Runway 9 approach and associated holding pattern for the Poplar Airport, Poplar, MT. This rule establishes a 700-foot Class E area within a 9.1-mile radius around the Poplar Airport and amends the adjacent 1200-foot Class E airspace at Wolf Point, MT, that fully encompasses the holding procedure associated with the SIAP. The FAA establishes Class E airspace extending upward from 700 feet AGL where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal would be to provide safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) at the Poplar Airport and between the terminal and en route transition stages.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, 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.

* * * * *

ANM MT E5 Poplar, MT [New]

Poplar Airport, MT
(Lat. 48°07′00″N, long. 105°11′17″W)

That airspace extending upward from 700 feet above the surface within a 9.1-mile radius of the Poplar, MT, airport.

* * * * *

ANM MT E5 Wolf Point, MT [Revised]

Wolf Point, L M Clayton Airport, MT
(Lat. 48°05′40″N, long. 105°34′30″W)
Wolf Point NDB
(Lat. 48°06′16″N, long. 105°36′07″W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Wolf Point NDB; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 47°48′00″N, long. 104°58′00″W; to lat. 47°48′00″N, long. 106°00′02″W; to lat. 48°20′00″N, long. 106°00′02″W; to lat. 48°20′00″N, long. 104°58′00″W; thence to the point of beginning.

* * * * *

Issued in Seattle, Washington, on February 9, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–4767 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 243

[Docket No. OST–95–950]

RIN 2105–AB78

Passenger Manifest Information

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Final rule; correction.

SUMMARY: DOT published a rule on February 18, 1998, requiring certificated air carriers and large foreign air carriers to collect the full name of each U.S.-citizen traveling on flight segments to or from the United States and solicit a contact name and telephone number. This document corrects a technical error in one section of the rule language to make clear that petitions requesting a waiver from the rule because of conflicts with foreign law should be filed by October 1, 1998, or on or before beginning service between that country and the United States.

DATE: This rule is effective March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel, DOT, (202) 366–9306.

SUPPLEMENTARY INFORMATION: On February 18, 1998, DOT published a final rule (63 FR 8258) concerning passenger manifest requirements. This document corrects a technical error in paragraph (b) of § 243.15. The February 18, 1998, version states that petitions requesting waivers should be filed, ''on or before the effective date of this rule, or on or before beginning service between that country and United States.'' The reference to effective date is incorrect and is being replaced by the phrase, ''October 1, 1998.''

Accordingly, the Department is correcting the rule published February 18, 1998, as follows:

On page 8282 in the second column in § 243.15(b), the phrase ''the effective date of this rule'' is corrected to read, ''October 1, 1998.''

Issued in Washington, DC, on February 19, 1998.

Nancy E. McFadden,

General Counsel.

[FR Doc. 98–4760 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–62–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 34–39677]

Commission Requirements for Registration Under Section 15 of the Exchange Act

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting Interim Form BD for the registration of brokers and dealers under the Securities Exchange Act of 1934. The Interim Form is intended to enhance the ability of the public to obtain information regarding securities professionals until the redesigned CRD system is operational.

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel, or Paul Andrews, Special Counsel at (202) 942–0073, Office of Chief Counsel,

Division of Market Regulation, Mail Stop 7–11, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

On July 12, 1996, the Commission adopted amendments to Form BD (''1996 Amendments''), the uniform application form for broker-dealer registration under the Securities Exchange Act of 1934 (''Exchange Act'').[1] In general, the amendments were adopted to provide the Commission, self-regulatory organizations (''SROs''), and state securities regulators with better information about a registrant's disciplinary history; to elicit more precise information about the business activities of broker-dealer applicants; and to facilitate the electronic retrieval of information. At the time it adopted these amendments, the Commission stated that use of Form BD, as amended, was to coincide with the implementation of the redesigned Central Registration Depository (''CRD''), a computer system operated by the National Association of Securities Dealers, Inc. (''NASD'') that maintains registration information regarding broker-dealers and their registered personnel. Among other things, the redesigned CRD system will allow broker-dealers to file Form BD electronically.[2]

Although the NASD expected to implement the redesigned CRD system in September 1996, a test of the system that began in May 1996 revealed that additional changes were needed in the software that will be used by broker-dealers to make electronic filings. Furthermore, the NASD determined that broker-dealers needed additional time to prepare their internal operations and infrastructure to support electronic filings. As a result, the NASD delayed the implementation of the redesigned CRD system. Because of this delay, on September 4, 1996, the Commission suspended the compliance date for the Form BD amendments.[3] Thus, until the redesigned CRD system is fully functional, applicants continue to file old Form BD.

One of the primary goals of the enhanced CRD, as well as the Form BD as amended, is to make certain information concerning broker-dealers and their associated persons more readily available to the public until the CRD redesign is complete. The NASD has determined to make the information available through a web-based technology. To do so, however, it is necessary to reformat a segment of Form BD.

To enhance the ability of the public to obtain information regarding securities professionals, the Commission is adopting Interim Form BD for use by registrants until the redesigned CRD system is operational.[4] Interim Form BD is based on old Form BD; it requires registrants to file information called for by the 1996 Amendments. The information would be in a computer format that will allow the CRD to make the information available to the public over the WorldWide Web. The Interim Form would not change the substance of the 1996 Amendments, but only their appearance on a temporary basis.

II. Description of the Interim Form BD

Interim Form BD will consist of Form BD currently in use with one exception. Old Question 7 on Form BD will be reformatted to resemble Question 11 on the amendments to Form BD approved by the Commission in July 1996.[5] The NASD, through the CRD system, will then publish the contents of Question 7 in the interim form for public access. Question 7 requests information about the disciplinary history of the applicant and its control affiliates, including information relating to statutory disqualifications,[6] other relevant history, and the applicant's financial soundness. In order to make the disclosure more organized and complete, Question 7 is broken into broad categories: criminal, civil, regulatory, and financial. Disclosure of such offenses as military court convictions, perjury, and conspiracy to commit certain offenses is also required.

III. Effective Date

In general, the Administrative Procedure Act (''APA''), 5 U.S.C. 551, *et seq.*, requires that agency rulemaking, such as changing Form BD, must be subject to a public notice and comment period. 5 U.S.C. 553. That requirement has already been satisfied. In Securities Exchange Act Rel. No. 35224, 60 FR 4040 (Jan. 12, 1995), the Commission solicited comment on what became the 1996 Amendments to Form BD. The substance of these amendments (namely, new Question 11) will be used in Interim Form BD. Thus, Interim Form BD is not subject to a notice and comment period.[7] In addition to being unnecessary, the Commission is of the view that soliciting comment would be impractical. The proposed Interim Form BD would only be used on a temporary basis and to delay its implementation until after a notice and comment period would significantly reduce its efficacy.

Moreover, although the APA generally requires publication of such amendments at least thirty days before their effective date, this requirement does not apply if the Commission determines, for good cause, not to provide a thirty-day period. See 5 U.S.C. 533(d). In light of the previous notice and comment period in connection with the Form BD amendments, as well as the fact that Interim Form BD will provide investors with immediate and inexpensive access to the relevant information concerning broker-dealers and their associated persons, the Commission here finds that good cause exists such that Interim Form BD is effective as of 16, 1998. The use of Interim Form BD is prospective only. Registrants already registered with the Commission need not refile on Interim Form BD.

IV. Statutory Basis

15 U.S.C. 78*o*, 78q, 78w.

List of Subjects in 17 CFR Part 249

Broker-Dealers, Reporting and recordkeeping requirements, Securities.

For the reasons set forth above, the Commission hereby amends Title 17, Chapter II, part 249 of the Code of Federal Regulations as follows:

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[1] Securities Exchange Act Rel. No. 37431 (July 12, 1996), 61 FR 37357 (July 18, 1996); see also 17 CFR 249.501.

[2] The CRD is a customized electronic database that allows ''one-stop'' filing for broker-dealer registration among the various state and federal regulators. In 1992, the Commission began participating in the CRD system as part of its ongoing effort to reduce the costs associated with broker-dealer registration.

[3] Securities Exchange Act Rel. No. 37632 (September 4, 1996), 61 FR 47412 (September 9, 1996).

[4] At this time, that is expected to occur shortly before the year 2000.

[5] The Commission has the authority to require the filing of Form BD pursuant to Sections 15 and 17 of the Exchange Act. 15 U.S.C. 78o and 78q.

[6] Sections 15(b)(1), 15(b)(4) and 15(b)(6) of the Exchange Act authorize the Commission to deny registration to a broker-dealer if the broker-dealer or an associated person of the broker-dealer has engaged in the activities listed in those sections, 15 U.S.C. 78*o*(b)(1), (b)(4), and (b)(6). *See also* 15 U.S.C. 78*o*–3(g)(2).

[7] Alternatively, Section 553(b)(3)(B) of the APA provides that an agency may dispense with prior notice and comment when it finds, for good cause, that such notice and public comment are ''impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 533(b)(3)(B). Because Interim Form BD makes no substantive or material change to the 1996 Amendments, and the Commission has already solicited comment on those amendments, the Commission finds that good cause exists such that notice and comment are unnecessary for the adoption of Interim Form BD.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 249 continues to read in part as follows:

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

* * * * *

Note: Form BD does not, and the Interim Form will not, appear in the Code of Federal Regulations.

2. By amending Form BD (referenced in Section 249.501) to revise Question 7 to read as follows:

BILLING CODE 8010–01–P

7A (1)	In the past ten years has the *applicant* or a *control affiliate* been convicted of or pleaded guilty or nolo contendere ("no contest") in a domestic, foreign or military court to: a *felony* or *misdemeanor* involving: investments or an investment-related business, or any fraud, false statements or omissions, wrongful taking of property, or bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	[ ]	[ ]	3
(2)	In the past ten years has the *applicant* or a *control affiliate* been charged with any felony or charged with a misdemeanor specified in question A(1) in a domestic, foreign or military court?	[ ]	[ ]	4
7B	Has any domestic or foreign court:			
(1)	in the past ten years, *enjoined* the *applicant* or a *control affiliate* in connection with any *investment-related* activity?	[ ]	[ ]	5
(2)	ever *found* that the *applicant* or a *control affiliate* was *involved* in a violation of *investment-related* statute(s) or regulation(s) -or- ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against the *applicant* or a *control affiliate* by a state or *foreign financial regulatory authority?*	[ ]	[ ]	6
7C	Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:			
(1)	*found* the *applicant* or a *control affiliate* to have made a false statement or omission?	[ ]	[ ]	7
(2)	*found* the *applicant* or a *control affiliate* to have been *involved* in a violation of its regulations or statutes?	[ ]	[ ]	8
(3)	*found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	[ ]	[ ]	9
(4)	entered an *order* against the applicant or a control *affiliate* in connection with *investment-related* activity?	[ ]	[ ]	10
(5)	imposed a civil money penalty on the applicant or a control *affiliate*, or *ordered* the *applicant* or a *control affiliate* to cease and desist from any activity?	[ ]	[ ]	10A

7D	Has any other Federal regulatory agency or any state regulatory agency or *foreign financial regulatory authority:*			
(1)	ever *found* the *applicant* or a *control affiliate* to have made a false statement or omission or been dishonest, unfair, or unethical?	[ ]	[ ]	11
(2)	ever *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of *investment-related* regulation(s) or statue(s) ?	[ ]	[ ]	12
(3)	ever *found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	[ ]	[ ]	13
(4)	in the past ten years entered an *order* against the *applicant* or a *control affiliate* in connection with investment-related activity?	[ ]	[ ]	14
(5)	ever denied, suspended, or revoked the *applicant's* or a *control affiliate's* registration or license or otherwise, by *order*, prevented it from associating with an *investment-related* business or restricted its activities?	[ ]	[ ]	15
(6)	ever revoked or suspended the *applicant's* or a *control affiliate's* authority to act as an attorney or accountant?	[ ]	[ ]	16
7E	Has any *self-regulatory organization* or commodities exchange ever:			
(1)	*found* the *applicant* or a *control affiliate* to have made a false statement or omission?	[ ]	[ ]	17
(2)	*found* the *applicant* or a *control affiliate* to have been *involved* in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the U.S. Securities and Exchange Commission)?	[ ]	[ ]	18
(3)	*found* the *applicant* or a *control affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked or restricted?	[ ]	[ ]	19
(4)	disciplined the *applicant* or a *control affiliate* by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?	[ ]	[ ]	20
7F	Is the *applicant* or a *control affiliate* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of 7B?	[ ]	[ ]	21
7G	Is the *applicant* or a *control affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of 7C, D, or E?	[ ]	[ ]	22
7H	Has a bonding company ever denied, paid out on, or revoked a bond for the *applicant*?	[ ]	[ ]	23
7I	Does the *applicant* have any unsatisfied judgments or liens against it?	[ ]	[ ]	24
7J	In the past ten years has the applicant or a control affiliate of the applicant been a securities firm or a control affiliate of a securities firm that has been the subject of a bankruptcy petition -or- has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?	[ ]	[ ]	25

* * * * *

By the Commission.

Dated: February 18, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4711 Filed 2–24–98; 8:45 am]

BILLING CODE 8010–01–C

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–98–007]

Drawbridge Operation Regulation; Bayou Chico, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the State Route 292 bascule span bridge across Bayou Chico, mile 0.3, at Pensacola, Florida. This deviation allows the bridge to remain closed to navigation between the hours of 7:30 a.m. and 11:30 a.m. on Saturday, February 28, 1998. This closure is necessary to facilitate the running of the Blue Angel Marathon, a long distance foot race which is an event of public interest.

DATES: The deviation is effective from 7:30 a.m. until 11:30 a.m. on February 28, 1998.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, Eighth Coast Guard District at 504–589–2965.

SUPPLEMENTARY INFORMATION: The State Route 292 bridge across Bayou Chico, mile 0.3, at Pensacola, Florida has a vertical clearance of 13 feet above mean high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists primarily of tugs with tows, commercial fishing vessels, sailboats and other recreational craft. The U.S. Naval Air Station has requested a temporary deviation from the normal operation of the bridge for the running of the Blue Angel Marathon.

This deviation requires that the draw of the State Route 292 bridge across Bayou Chico at mile 0.3 remain closed to navigation between the hours of 7:30 a.m. and 11:30 a.m. on Saturday, February 28, 1998. Presently, the following special drawbridge operating regulation is in effect: The draw shall open on signal at any time for the passage of commercial vessels. The draw shall open at any time for the passage of pleasure vessels; except that, from 6 a.m. to 8 a.m., 11 a.m. to 1 p.m., and 3 p.m. to 6 p.m. Monday through Friday except Federal holidays, the draw need be opened only on the hour and half hour or when five or more pleasure vessels are waiting to pass or in emergencies or severe storms. When the draw is open for commercial vessels during these restricted periods, accumulated pleasure vessels shall be passed.

Dated: February 12, 1998.

T.W. Josiah,

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

[FR Doc. 98–4834 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–97–072]
RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the Onslow Beach Swing Bridge across the Atlantic Intracoastal Waterway (AICW), mile 240.7, at Camp Lejeune, North Carolina, at the request of the United States Marine Corps (USMC).

The final rule continues to provide for openings on signal, except that from 7 a.m. to 7 p.m., the draw will only open on the hour and half hour, year-round. This rule is intended to reduce vehicular traffic delays while still providing for the reasonable needs of navigation.

DATES: This final rule is effective on March 27, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the office of the Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 8 a.m. and 4:30 p.m., through Friday, except Federal holidays. The telephone number is (757) 398–6222.

FOR FURTHER INFORMATION CONTACT: Ann Deaton, Bridge Administrator, Fifth Coast Guard District, (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 16, 1997, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, North Carolina'' in the **Federal Register** (62 FR 53770). The Coast Guard received one letter commenting on the proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The Onslow Beach Swing Bridge and adjoining property are part of the Marine Corps Base at Camp Lejeune military reservation, located adjacent to Jacksonville, North Carolina. The current regulations require the Onslow Beach Swing Bridge to open on signal at all times. This requirement is included in the general operating regulations at 33 CFR 117.5.

The USMC requested changes in the regulation to require the bridge to open on signal, except from 7 a.m. to 7 p.m., when the bridge would open on the hour and half hour.

Prior to publishing the NPRM, the Coast Guard reviewed the USMC's bridge logs from October 1993 through July 1997 which revealed an average of 38 bridge opening requests per day. During peak opening periods in the Fall and Spring, bridge tenders received an average of 45 bridge opening requests per day. Considering the minimal number of openings identified by the bridge logs, the Coast Guard believes that this rule will more fairly balance the competing needs of vehicular and vessel traffic.

Other drawbridges along the AICW in North Carolina are governed by specific regulations listed in 33 CFR 117.821 which require them to open on the hour or on the hour and half hour. The USMC's requested change to the regulations for the Onslow Beach Swing Bridge would make its schedule consistent with those for the other AICW drawbridges in North Carolina.

Therefore, the Coast Guard is amending § 117.821 by revising paragraph (a)(3) to require the Onslow Beach Swing Bridge across the AICW, mile 240.7, at Camp Lejeune, North Carolina, to open on signal except that openings will be limited to on the hour and half hour, between 7 a.m. and 7 p.m.

The final rule also amends § 117.821(a) by deleting the text stating that the bridge shall open on signal for public vessels of the United States, state and local government vessels, and any vessel in an emergency involving danger to life or property. This is a general requirement published at 33 CFR 117.31, which is no longer required in each specific bridge regulation. Commercial vessels will continue to pass on signal as provided in new paragraph (a).

To ensure clarity and consistency of the operating regulation, parts of former paragraph (b) have been reworded and

redesignated as paragraph (a). The final rule makes no substantive changes in paragraphs (b)(1)–(6); however minor editorial changes to the text have been made to clarity the regulation. For clarity and ease of use to the public, the Coast Guard is republishing the entire section as amended.

Discussion of Comments and Changes

The Coast Guard received one comment on the NPRM expressing support for the proposed rule. No adverse comments were received; therefore, the final rule is being implemented without change.

Regulatory Evaluation

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

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632).

This final rule does not restrict vessel navigation, but merely limits the bridge openings to on the hour and half hour, from 7 a.m. to 7 p.m. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B (as amended, 59 FR 38654, 29 July 1994), this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.821 is revised to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albermarle Sound to Sunset Beach.

(a) The drawbridges across the Atlantic Intracoastal Waterway in North Carolina shall open on signal for commercial vessels at all times and on signal for pleasure vessels, except at the times and during the periods specified in this paragraph:

(1) S.H. 94 Bridge, mile 113.7, at Fairfield, NC from April 1 to November 30, between 7 a.m. and 7 p.m., the draw need only open on the hour and half hour.

(2) S.R. 304 Bridge, mile 157.2, at Hobucken, NC, from April 1 to November 30, between 7 a.m. and 7 p.m., the draw need only open on the hour and half hour.

(3) Onslow Beach Swing Bridge, mile 240.7, at Cap Lejeune, NC, between 7 a.m. and 7 p.m., the draw need only open on the hour and half hour.

(4) S.R. 50 Bridge, mile 260.7, at Surf City, NC, between 7 a.m. and 7 p.m., the draw need only open on the hour.

(5) Figure Eight Swing Bridge, mile 278.1, at Scotts Hill, NC, the draw need only open on the hour and half hour.

(6) S.R. 74 Bridge, mile 283.1, at Wrightsville Beach, NC, between 7 a.m. and 7 p.m., the draw need only open on the hour.

(7) S.R. 1172 Bridge, mile 337.9, at Sunset Beach, NC, shall open on the hour on signal between 7 a.m. and 7 p.m., April 1 to November 30, except that on Saturdays, Sundays and Federal holidays, from June 1 through September 30, the bridge shall open on signal on the hour between 7 a.m. and 9 p.m.

(b) If a pleasure vessel is approaching a drawbridge which is only required to open on the hour or on the hour and half hour, and cannot reach the drawbridge on the hour or on the half hour, the drawtender may delay the required opening up to 10 minutes past the hour or half hour.

Dated: February 13, 1998.

Roger Rufe, Jr.

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 98–4836 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–14–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 251

[Docket No. 98–1 CARP]

Copyright Arbitration Royalty Panels; List of Arbitrators

AGENCY: Copyright Office, Library of Congress.

ACTION: Publication of the 1998–1999 CARP arbitrator list.

SUMMARY: The Copyright Office is publishing the list of arbitrators eligible for service on a Copyright Arbitration Royalty Panel (CARP) during 1998 and 1999. The CARP arbitrator list will be used to select the arbitrators who will serve on panels initiated in 1998 and 1999 for determining the distribution of royalty fees or the adjustment of royalty rates.

EFFECTIVE DATE: February 25, 1998.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney-Advisor, at Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

For royalty rate adjustments and distributions that are in controversy, the Copyright Act requires the selection of a Copyright Arbitration Royalty Panel (CARP) consisting of three arbitrators from ''lists provided by professional

arbitration associations.'' See 17 U.S.C. 802(b). The Librarian of Congress selects two of the arbitrators for a CARP from a list of nominated arbitrators; those selected then choose a third arbitrator to serve as chairperson of the panel. If the two arbitrators cannot agree, the Librarian is instructed to select the third arbitrator.

On December 7, 1994, the Copyright Office issued final regulations implementing the CARP selection process. 59 FR 63025 (December 7, 1994). Subsequently, these rules were amended to provide for the generation of a new list of nominees biannually. 61 FR 63717 (December 2, 1996). Section 251.3(a) of the regulations allows any professional arbitration association or organization to nominate qualified individuals, as described in § 251.5, to serve as arbitrators on a CARP. The regulations require that the submitting arbitration association supply the following information for each person:

(1) The full name, address, and telephone number of the person.

(2) The current position and name of the person's employer, if any, along with a brief summary of the person's employment history, including areas of expertise, and, if available, a description of the general nature of clients represented and the types of proceedings in which the person represented clients.

(3) A brief description of the educational background of the person, including teaching positions and membership in professional associations, if any.

(4) A statement of facts and information which qualify the person to serve as an arbitrator under § 251.5.

(5) A description or schedule detailing fees proposed to be charged by the person for service on a CARP.

(6) Any other information which the professional arbitration association or organization may consider relevant. 37 CFR 251.3(a).

Section 251.3(b) of the regulations requires the Copyright Office to publish a list of qualified persons and mandates that this list must include between 30 and 75 names of persons who were nominated from at least three arbitration associations. The newly comprised list of arbitrators is in effect until the end of the 1999 calendar year and any and all arbitrators selected for a CARP during 1998 and 1999 would come from this list. The list includes the name of the nominee and the nominating association.

The publication of today's list satisfies the requirement of 37 CFR 251.3. The information submitted by the arbitration association with respect to each person listed is available for copying and inspection at the Licensing Division of the Copyright Office. Thus, for example, if the Librarian is required to convene a CARP in 1998 for a royalty fee distribution, parties to that proceeding may review that information as a means of formulating objections to listed arbitrators under § 251.4. The Licensing Division of the Copyright Office is located in the Library of Congress, James Madison Building, Room 458, 101 Independence Avenue, S.E., Washington, DC 20540.

Deadline for Filing Financial Disclosure Statement

Section 251.32(a) of the CARP rules provides that, within 45 days of their nomination, each nominee must ''file with the Librarian of Congress a confidential financial disclosure statement as provided by the Library of Congress.'' The Copyright Office sent financial disclosure statements to the nominating associations, with specific instructions for completing and filing the statement, and asked each organization to distribute the forms to its nominees for the CARP arbitrator list. The Librarian of Congress will use the financial disclosure form to determine what financial conflicts of interest, if any, may preclude the nominee from serving as an arbitrator in a CARP proceeding. Unlike information submitted by the arbitration associations under § 251.3(a), the information contained in the financial disclosure statements is confidential and is not available to the public or to the parties to the proceeding. Each nominee has filed a completed financial disclosure form with the Library of Congress.

The 1998–1999 CARP Arbitration List

Miles J. Alexander, Esq.—CPR Institute for Dispute Resolution
Richard Bennett, Esq.—American Arbitration Association
Dorothy K. Campbell, Esq.—American Arbitration Association
Virginia S. Carson, Esq.—American Arbitration Association
Gray Castle, Esq.—JAMS/Endispute
Terry L. Clark, Esq.—American Arbitration Association
The Honorable John W. Cooley—Judicial Dispute Resolution, Inc.
M. Scott Donahey, Esq.—American Arbitration Association
Edward Dreyfus—American Arbitration Association
The Honorable Lenore G. Ehrig—American Arbitration Association
The Honorable John B. Farmakides—American Arbitration Association
The Honorable Thomas A. Fortkort—American Arbitration Association
The Honorable Charles W. Fowler—Arbitration and Mediation Services
Elizabeth E. Granville, Esq.—American Arbitration Association
The Honorable Lewis Hall Griffith—American Arbitration Association
The Honorable Jeffrey S. Gulin—Arbitration and Mediation Services
The Honorable Louis N. Hurwitz—Arbitration and Mediation Services
The Honorable Mel R. Jiganti—JAMS/Endispute
Sheldon Karon, Esq.—American Arbitration Association
The Honorable William B. Lawless—Judge-Net
Christine Lepera, Esq.—American Arbitration Association
Michael K. Lewis, Esq.—CPR Institute for Dispute Resolution
The Honorable Lewis A. London—Arbitration and Mediation Services
Denis R. Madigan, Esq.—JAMS/Endispute
The Honorable H. Curtis Meanor—CPR Institute for Dispute Resolution
Gloria Messinger, Esq.—American Arbitration Association
Kenneth E. Milam, Esq.—CPR Institute for Dispute Resolution
The Honorable James R. Miller, Jr.—JAMS/Endispute
The Honorable Sharon T. Nelson—American Arbitration Association
Timothy T. Patula, Esq.—American Arbitration Association
Gerald F. Phillips, Esq.—American Arbitration Association
The Honorable Kathleen A. Roberts—JAMS/Endispute
Sol Rosenthal, Esq.—American Arbitration Association
Peter C. Schaumber, Esq.—Center for Litigation Alternatives
Linda R. Singer, Esq.—CPR Institute for Dispute Resolution
Jeffrey L. Squires, Esq.—American Arbitration Association
William Stuart Taylor, Esq.—American Arbitration Association
The Honorable Curtis E. von Kann—JAMS/Endispute
The Honorable Ronald P. Wertheim—JAMS/Endispute
R. Quincy White, Esq.—American Arbitration Association
Darryl Wilson, Esq.—American Arbitration Association
Maurice L. Zilber, Esq.—American Arbitration Association

Dated: February 19, 1998.

David O. Carson,

General Counsel.

[FR Doc. 98–4749 Filed 2–24–98; 8:45 am]

BILLING CODE 1410–33–P

POSTAL SERVICE

39 CFR Part 20

Increase of Maximum Size and Weight Limits To Existing Global Package Link Premium Service to Japan

AGENCY: Postal Service.

ACTION: Interim rules with request for comments.

SUMMARY: Global Package Link (GPL) is an international mail service designed for companies sending merchandise to other countries. Current size allowances for GPL and returns services to Japan will be increased to U.S. domestic limits.

DATES: The interim regulations take effect February 25, 1998. Comments must be received on or before March 27, 1998.

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

FOR FURTHER INFORMATION CONTACT: Robert E. Michelson at the above address. Telephone: (202) 268–5731.

SUPPLEMENTARY INFORMATION:

I. Introduction

GPL service to Japan is currently limited to packages weighing up to 44 pounds and those with dimensions up to 60 inches per any side or total length plus girth of up to 108 inches. These size restrictions prevent existing mailers as well as potential new customers, with package dimensions larger than these limits, from using GPL to Japan. In response to requests from these mailers, size allowances on GPL and returns services to Japan will be increased to the domestic limits of 70 pounds and 108 inches (length plus girth combined).

II. GPL Size Increase to Japan

A. Qualifying Criteria

Customers wishing to send GPL packages to Japan that are larger than the current size restrictions of 44 pounds and maximum length of 60 inches will need to use GPL Premium Oversize service. GPL Premium Oversize service will include those packages longer than 60 inches on a side or weighing more than 44 pounds. Premium Oversize service will accommodate packages that fall within domestic limits of length plus girth up to 108 inches and weight up to 70 pounds. It will be the responsibility of the customer to choose the Premium Oversize option. Failure to choose the Premium Oversize option when dimensions or weight are over 60 inches per any side or over 44 pounds will result in the package being returned to the mailer for remailing as GPL Premium Oversize.

B. Delivery

GPL Premium Oversize service to Japan is an extension of the GPL Premium service. It will have the same attributes including trackability and up to $500 insurance at no additional cost.

C. Returns Service

The returns service weight allowance from Japan will be increased from the current 44-pound maximum to a 70-pound maximum. The maximum size will be increased to 108 inches (combined length plus girth).

D. Rates

The base rates for Premium Oversize GPL and extended returns service to Japan are set forth in the interim regulations below.

III. Conclusion

Accordingly, the Postal Service hereby adopts this size increase for GPL service and Returns service to Japan on an interim basis, at the rates set forth in the schedule below. Although 39 U.S.C. 407 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 (IMM), which is incorporated by reference in the Code of Federal Regulations (39 CFR 20.1).

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

PART 20—[AMENDED]

1. The authority citation 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 immediately, (February 25, 1998), subchapter 620 of the International Mail Manual, Issue 19, is amended as follows:

6 Special Programs

* * * * *

623.3 Size and Weight Limits

623.31 Weight Limits

The weight limits for Global Package Link service are 70 pounds for Chile, China, and Germany; 66 pounds for Brazil, Canada, France, Singapore, and the United Kingdom; 64 pounds for Mexico; and 44 pounds for Japan with the Premium service.

GPL Premium packages to Japan weighing more than 44 pounds up to a maximum of 70 pounds must be mailed as GPL Premium Oversize. To use the GPL Premium Oversize service, the mailer has the responsibility to select GPL Premium Oversize service when selecting the class of service and use the corresponding GPL Premium Oversize rates chart. GPL Premium packages weighing more than 44 pounds, up to a maximum of 70 pounds, will be returned to the mailer for remailing if GPL Premium Oversize service is not selected.

623.32 Size Limits

The maximum length of GPL packages is 60 inches. The maximum length and girth combined is 108 inches. Exceptions: maximum size for Germany is length 47 inches, height 23 inches, width 23 inches; for Japan standard packages weighing less than 1 pound, the maximum length is 24 inches with a combined maximum height, depth, and length of 36 inches.

GPL Premium packages to Japan whose length is more than 60 inches up to a maximum length plus girth of 108 inches must be mailed as GPL Premium Oversize. To use the GPL Premium Oversize service, the mailer has the responsibility to select GPL Premium Oversize service when selecting the class of service and use the corresponding GPL Premium Oversize rates chart. GPL Premium packages longer than 60 inches up to length plus girth of 108 inches will be returned to the mailer for remailing if GPL Premium Oversize service is not selected.

All GPL packages must be large enough to accommodate the necessary labels and customs forms on the address side.

* * * * *

GLOBAL PACKAGE LINK TO JAPAN RATES

Weight not over (lbs.)	Premium	Standard	Premium oversize	Returns
1	14.50	5.50	27.50	7.20
2	16.50	8.50	31.00	9.80
3	19.00	13.00	34.50	12.40
4	21.50	16.50	38.00	15.00
5	24.00	22.00	42.50	17.60
6	27.00	25.00	47.00	20.20
7	29.50	[1] 6	51.50	22.80
8	32.00		55.00	25.40
9	34.50		58.00	28.00
10	37.00		60.50	30.60
11	39.50		63.00	33.20
12	42.00		66.00	35.80
13	44.50		68.50	38.40
14	47.00		71.00	41.00
15	49.50		73.00	43.70
16	52.00		75.50	48.00
17	54.50		78.00	50.70
18	57.00		80.00	53.50
19	59.50		83.00	56.20
20	62.00		85.00	58.90
21	64.50		87.00	63.90
22	67.00		89.00	66.70
23	69.50		91.00	69.50
24	72.00		93.00	72.30
25	74.50		95.00	75.10
26	77.00		97.00	77.90
27	79.50		99.00	80.70
28	82.00		101.00	83.50
29	84.50		103.00	86.30
30	87.00		104.00	89.10
31	89.50		106.00	91.90
32	92.00		108.00	94.70
33	94.50		110.00	97.50
34	97.00		112.00	100.40
35	99.50		114.00	103.20
36	102.00		116.00	106.00
37	104.50		117.00	108.80
38	107.00		118.00	111.60
39	109.00		119.00	114.40
40	112.00		120.00	117.20
41	114.50		121.00	120.00
42	117.00		122.00	122.80
43	119.50		123.00	125.60
44	122.00		124.00	128.40
45	[1] 44		125.00	[1] 44
46			126.00	
47			127.00	
48			128.00	
49			129.00	
50			130.00	
51			131.00	
52			132.00	
53			134.00	
54			136.00	
55			138.00	
56			140.00	
57			142.00	
58			144.00	
59			146.00	
60			148.00	
61			150.00	
62			152.00	
63			154.00	
64			156.00	
65			158.00	
66			161.00	
67			163.00	
68			165.00	
69			167.00	
70			169.00	

[1] lb. max.

Discounts for GPL service to Japan are 3 percent off the base rates for those packages sent over 100,000 during a 12-month period. Parcels sent via the Premium Oversize service weighing less than 15 pounds but measuring more than 84 inches in length and girth combined are chargeable with a minimum rate equal to that for a 15-pound parcel.

* Weights over 44 pounds, use Premium Oversize service.

** Weights over 6 pounds, use Premium service.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–4824 Filed 2–24–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ–006–FON FRL–5969–8]

Finding of Failure To Submit Required State Implementation Plans for Particulate Matter; Arizona; Phoenix PM–10 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act (Act), EPA is taking final action to find that the State of Arizona has failed to make required State Implementation Plan (SIP) submittals for the metropolitan Phoenix PM–10 nonattainment area. These submittals are the regional moderate area plan requirements for the 24-hour PM–10 standard and the serious area plan requirements for annual PM–10 standard and the regional serious area requirements for the 24-hour standard. The deadline for these submittals was December 10, 1997.

This final action triggers the 18-month time clock for mandatory application of sanctions and 2-year time clock for a federal implementation plan under the Act. This action is consistent with the Act's mechanism for assuring SIP submissions.

EFFECTIVE DATE: February 6, 1998.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California, 94105–3901, telephone (415) 744–1248.

SUPPLEMENTARY INFORMATION:

I. Background

A. Serious Area PM–10 Planning Requirements for the Phoenix Metropolitan Area

In 1990, Congress amended the Clean Air Act to address, among other things, continued nonattainment of the PM–10 NAAQS.[1] Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C., 7401–7671q (1991). On the date of enactment of the Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the amended Act were designated nonattainment by operation of law. These areas included all former Group I areas identified in 52 FR 29383 (August 7, 1987) and clarified in 55 FR 45799 (October 31, 1980), and any other areas violating the PM–10 NAAQS prior to January 1, 1989. The metropolitan Phoenix PM–10 nonattainment area (Phoenix area) was identified as a Group I area in the August 7, 1987, **Federal Register** notice. A **Federal Register** notice announcing all areas designated nonattainment for PM–10 at enactment of the 1990 amendments was published on March 15, 1991 (56 FR 11101). The boundaries of the Phoenix nonattainment area were set forth in a November 6, 1991, **Federal Register** notice (56 FR 56694, codified for the State of Arizona at 40 CFR 81.303).

Once an area is designated nonattainment, section 188 of the amended Act outlines the process for classification of the area and establishes the area's attainment date. In accordance with section 188(a), at the time of designation, the Phoenix area was initially classified as moderate by operation of law with an attainment date of December 31, 1994.

The Act further provides that moderate areas that the Administrator finds have failed to attain by their moderate area deadlines are reclassified to serious by operation of law, CAA section 188(b)(2). Reclassified areas are then required to submit revised SIPs to address the serious area PM–10 requirements within 18 months of the effective date of the reclassification, CAA section 189(a)(2).

On May 10, 1996, EPA published a final reclassification of the metropolitan Phoenix PM–10 nonattainment area to serious (61 FR 21372). Pursuant to section 189(b)(2), the State of Arizona was thus required to submit a serious area plan addressing both PM–10 NAAQS for the area by December 10, 1997, 18 months after the effective date of the reclassification.

These requirements, as they pertain to the Phoenix nonattainment area, include:

(a) Provisions to assure that the best available control measures (BACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of best available control technology (BACT)) for the control of PM–10 shall be implemented no later than 4 years after the area is reclassified, (CAA section 189(b)(1)(B));

(b) A demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 2001, or an alternative demonstration that attainment by that date would be impracticable and that the plan provides for attainment by the most expeditious alternative date practicable (CAA section 189(b)(1)(A)(i) and (ii)); and

(c) Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress toward attainment by December 31, 2001 (CAA section 189(c)).

B. Residual Moderate Area Planning Requirements in the Phoenix Metropolitan Area

On May 14, 1996—just days after the reclassification was published—the Court of Appeals for the Ninth Circuit found that the Phoenix *moderate* area PM–10 plan failed to address the 24-hour PM–10 standard as required by the Clean Air Act (*Ober* v. *EPA*, 84 F.3d 304 (9th Cir. 1996)). As a result, the Court mandated that EPA require ''the State to submit a separate demonstration of the implementation of all 'reasonably available control measures' targeting the 24 hour standard violations; attainment and 'reasonable further progress' for the 24 hour standard.'' 84 F.3d at 316.

[1] EPA revised the NAAQS for particulate matter on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulate with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (μg/m^3). The 24-hour PM–10 standard of 150 μg/m^3 is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, appendix K.

On July 18, 1997, EPA slightly revised both the annual and the 24-hour PM–10 standard and also established two new standards for PM, both applying only to particulate matter up to 2.5 microns in diameter (PM–2.5) (62 FR 38651).

This finding applies to the outstanding obligation of the State to submit for the Phoenix metropolitan PM–10 nonattainment area a plan addressing the 24-hour and annual PM–10 standards, as originally promulgated.

Breathing particulate matter can cause significant health effects, including an increase in respiratory illness and premature death.

In order to comply with the court's order without diverting resources from the serious area planning effort, EPA—in consultation with the Arizona Department of Environmental Quality (ADEQ) and the Maricopa County Environmental Services Department (MCESD)—decided that the State would incorporate the moderate area plan elements for the 24-hour standard into the serious area plan but would split that planning effort into two related parts. Accordingly, EPA required submittal of a limited, locally-targeted plan (known as the microscale plan) meeting both the moderate and serious area requirements for the 24-hour standard by May 9, 1997 and a full regional plan meeting those requirements for both the 24-hour and annual standards by December 10, 1997. Letter from Felicia Marcus, EPA, to Russell Rhoades, ADEQ, September 18, 1996. Thus, the microscale and regional plans taken together would satisfy both the moderate area requirements mandated by the court and the serious area planning requirements for both standards.

In brief, the microscale plan was to address the 24-hour standard violations at five specific monitors in the metropolitan Phoenix area and meet the statutory RACM, BACM, attainment, and RFP requirements for moderate and serious PM–10 areas.

ADEQ submitted the *Plan for Attainment of the 24-hour PM–10 Standard—Maricopa County PM–10 Nonattainment Area* (May, 1997) to EPA on May 9, 1997. On August 4, 1997 (62 FR 41856), EPA approved in part and disapproved in part the microscale plan. For a complete discussion of the microscale plan, see the proposed approval/disapproval at 62 FR 31025 (June 6, 1997).

The regional plan, representing the balance of Phoenix's serious area plan, as well as the additional moderate area elements required by Court, was due December 10, 1997, the date established by the reclassification. This plan, which was to meet the requirements in section 189(b) and (c) of the Act, needed to assure that all statutory, regulatory, and policy requirements for serious area PM–10 plans for both the annual and 24-hour standards were fully addressed. It was to include a regional analysis, based on air quality modeling, that demonstrated implementation of BACM, RACM, and additional measures as necessary to assure expeditious attainment and quantitative milestones and RFP throughout the nonattainment area. As part of this regional plan, attainment of both PM–10 standards was to be demonstrated at all monitoring sites.

C. Consequences of a Failure To Submit Finding

The Maricopa Association of Governments (MAG), ADEQ, and MCESD have been working on the regional serious area plan since the Phoenix area was reclassified in May, 1996. These efforts have included development of a regional emission inventory, regional Urban Air Quality modeling, and evaluation of candidate BACM.[2]

Notwithstanding these significant efforts by the Maricopa Association of Governments, the Maricopa County Environmental Service Department and the Arizona Department of Environmental Quality, the State has failed to meet the December 10, 1997 deadline for the required SIP submittals. EPA is therefore compelled to find that the State of Arizona has failed to make the required SIP submittals for the Phoenix area PM–10 nonattainment area.

The CAA establishes specific consequences if EPA finds that a state has failed to meet certain requirements of the CAA. Of particular relevance here is CAA section 179(a)(1), the mandatory sanctions provision. Section 179(a) sets forth four findings that form the basis for application of a sanction. The first finding, that a State has failed to submit a plan required under the CAA, is the finding relevant to this rulemaking.

If Arizona has not made the required complete submittals within 18 months of the effective date of today's rulemaking, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. If the State has still not made a complete submittal 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31.[3] In addition, CAA section 110(c) provides that EPA must promulgate a federal implementation plan (FIP) no later than 2 years after a finding under section 179(a).

The 18-month clock will stop and the sanctions will not take effect if, within 18 months after the date of the finding, EPA finds that the State has made a complete submittal of a plan addressing the serious area PM–10 requirements for Phoenix area and the residual moderate area planning requirements for the 24-hour standard. In addition, EPA will not promulgate a FIP if the State makes the required SIP submittals and EPA takes final action to approve the submittals within 2 years of EPA's findings (section 110(c)(1) of the Act).[4]

II. Final Action

A. Rule

EPA is making findings of failure to submit for the Phoenix PM–10 nonattainment area, due to failure of the State to submit SIP revisions addressing (1) the Clean Air Act's moderate area plan requirements for the regional aspects of the 24-hour PM–10 standard and (2) the Act's serious area plan requirements for the annual PM–10 standard and the regional aspects of the 24-hour standard.

B. Effective Date Under the Administrative Procedures Act

Because EPA is issuing this action as a rulemaking, the Administrative Procedures Act (APA) applies.

The action will be effective on the date this action is signed, February 6, 1998. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. This action concerns SIP submittals that are already overdue and the State and general public are aware of applicable provisions of the CAA relating to

[2] MAG has also worked with the cities and towns of Maricopa County to adopt measures for PM–10 control that are in addition to those adopted for the microscale plan. These measures were submitted to EPA on December 11, 1997 as a revision to the SIP and EPA found that submittal complete on February 6, 1998. See Letter, David P. Howekamp, U.S. EPA—Region 9 to Russell Rhoades, ADEQ, February 6, 1998. These measures were not intended by the State to constitute the serious area PM–10 SIP or any part of that plan and therefore their submittal does not affect the finding of failure to submit for the serious area plan. See Letter, Russell Rhoades, ADEQ to Felicia Marcus, U.S. EPA, Region 9 re: Submittal of the Particulate Matter Control Measures for the Maricopa County Nonattainment Area (dated December 1997), December 11, 1997.

[3] In a 1994 rulemaking, EPA established the Agency's selection of the sequence of these two sanctions: The offset sanction under section 179(b)(2) shall apply at 18 months, followed 6 months later by the highway sanction under section 179(b)(1) of the Act. EPA does not choose to deviate from this presumptive sequence in this instance. For more details on the timing and implementation of the sanctions, see 59 FR 39832 (August 4, 1994), promulgating 40 CFR 52.31, ''Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act.''

[4] EPA is already obligated to promulgate a FIP for the moderate area plan requirements by July 18, 1998. This FIP obligation arose from an incompleteness finding made on the 1991 submittal of the initial moderate area plan. Under section 179(a) of the Act, incompleteness findings also trigger both sanction and FIP clocks. While Arizona subsequently completed the submittal and turned off the sanction clock, EPA's approval of the moderate area plan was vacated in *Ober,* leaving EPA with a FIP obligation in regards to the full moderate area plan.

overdue SIPs. In addition, this action simply starts a ''clock'' that will not result in sanctions for 18 months, and that the State may ''turn off'' through the submission of a complete SIP submittal. These reasons support an effective date prior to 30 days after the date of publication.

C. Notice-and-Comment Under the Administrative Procedures Act

This action is a final agency action but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 533(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submittals, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(d)(3). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert Agency resources from the critical substantive review of submitted SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

As discussed in section III.C. below, findings of failure to submit required SIP revisions do not by themselves create any new requirements. Therefore, I certify that today's action does not have a significant impact on small entities.

C. Unfunded Mandates Act

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

In addition, under the Unfunded Mandates Act, before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must have developed, under section 203, a small government agency plan.

EPA has determined that today's action is not a Federal mandate. The CAA provision discussed in this notice requires states to submit SIPs. This notice merely provides findings that Arizona has not met that requirement. This notice does not, by itself, require any particular action by any State, local, or tribal government, or by the private sector.

For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of February 6, 1998. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Paperwork Reduction Act

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

F. Judicial Review

Under CAA Section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the appropriate circuit by April 27, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2) of the Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, particulate matter, Intergovernmental relations.

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

Dated: February 6, 1998.

Amy K. Zimpfer,

Acting, Regional Administrator, Region IX.

[FR Doc. 98–4821 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300615; FRL–5770–8]
RIN 2070–AB78

Norflurazon; Extension of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends time-limited tolerances for residues of the herbicide norflurazon and its desmethyl metabolite in or on bermudagrass forage and hay at 2 and 3 parts per million (ppm), respectively, for an additional 1-year period, to November 30, 1999. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on bermudagrass for control of grassy weeds. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (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.

DATES: This regulation becomes effective February 25, 1998. Objections and requests for hearings must be received by EPA, on or before April 27, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300615], 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–300615], 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. 119, 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. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, 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: Rm. 272, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–308–9364; e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of April 11, 1997 (62 FR 17742–17748) (FRL–5598–2) , which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established time-limited tolerances for the residues of norflurazon and its desmethyl metabolite in or on bermudagrass forage and hay at 2 and 3 ppm, respectively, with an expiration date of November 30, 1998. EPA established the tolerance because 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.

EPA received a request to extend the use of norflurazon on bermudagrass for this year growing season due to the continuation of the emergency situation in Alabama, Georgia, Mississippi, and Texas. After having reviewed the submission, EPA concurs that emergency conditions exist for these States. EPA has authorized under FIFRA section 18 the use of norflurazon on bermudagrass for control of grassy weeds.

EPA assessed the potential risks presented by residues of norflurazon in or on bermudagrass forage and hay. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of April 11, 1997 (62 FR 17742–17748). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1-year period. Although this tolerance will expire and is revoked on November 30, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on bermudagrass forage and hay after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. 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.

I. 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 April 27, 1998, 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.

II. Public Record and Electronic Submissions

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

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300615]. No 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.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerancethat was previously extended by EPA 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). IN addition, 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).

Since this extension of an existing time-limited tolerance does 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.

IV. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: February 6, 1998.

James Jones,

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.

§ 180.356 [Amended]

2. In § 180.356, by amending paragraph (b) in the table, for the commodities ''Grasses, Bermuda, Forage'' and ''Grasses, Bermuda, Hay'' by removing the date ''November 30, 1998'' and by adding in its place ''11/30/99''.

[FR Doc. 98–4522 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300614; FRL–5769–9]

RIN 2070–AB78

Kaolin; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of anhydrous kaolin when used in or on food commodities to aid in the control of insects, fungi, and bacteria (food/feed use). This regulation was requested by Engelhard Corporation.

DATES: This regulation becomes effective February 25, 1998. Objections and requests for hearings must be received by EPA on or before April 27, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300614], may 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, Pittsburg, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Information and Records Intregrity 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. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically to the OPP by sending electronic mail (e-mail) to: opp-docket@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 in 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 number [OPP–300614]. 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: Driss Benmhend, 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 and telephone number: Rm. 5–W61, CS #1, 2800 Crystal Drive, Arlington, VA 22202, (703) 308–9525; e-mail: benmhend.driss@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 26, 1997 (62 FR 63168)(FRL–5753–3), EPA issued a notice pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), announcing the filing of a pesticide tolerance petition for the new active ingredient kaolin (PP 7E4908) by Engelhard Corporation, Research Center, 101 Wood Avenue, Iselin, NJ 08830. The notice included a summary of the petition prepared by the petitioner. The summary contained conclusions and arguments to support its conclusion that the petition complied with the Food Quality Protection Act (FQPA) of 1996. The petition requested the establishment of a permanent tolerance exemption for kaolin for all food commodities. Kaolin is a naturally occurring aluminosilicate, used as an indirect food additive for paperboard food contact, adhesives, cellophane, etc. It is also used in pharmaceuticals (tablet diluents poultices), and in toiletries (toothpaste, etc.). Prior to the current petition request, EPA authorized the issuance of an experimental use permit (EUP) to the registrant for the end-use product, M-96-018 Kaolin (70060-EUP-R), containing 98.8% active ingredient. In conjunction with the EUP, EPA approved a petition for a temporary tolerance exemption (PP 7G4793) for the active ingredient when applied to all food commodities. The exemption from a temporary tolerance for kaolin on all food commodities was granted for purposes of the EUP (April 23, 1997, 62 FR 19683) (FRL–5712–8).

There were no comments or requests for referral to an advisory committee, received in response to the notice of filing. The data submitted in the petition and other relevant material have been evaluated and were considered in support of this tolerance.

I. Toxicological Profile

The submitted toxicology studies are acceptable for these new registrations. No additional toxicology data are required. The data reported in the acute oral toxicity studies demonstrated that the acute oral LD_{50} for kaolin in rats is >5,000 mg/kg of body weight. No toxicity or clinical abnormalities were observed throughout the study period; Toxicity Category IV. The data reported in the acute dermal toxicity study demonstrated that the acute dermal LD_{50} for kaolin in rats is >5,000 mg/kg of body weight. No toxicity or clinical abnormalities were observed throughout the study period; Toxicity Category IV. The data reported in the primary eye irritation study demonstrate that the test substance was minimally irritating. Kaolin was not corrosive and all eye irritation effects cleared within 72 hours postdosing; Toxicity Category III. The data reported in the primary-skin irritation study demonstrated that the test substance caused no dermal irritation in rabbits treated with 0.5 g kaolin for 4 hours. No toxicity or clinical abnormalities were observed throughout the study period; Toxicity Category IV.

Kaolin is used as an indirect food additive for paper/paperboard dry food contact, adhesives, polymeric coatings, rubber articles, and cellophane. Kaolin is used in pharmaceuticals, tablet diluents, poultices, and surgical dusting powders. Kaolin is used as a cosmetic in face powders, face masks, and face packs. Kaolin is used in health products and toiletries, toothpaste, and antiperspirants. Kaolin can be used directly in foods as an anti-caking agent (up to 2.5%). Kaolin has GRAS (Generally Recognized as Safe) status under 21 CFR 186.1256 and is generally recognized as safe ''as an indirect human food ingredient with no limitation other than current good manufacturing practice.''

II. Aggregate Exposure

1. *Dietary exposure and risk characterization*. Dietary exposure of kaolin via food or water is difficult to estimate due to the use of kaolin in thousands of products. Kaolin is an inert mineral and has no known toxicological effects

2. *Non-dietary exposure, non-occupational exposure*. The amount of kaolin currently used in the U.S. pesticide industry as an inert is between 2 million lbs. and 10 million lbs. per year.

3. *Aggregate exposure from multiple routes including dermal and inhalation*. Risks associated with dermal and inhalation aggregate exposure are measured via the acute toxicity studies submitted to support registration. Because the inhalation toxicity studies for kaolin showed no toxicity (Toxicity Category IV), the risks anticipated for this route of exposure are considered minimal. Results of the acute dermal study indicated low toxicity (Toxicity Category IV), and no significant dermal irritation (Toxicity Category IV). Based on these results, the anticipated risks from dermal exposure are also considered minimal. Therefore, the risks from aggregate exposure via dermal and inhalation exposure are a compilation of two low risk exposure scenarios and are considered negligible.

III. Safety Considerations

The lack of toxicity of kaolin is demonstrated by the above summary. Based on this information, the aggregate exposure to kaolin over a lifetime should not pose appreciable risks to human health. There is a reasonable certainty that no harm will result from aggregate exposure to kaolin residues. Exempting kaolin from the requirement of a tolerance is safe.

Consistent with section 408(b)(2)(c) of the FFDCA, EPA has assessed the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with the common mechanism of toxicity. Based on the available information, the Agency concludes that kaolin is ubiquitous in all foods including those consumed by infants and children. Furthermore, kaolin is used as an additive in several food and non food products. Like adults, infants and children are also exposed to kaolin in these products, and there is no evidence that suggests that such exposure may lead to any harm.

IV. Cumulative Effects

Kaolin has no mode of toxicity and therefore no common mechanism of toxicity with other substances.

V. International Tolerances

No international tolerance exemptions are known to exist.

VI. Summary of Findings

Kaolin is considered as GRAS by FDA under 21 CFR 186.1256. EPA has not

identified any toxicity or clinical abnormalities. Moreover, the ecological effects studies demonstrated that there were no adverse effects. As a result, the Agency concludes that the exemption from the requirement of a tolerance is safe. Therefore, the tolerance exemption is established as set forth below.

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 (1)(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 April 27, 1998, 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 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 a 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 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.

VIII. Public Docket

EPA has established a record for this rulemaking under docket number [OPP–300614] (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 Rm. 119 of the Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

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 address in ''ADDRESSES'' at the beginning of this document.

IX. 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 tolerances and 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.

X. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: February 6, 1998.

Marcia E. Mulkey,

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 180.1180 is amended by removing the paragraph heading for paragraph (a), revising paragraph (b), and removing paragraphs (c) and (d) to read as follows:

§ 180.1180 Kaolin; exemption from the requirement of a tolerance.

* * * * *

(b) Kaolin is exempted from the requirement of a tolerance for residues when used on or in food commodities to aid in the control of insects, fungi, and bacteria (food/feed use).

[FR Doc. 98–4652 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300603; FRL–5766–4]

RIN 2070–AB78

Bensulfuron Methyl (methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] Benzoate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of bensulfuron methyl in or on crayfish. In addition, this regulation raises the tolerance for residues of bensulfuron methyl on rice straw. E.I. duPont de Nemours and Company, Inc. requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170).

DATES: This regulation is effective February 25, 1998. Objections and requests for hearings must be received by EPA on or before April 27, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300603], 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–300603], 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. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300603]. 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: Jim Tompkins, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 16, 1997 (62 FR 27033) (FRL-5717–7), 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 pesticide petitions (PP) 4F4367 and 5F4490. This notice included a summary of the petitions prepared by E.I. duPont de Nemours and Company, Inc., the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.445 be amended by establishing a tolerance for residues of the herbicide bensulfuron methyl, in or on rice (grain) at 0.02 parts per million (ppm), rice straw at 0.05 ppm, and crayfish at 0.05 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, 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 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 bensulfuron methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate and to make a determination on aggregate exposure, consistent with

section 408(b)(2), for tolerances for residues of bensulfuron methyl on rice straw at 0.3 ppm and crayfish 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 bensulfuron methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate are discussed below.

1. An acute oral study with an LD_{50} greater than 5,000 milligrams/kilogram (mg/kg) (limit test).

2. A 90-day dog feeding study with a no-observed-effect level (NOEL) of 32.1 milligrams/kilogram/day (mg/kg/day) in males and 36.3 mg/kg/day in females.

3. A 90-day mouse feeding study with a NOEL of 132 mg/kg/day in males and 133 mg/kg/day in females.

4. A 90-day rat feeding study with a NOEL of 93 mg/kg/day in males and 111 mg/kg/day in females.

5. A rat developmental study with a developmental NOEL of greater than 1,320 mg/kg/day, the highest dose tested.

6. A rabbit developmental study with a developmental NOEL of 300 mg/kg/day.

7. A two-generation rat reproduction study with a reproductive NOEL of 309 mg/kg/day in males and 405 mg/kg/day in females.

8. A *Salmonella*/Mammalian Activation Assay, negative with and without metabolic activation.

9. An *in vivo* bone marrow chromosome study in rats with no evidence of induced chromosome aberration in bone marrow.

10. An *in vitro* sister chromatid exchange assay in CHO cells with a slight increase in SCE frequency in nonactivated system at maximum concentration, but negative in the activated system at the same concentration.

11. A 1-year dog feeding study with a NOEL of 21.4 mg/kg/day in males and 19.9 mg/kg/day in females.

12. A 2-year mouse chronic feeding/carcinogenicity study with a NOEL of 226 mg/kg/day in males and 227 mg/kg/day in females for systemic effects and with no carcinogenic potential observed under conditions of the study up to 455 mg/kg/day in males and 460 mg/kg/day in females, the highest dose tested.

13. A 2-year rat chronic feeding/carcinogenicity study with a NOEL of 30 mg/kg/day in males and 40 mg/kg/day in females for systemic effects and with no carcinogenic potential observed under conditions of the study up to 309 mg/kg/day in males and 405 mg/kg/day in females, the highest dose tested.

Based on a NOEL of 19.9 mg/kg/day in the 1-year dog feeding study and a safety factor of 100, the acceptable daily intake has been set at 0.2 mg/kg/day. These tolerances have a theoretical maximum residue contribution of 0.000005 mg/kg/day and would utilize less than 1 percent of the reference dose (RfD) for the general US population. There are no population subgroups for which the percentage of the RfD utilized is greater than the general U.S. population.

B. Toxicological Endpoints

1. *Acute toxicity*. No toxicological effects attributable to a single exposure (dose) were identified in any of the studies. Therefore, this risk assessment is not required.

2. *Short - and intermediate - term toxicity*. EPA has concluded that available evidence doe not indicate any evidence of significant toxicity from short and intermediate term exposure.

3. *Chronic toxicity*. EPA has established the RfD for bensulfuron methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate at 0.20 mg/kg/day. This RfD is based on the systemic NOEL of 19.9 mg/kg/day for females in a one year toxicity study in beagle dogs.

4. *Carcinogenicity*. Although bensulfuron methyl has not received a carcinogenicity classification, the Health Effects Division RfD Committee found no evidence of carcinogenicity in the mouse or rat.

C. Exposures and Risks

1. *From food and feed uses*. Tolerances have been established (40 CFR 180.445) for the residues of bensulfuron methyl, in or on rice (grain) at 0.02 ppm, rice straw at 0.05 ppm. The petitioner has proposed to increase the tolerance for rice straw to 0.3 ppm. A tolerance of 0.05 ppm for bensulfuron methyl residues in crayfish is proposed. Risk assessments were conducted by EPA to assess dietary exposures and risks from bensulfuron methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate 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. An acute risk assessment is not required as an appropriate endpoint was not identified for bensulfuron methyl.

ii. *Chronic exposure and risk*. The Agency's Dietary Risk Evaluation System (DRES) does not contain the commodity crayfish. DRES does contain the commodity fish, shellfish which includes crayfish as well as other shellfish. For human dietary exposure calculations, The Agency has substituted the commodity fish, shellfish for crayfish. In conducting this chronic dietary risk assessment, The Agency has made very conservative assumptions: (1) 100% of all commodities having bensulfuron methyl tolerances will contain residues; (2) those residues will be at the level of the tolerance; and (3) bensulfuron methyl residues in fish, shellfish will be at the proposed tolerance level for crayfish. These assumptions will result is an overestimate of dietary exposure.

Thus, in making a safety determination for this tolerance, the Agency is taking into account this conservative exposure assessment.

The existing tolerances (published and pending, and including the proposed tolerance for crayfish) result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to less than 1% of the RfD for the U.S. population (48 states). There are no population subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 States).

2. *From drinking water— Chronic exposure and risk*. Based on the chronic dietary (food) exposure and using default body weights and water consumption figures, chronic levels of concern (LOC) for bensulfuron methyl in drinking water were calculated. For chronic exposure, based on an adult body weight of 70 kg and 2 liters consumption of water per day, the Agency's level of concern from chronic exposure in drinking water is 7,000 parts per billion for adults. For children (10 kg and consuming 1 liter water per day) our level of concern for drinking water is 2,000 parts per billion.

Because all the Agency's estimates for the levels of bensulfuron methyl in drinking water were less than 2 parts per billion, potential residues in drinking water are not greater than the Agency's level of concern.

3. *From non-dietary exposure*. There is no non-food use of bensulfuron methyl currently registered under FIFRA, as amended. No non-dietary

exposures are expected for the general population.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' 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 bensulfuron methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate 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, bensulfuron methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate 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 methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate has a common mechanism of toxicity with other substances.

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

1. *Acute risk.* An acute and intermediate-term risk assessment is not required as an appropriate endpoints were not identified for bensulfuron methyl.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to bensulfuron methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate from food will utilize <1% of the RfD for the U.S. population. 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 bensulfuron methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate in drinking water, 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 bensulfuron methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate 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.

An acute and intermediate-term risk assessment is not required as appropriate endpoints were not identified for bensulfuron methyl.

E. Aggregate Cancer Risk for U.S. Population

A carcinogenic risk assessment is not required as there is no evidence of carcinogenicity for bensulfuron methyl in the mouse or rat or dog.

F. 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 bensulfuron methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-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 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 uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/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 MOE/safety factor.

ii. *Developmental and reproductive toxicity studies.* The prenatal developmental toxicity data demonstrated no indication of increased sensitivity of rabbits to in utero exposure to bensulfuron methyl. In addition, the multigeneration reproduction study data did not identify any increased sensitivity of rats to in utero or postnatal exposure. In both studies, the maternal LOEL was less than or equivalent to the NOEL for effects in the offspring. Minor

ossification variations were observed in a developmental study in rats, but only at a dose of 1,320 mg/kg/day which exceeds the limit dose of 1,000 mg/kg/day as specified in Guideline Sec. 93-3a.

For chronic dietary risk assessment, the Agency determined that based on a complete database the 10x factor to account for enhanced sensitivity of infants and children (as required by FQPA) should be removed. Removal of the 10x is based on a complete database. The present UF of 100 (10X each for inter-and intra-species variability) is adequate to ensure protection of these population subgroups from exposure to bensulfuron methyl for reasons stated below:

(a) There is no indication of increased sensitivity to young animals following pre- and/or post-natal exposure to bensulfuron methyl.

(b) There is no increased sensitivity to fetuses as compared to maternal animals following in utero exposures in rats and rabbits.

(c) There is no increased sensitivity to pups as compared to adults in a multi-generation reproduction toxicity study in rats.

(d) Considering the overall toxicity profile of bensulfuron methyl, it was noted that toxic effects were only observed at or near the Limit Dose with all short- and long-term studies.

2. *Acute risk*. An acute risk assessment is not required as an appropriate endpoints were not identified for bensulfuron methyl.

3. *Chronic risk*. Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to bensulfuron methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate from food will utilize <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. Despite the potential for exposure to bensulfuron methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate in drinking water, 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 bensulfuron methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate residues.

4. *Short- or intermediate-term risk*. EPA has concluded that available evidence does not indicate any evidence of significant toxicity from short and intermediate term exposure.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of bensulfuron methyl in plants and animals is adequately understood for purposes of this tolerance. Due to very low levels of residues with a small percentage of metabolites, these metabolites need not be regulated.

B. Analytical Enforcement Methodology

An adequate analytical method, high-pressure liquid chromatography using a photo conductivity detector, is available for enforcement purposes. The analytical method for enforcing these tolerances has been submitted for published in the Pesticide Analytical Manual, Vol II (PAM II). Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in PAM, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 119FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–305–5229).

C. Magnitude of Residues

The nature of the residue in plants is adequately understood for the purpose of this tolerance. Based on the results of animal metabolism studies it is unlikely that significant residues would occur in secondary animal commodities from this use.

D. International Residue Limits

There are no established CODEX, Canadian or Mexican residue limits for bensulfuron methyl in/on rice (grain and straw) and crayfish. Thus, harmonization of the proposed tolerances with CODEX, Canada and Mexico are not an issue for these petitions.

E. Rotational Crop Restrictions

No tolerances for inadvertent residues of bensulfuron methyl are required in rotational crops. The rotational crop restrictions contained on the current Londax DF label (EPA 352-325) are adequate.

IV. Conclusion

Therefore, the tolerances are established for residues of bensulfuron methyl in/or on crayfish at 0.05 ppm and increase tolerance on rice straw from 0.05 to 0.3 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 April 27, 1998, 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–300603] (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 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis 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 tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior 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 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.

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: February 9, 1998.

Peter Caulkins,

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 180.445 is revised to read as follows:

§ 180.445 Bensulfuron methyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide bensulfuron methyl (methyl-2[[[[[(4,6-dimethoxy-pyrimidin-2-yl) amino] carbonyl] amino] sulfonyl] methyl] benzoate) in or on the following raw agricultural commodities:

Commodity	Parts per million
Crayfish	0.05
Rice	0.02
Rice, straw	0.3

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

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

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

[FR Doc. 98–4651 Filed 2–24–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300607; FRL–5767–6]

RIN 2070–AB78

Thiabendazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of thiabendazole in or on lentils. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on lentils. This regulation establishes a maximum permissible level for residues of thiabendazole 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 October 31, 1998.

DATES: This regulation is effective February 25, 1998. Objections and requests for hearings must be received by EPA on or before April 27, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300607], 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–300607], 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. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300607]. 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: 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 address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9356; e-mail: beard.andrea@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 residues of the fungicide thiabendazole, in or on lentils at 0.1 part per million (ppm). This tolerance will expire and is revoked on October 31, 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 Thiabendazole on Lentils and FFDCA Tolerances

The Applicants state that the *ascochyta blight* fungus is relatively newly occurring in the U.S., and presently available fungicides do not adequately control its spread in lentils, to prevent significant economic loss. Additionally, the Applicants state that a recently discovered strain which reproduces sexually is of even greater concern, as this sexual stage releases spores, capable of traveling long distances on the wind. This disease was initially of isolated occurrence in the United States until the last several years. The sexual strain has potential to lead to significant widespread infection of lentils. The previously known asexual strain resulted mainly in localized infections, being spread only through direct contact or waterborne splash. The Applicants stated that without the requested use of thiabendazole to control this disease, significant economic losses would occur. EPA has authorized under FIFRA section 18 the crisis provisions the use of thiabendazole on lentils for control of *ascochyta blight* in Idaho, Washington, and North Dakota. After having reviewed the submission, EPA concurs that emergency conditions exist for these states.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of thiabendazole in or on lentils. 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 October 31, 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 lentils after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. 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 thiabendazole meets EPA's registration requirements for use on lentils 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 thiabendazole 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 Idaho, Washington, and North Dakota 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 thiabendazole, 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 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This hundredfold MOE is based on the same rationale as the hundredfold 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 thiabendazole and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of thiabendazole in or on lentils at 0.1 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 thiabendazole are discussed below.

1. *Acute toxicity*. EPA has not yet established a toxicological endpoint for acute toxicity.

2. *Short- and intermediate- term toxicity*. For the purposes of this section 18 action the EPA has determined that short- and intermediate-term toxicity risk assessments are not required.

3. *Chronic toxicity*. EPA has not established the RfD for thiabendazole. However, for the purposes of this section 18 use, a RfD was calculated at 0.035 milligrams/kilogram/day (mg/kg/day), based on a human study, using 77 normal adult males, half of whom received a placebo, and half of whom received thiabendazole in a double blind manner, in divided doses over a 24 week period, at 250 mg daily. The daily doses were well-tolerated, and there were no side reactions, laboratory findings, or changes in physical findings related to the drug intake during the study. At an estimated body weight of 70 kg, this NOEL dose would be 3.5 mg/kg/day. Using an uncertainty factor of 10 to account for intraspecies differences and an additional factor of 10 due to data gaps, the provisional RfD is calculated to be 0.035 mg/kg/day.

4. *Carcinogenicity*. There is no identifiable cancer risk associated with exposure to thiabendazole because adequate studies are not available. In 1993, the registrant submitted information under section 6(A)(2) of FIFRA, concerning increased incidence of benign thyroid adenomas coupled with focal cystic follicular hyperplasia at the mid- and high-dose levels in a 2–year rat feeding study. Review of the data identified no concerns for carcinogenicity since the benign tumors occurred at levels well above the RfD, and since exposure to thiabendazole is expected to be short, less than 1–year.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.242) for the residues of thiabendazole, in or on a variety of raw agricultural commodities, ranging from 0.02 ppm in sweet potatoes (for seed) to 150 ppm in grape pomace. Tolerances have also been established for thiabendazole and its metabolite 5-hydroxythiabendazole at 0.4 ppm in milk, 0.1 ppm in eggs, and 0.1 ppm in meat, fat, and meat byproducts of livestock and poultry. Risk assessments were conducted by EPA to assess dietary exposures and risks from thiabendazole 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. Since there have been no toxicological endpoints identified for acute exposure to thiabendazole, an acute risk assessment was not conducted.

ii. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment, refinements were used including anticipated residue levels for oranges and apples, and percent of crop treated information for grapefruit, lemons, oranges, and apples. The ARC is equivalent to the following percentages of the RfD: overall U.S. population, 26.5; nursing infants, 39.4; non-nursing infants, 83.1; children 1–6 years old, 60.9; children 7–12 years old, 39.3; hispanics, 27.1; and non-hispanic whites, 27.2.

2. *From drinking water.* Based on available information, thiabendazole is persistent in the environment, but not mobile. There are no established Maximum Contaminant or Health Advisory Levels for thiabendazole in drinking water.

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 thiabendazole 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 thiabendazole 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.* Thiabendazole is currently registered for use on the following residential non-food sites: ornamental bulbs and turf; stored textiles, fabrics, and fibers; as a preservative/additive to adhesives, paints, paper, and plastic products; laundry equipment; and bathroom premises. However, due to the absence of toxicological endpoints for short, intermediate, and chronic exposure scenarios and sufficient residential-related quantitative exposure data, a comprehensive aggregate risk assessment of residential exposure is not possible at this time.

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).

Thiabendazole is a member of the benzimidazole class of pesticides; however, EPA does not have, at this time, available data to determine whether thiabendazole 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, thiabendazole 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 thiabendazole has a common mechanism of toxicity with other substances.

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

1. *Acute risk.* An acute dietary toxicological endpoint has not been identified for thiabendazole, and therefore an acute aggregate risk assessment was not conducted.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to thiabendazole from food will utilize 26.5% 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. Despite the potential for exposure to thiabendazole 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 thiabendazole residues.

D. 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 a pesticide, EPA generally considers 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 MOE and uncertainty factor (usually 100 for combined inter- and intra-species

variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete database 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 MOE/safety factor.

ii. *Pre- and post-natal sensitivity*. The toxicology database for evaluating pre- and post-natal toxicity for thiabendazole is incomplete with respect to current data requirements. Based on this, EPA concludes that lack of reliable data support use of an additional margin/factor of 10; this additional factor was included in the analyses described above.

iii. *Conclusion*. Due to the toxicology data gaps described above, an additional tenfold uncertainty factor was used in conducting this risk assessment for thiabendazole.

2. *Acute risk*. Although there is potential for exposure to thiabendazole through drinking water, EPA does not expect that exposure would result in aggregate MOEs (food plus water) that would exceed levels of concern for acute dietary exposure.

3. *Chronic risk*. Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to thiabendazole from food will utilize 83% 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 thiabendazole 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 thiabendazole residues.

V. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residues of thiabendazole in plants and animals is adequately understood. For the purposes of this section 18 use, the residues are as set forth in 40 CFR 180.242: the residue for plants is the parent, thiabendazole; for animal commodities, the residues of concern are thiabendazole and its metabolite 5-hydroxythiabendazole.

B. Analytical Enforcement Methodology

Adequate enforcement methodology, spectrophotofluorometric, detection for thiabendazole is available in PAM II Method I.

C. Magnitude of Residues

Residues of thiabendazole are not expected to exceed 0.1 ppm in or on lentils as a result of this section 18 use. Secondary residues are not expected to result in animal commodities from this use, since no feed items are associated with lentils.

D. International Residue Limits

There are no Codex proposals, Canadian, or Mexican limits for thiabendazole in or on lentils.

E. Rotational Crop Restrictions

Since this section 18 use is a seed treatment, rotational crop restrictions are not a concern.

VI. Conclusion

Therefore, the tolerance is established for residues of thiabendazole in or on lentils at 0.1 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 April 27, 1998, 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 Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the 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–300607] (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 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

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 action finalizes a tolerance under FFDCA section 408(e). 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). In addition, 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 special 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, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), 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.

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: February 6, 1998.

James Jones,

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 § 180.242 is amended by adding text to paragraph (b) to read as follows:

§ 180.242 Thiabendazole; tolerances for residues.

(a) *General* . * * *

(b) *Section 18 emergency exemptions*. Time-limited tolerances are established for the residues of thiabendazole, in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table. The tolerances will expire on the dates specified in the table.

Commodity	Parts per million	Expiration/ Revocation Date
Lentils	0.1	10/31/98

* * * * *

[FR Doc. 98–4793 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50628A; FRL–5770–7]

RIN 2070–AB27

Significant New Uses of Certain Chemical Substances; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA issued a document (FR Doc. 98–1074) in the **Federal Register** of January 22, 1998 adding significant new use rules (SNUR) for 163 substances. This document inadvertently assigned notification requirements for a substance already subject to a SNUR and several notification requirements under § 721.63 for one SNUR. EPA did not intend to issue these notification requirements. This action is necessary in order to issue the correct notification requirements.

DATES: This document is effective on February 25, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a document (FR Doc. 98–1074) in the **Federal Register** of January 22, 1998 (63 FR 3394) (FRL–5720–3), which inadvertently assigned notification requirements for a substance already subject to a SNUR and several notification requirements under § 721.63 for one SNUR. This correction removes the notification requirements entirely for § 721.5730 and changes the notification requirements under § 721.63 for § 721.9662(a)(2)(i).

On page 3432, in the first column, amendatory instruction 69. and § 721.5730 should be removed.

On page 3439, in the first column, in § 721.9662(a)(2)(i), in the third line, ''(a)(1), (a)(2)(i), (a)(4), (a)(5)(xii), (a)(5)(xiii), (a)(5)(xiv), and (a)(6)(v).'' should read ''(a)(1) and (a)(2)(i).''

I. Regulatory Assessment Requirements

This final rule does not impose any requirements. It only implements a correction to the Code of Federal Regulations. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), Executive Order 12875, entitled ''Enhancing the Intergovernmental Partnership'' (58 FR 58093, October 28, 1993), or Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994). In addition, since this type of

action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.).

II. Submission to Congress and Comptroller General

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

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 17, 1998.

Rebecca S. Cool,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–4792 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50629A; FRL–5769–1]

RIN 2070–AB27

Revocation of Significant New Use Rules for Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking significant new use rules (SNURs) for 12 chemical substances promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA). Based on the new data the Agency no longer finds that activities not described in the corresponding TSCA section 5(e) consent orders or the premanufacture notices (PMN) for these chemical substances may result in significant changes in human or environmental exposure.

DATES: This rule is effective March 27, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

In the **Federal Register** referenced for each substance, OPPTS–50582, August 15, 1990 (55 FR 33303); OPPTS–50585, September 28, 1990 (55 FR 39899); OPPTS–50589, April 17, 1991 (56 FR 15784); OPPTS–50601, September 23, 1992 (57 FR 44070); OPPTS–50613, October 4, 1993 (58 FR 51706); and OPPTS–50620, March 1, 1995 (60 FR 11042) (FRL–4868–4), EPA issued a SNUR establishing significant new uses for the substances. Because of additional data EPA has received for these substances, EPA is revoking these SNURs.

I. Background

The Agency proposed the revocation of these SNURs in the **Federal Register** of December 9, 1997 (62 FR 64795) (FRL–5752–9). The background and reasons for the revocation of each individual SNUR are set forth in the preamble to the proposed revocation. The comment period closed on January 8, 1998. The Agency received no comments concerning the proposed revocation. Therefore, EPA is revoking these rules.

II. Rationale for Revocation of the Rule

During review of the PMNs submitted for the chemical substances that are the subject of this revocation, EPA concluded that regulation was warranted based on available information that indicated activities not described in the TSCA section 5(e) consent orders or the PMNs might result in significant changes in human or environmental exposure. Based on these findings, SNURs were promulgated.

EPA has revoked those TSCA section 5(e) consent orders that are the bases for these SNURs and no longer finds that activities other than those described in the TSCA section 5(e) consent orders or the PMNs may result in significant changes in human or environmental exposure. The revocation of SNUR provisions for these substances is consistent with the findings set forth in the preamble to the proposed revocation of each individual SNUR.

Therefore, EPA is revoking the SNUR provisions for these chemical substances. When this revocation becomes final, EPA will no longer require notice of intent to manufacture, import, or process these substances, except in the case where the PMN submitter has formally withdrawn the PMN. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Public Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–50629A (including 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 Confidential Business Information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

IV. Regulatory Assessment Requirements

This final rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, 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). Since this final rule does not impose any requirements, it does not contain any information collections subject to approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*., or require any other action 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, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined that SNUR revocations, which eliminate requirements without imposing any new ones, have no adverse economic impacts. The Agency's generic certification for SNUR revocations appears on June 2, 1997 (62 FR 29684) (FRL–5597–1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

V. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 13, 1998.

Ward Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§§ 721.700, 721.2840, 721.2860, 721.2880, 721.2940, 721.3200, 721.4640, 721.5990, 721.8125, 721.9260, 721.9780, 721.9962 [Removed]

2. By removing §§ 721.700, 721.2840, 721.2860, 721.2880, 721.2940, 721.3200, 721.4640, 721.5990, 721.8125, 721.9260, 721.9780, and 721.9962.

[FR Doc. 98–4791 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[CC Docket No. 92–297; FCC 98–15]

Reconsideration of the Rules and Policies for Local Multipoint Distribution Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: The Federal Communications Commission has adopted a Third Order on Reconsideration (Third Reconsideration Order) in the Local Multipoint Distribution Service (LMDS) proceeding, reaffirming its commitment to the rapid implementation of LMDS and the broad range of one-way and two-way voice, video, and data service capabilities that LMDS offers. LMDS is a fixed, point-to-multipoint wireless service that has the flexibility and potential to promote competition in the telephony and cable distribution marketplaces, as well as to introduce new and innovative services to the public. The action is taken to resolve petitions for reconsideration of the service rules, except the competitive bidding rules, adopted in the Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking (Second Report and Order) to implement LMDS in the 27.5–28.35 GHz, 29.1–29.25 GHz , and 31.0–31.3 GHz frequency bands. The limited revisions to the Commission's rules adopted in this Third Reconsideration Order will permit certain point-to-point operations on a secondary basis to LMDS in the 31 GHz band under the previous service rules replaced by LMDS without adversely affecting LMDS or the initiation of the auction and licensing of LMDS under the LMDS service rules.

EFFECTIVE DATE: April 27, 1998.

FOR FURTHER INFORMATION CONTACT: Barbara Reideler or Jay Whaley, Policy Division, Wireless Telecommunications Bureau, (202) 418–1310.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Third Reconsideration Order in CC Docket No. 92–297, FCC 98–15, adopted on February 3, 1998, and released on February 11, 1998. The complete text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W., Washington, DC 20036.

Synopsis of Third Reconsideration Order

1. On March 11, 1997, the Commission adopted a Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking (Second Report and Order) [1] in this proceeding, which designated the 31.0–31.3 GHz frequency band (31 GHz band) for Local Multipoint Distribution Service (LMDS) and adopted competitive bidding and service rules to implement LMDS in the 27.5–28.35 GHz and 29.1–29.25 GHz frequency bands (28 GHz band) and the 31 GHz band. In this Third Order on Reconsideration (Third Reconsideration Order), the Commission addressed petitions for reconsideration and clarification of the Second Report and Order, except petitions for reconsideration of the LMDS competitive bidding rules.[2] The petitions were denied, with one exception that resulted in limited revisions to the rules adopted in the Second Report and Order. The Third Reconsideration Order deferred consideration of the comments filed in response to the Fifth Notice of Proposed Rulemaking, which was issued in conjunction with the Second Report and Order, to a separate Report and Order to be issued in the near future.

2. The Second Report and Order adopted an ownership rule that imposed a three-year restriction on the eligibility of incumbent local exchange companies (LECs) and incumbent cable companies to hold an attributable interest in the larger LMDS license of 1,150 megahertz whose geographic service area significantly overlaps such incumbent's authorized or franchised service area. The Third Reconsideration Order reviewed the portion of the eligibility restriction that permits incumbent LECs and incumbent cable companies to bid

[1] Rulemaking To Amend Parts 1, 2, 21, and 25 of the Commission's Rules To Redesignate the 27.5–29.5 GHz Frequency Band, To Reallocate the 29.5–30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Petitions for Reconsideration of the Denial of Applications for Waiver of the Commission's Common Carrier Point-to-Point Microwave Radio Service Rules, CC Docket No. 92–297, Suite 12 Group Petition for Pioneer Preference, PP–22; Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 12545 (1997), 62 FR 23148, April 29, 1997, and 62 FR 16514, April 7, 1997.

[2] The petitions for reconsideration of the LMDS competitive bidding rules were considered in the Second Order on Reconsideration at 62 FR 48787, September 17, 1997.

on and acquire such an in-region LMDS license, so long as they subsequently come into compliance with the eligibility restriction through divestiture of the ineligible interests or areas within 90 days of the grant of such license.

3. The Commission affirmed that the divestiture rule is consistent with similar rules in similar ownership eligibility restrictions and would not undermine the restriction. Ineligible incumbents would not be able to distort the auction process, which is protected by several provisions that prevent various anticompetitive strategies. The rule also is consistent with the Commission's goal to structure the eligibility restriction as flexibly as possible to minimize potential adverse limitations on incumbent LECs and incumbent cable companies by permitting them to compete for the LMDS license and then decide which business to pursue or divest.

4. The Third Reconsideration Order also reviewed the portion of the eligibility rule that defines an ownership interest of 20 percent or higher as an attributable interest for eligibility purposes. The Commission affirmed that the 20 percent attribution level better serves the competitive goals for LMDS than a 10 percent attribution level for several reasons. The 20 percent level maximizes the opportunity for competition and increases the availability of financing by permitting a wide variety of players to enter the markeplace and provide financing, while preventing anticompetitive activities of incumbents. The 20 percent level was reasonably based upon a market analysis and predictive judgments that weighed and balanced several competing interests, and was adopted because it is more reasonable than other levels in achieving the goals of the eligibility restriction. In addition, there are safeguards in the LMDS attribution rule that make incumbent cable companies ineligible to hold a controlling interest in an LMDS licensee, even if their attributable ownership interest is less than 20 percent.

5. The Commission found that the 20 percent level is consistent with the ownership restriction that applies to similar wireless services and that was adopted to achieve similar goals to promote competition and prevent the concentration of spectrum among entities with the incentive to prevent competition. Although the Commission uses a 5 percent level in another ownership restriction, the circumstances are different and require a more restrictive approach than LMDS. Different ownership attribution standards have been adopted in the context of different rulemakings, depending on the particular circumstances and objectives in each case.

6. The Commission also reviewed the portion of the eligibility rule that does not treat debts, warrants and similar convertible interests as attributable interests until conversion is effected. The Third Reconsideration Order affirmed the rule, which is consistent with similar ownership restrictions adopted by the Commission. The different treatment of such debts and interests in the attributable interest provisions of the LMDS designated entity auction rules also adopted in the Second Report and Order was based on the different circumstances and objectives of the designated entity rules and was consistent with the auction rules adopted in other services. The Third Reconsideration Order found that existing Commission rules prevent incumbent LECs and incumbent cable companies that hold such convertible instruments from engaging in anticompetitive activities and undermining the eligibility restriction. In addition, the Commission has adopted ownership disclosure requirements that the Third Reconsideration Order directs LMDS applicants to address in the long-form applications to be filed by the LMDS auction winners and that provide additional safeguards to ensure that anticompetitive conduct does not materialize.

7. The Third Reconsideration Order determined that the policies and criteria used in establishing ownership restrictions in various rulemakings for different services would benefit from a comprehensive evaluation. Accordingly, the Commission decided to initiate a proceeding to examine the various ownership restrictions, including their ownership attribution standards and their treatment of convertible interests, later this year.

8. The Third Reconsideration Order reviewed the decision to apply the eligibility restriction to all incumbent LECs and incumbent cable companies, including rural incumbent LECs. The Commission affirmed that the rule is consistent with the policy objectives of section 309(j) of the Communications Act to promote competition in all areas, ensure prompt delivery of service to rural areas, and provide opportunities for rural telephone companies. Rural incumbent LECs have the same incentives for anticompetitive use of LMDS licenses as other incumbent LECs to bar the entry of new competitors. The eligibility restriction reserves the initial licensing of LMDS for entrants without market power to ensure new competitors to all areas, including rural areas.

9. The Commission also concluded that the eligibility restriction does not subject rural incumbent LECs to greater disqualification under its definition of a significant overlap, which occurs when the service area of an incumbent LEC or incumbent cable company includes at least 10 percent of the population of the LMDS licensed service area. Whether applied to an entire licensed area or a smaller partitioned licensed area, a significant overlap was determined to create the potential for exercise of undue market power by incumbent LECs, including rural incumbent LECs. The Commission affirmed that if an incumbent LEC or incumbent cable company, including a rural incumbent LEC, is prevented from acquiring an LMDS license that significantly overlaps its service area, it is not barred altogether from acquiring an LMDS license and several alternatives are available. The incumbent LEC or incumbent cable company may acquire an LMDS license that does not significantly overlap, that overlaps so long as it divests the overlapping area within 90 days of a grant of the license, or that is partitioned from a larger LMDS license and complies with the eligibility restriction. Incumbents also may acquire the 150 megahertz LMDS license to which the eligibility restriction does not apply.

10. The Third Reconsideration Order noted that in the Second Report and Order, the Commission has committed to initiate a review of the eligibility restriction in the year 2000, in order to determine whether the restriction should be extended to promote competition. The Commission determined, on reconsideration, to begin this review prior to 2000 and to provide a framework for the use of the Commission's resources in carrying out the review. Therefore, the Chief Economist, the Chief of the Cable Services Bureau, the Chief of the Common Carrier Bureau, the Chief of the Mass Media Bureau, the Chief of the International Bureau, the General Counsel, and the Chief of the Wireless Telecommunications Bureau were instructed to prepare jointly a study examining whether there has been sufficient entry and increases in competition to sunset the eligibility restriction on incumbent LECs and incumbent cable companies. The results of this study, together with a joint recommendation, are to be submitted to the Commission no later than June 30, 1999. Based on the report and joint

recommendation, the Commission intends to determine whether to initiate a rulemaking proceeding to extend the date for the termination of the eligibility restriction.

11. The Third Reconsideration Order identified safeguards that exist, even after the eligibility restriction is terminated, to ensure that proposed license acquisitions by incumbent LECs or incumbent cable operators will not be inconsistent with the pro-competitive policies on which the restriction is based. After the initial auctioning of LMDS licenses, licenses are acquired under the Commission's transfer and assignment rules, which require prior Commission approval. The Third Reconsideration Order determined that the Commission would consider whether a particular market is sufficiently competitive before granting approval, and would rely on an examination of the same factors identified in the Second Report and Order for determining whether a market is sufficiently competitive to grant a waiver of the eligibility restriction under section 101.1003(a)(2) of the Commission's Rules (47 CFR 101.1003(a)(2)).

12. The Third Reconsideration Order granted a petition for clarification of the LMDS technical rules concerning frequency coordination and emission masks. The Second Report and Order imposed a frequency coordination requirement on LMDS licensees that requires licensees to initiate the coordination procedures in the Commission's rules to avoid interference problems with any neighboring LMDS licensee located within 20 kilometers of the boundaries of its service area. The Commission clarified that the identity of any such neighboring licensees is readily available in the Commission's database in order for the LMDS licensee to fulfill its obligation to provide notification of its operations to such neighbors. The Commission further clarified that such neighbor is required to respond to the notification with specific information concerning any problem, providing the LMDS licensee with sufficient information to further enable it to fulfill its obligation to complete the coordination process. The Third Reconsideration Order also clarified that the emission mask requirements in part 101 of the Commission's Rules apply to LMDS and that LMDS will be governed by the emission specifications set out in section 101.111 of the Rules (47 CFR 101.111(a)(2)).

13. The Third Reconsideration Order reviewed whether the flexible LMDS construction rule, which requires LMDS licensees to demonstrate substantial service during the 10-year licensed period in order to be granted license renewal, adversely impacts rural LECs and is inconsistent with section 309(j) of the statute. The Commission affirmed that the flexibility of the rule will promote efficient use of the spectrum, encourage service to rural areas, and prevent the warehousing of spectrum, which are consistent with the policies in section 309 (j). The Commission affirmed that specific construction benchmarks were not devised because of the broad range of new and innovative LMDS services, many of which are in the design stage. Stricter requirements could discourage participation in LMDS because the services and equipment are under development.

14. The Third Reconsideration Order upheld the decision to designate the entire 300 megahertz in the 31 GHz band for LMDS and to terminate licensing under the previous service rules, which provided a point-to-point localized service in the 31 GHz band. In denying the petition for reconsideration to designate only 150 megahertz in the 31 GHz band plan for LMDS, the Commission found that there was adequate support for its finding that the entire 300 megahertz should be designated to LMDS to ensure its potential for development of a full range of broadband telecommunications and video distribution services and to fulfill the Commission's obligation to designate spectrum for the most effective and efficient use.

15. The Third Reconsideration Order reviewed the decision to dismiss the applications that were filed under the previous point-to-point 31 GHz service rules and were pending at the Commission when the LMDS service rules were adopted for the 31 GHz band on March 11, 1997, in the Second Report and Order. On reconsideration, the dismissed applicants were allowed to refile the dismissed applications within 60 days of the effective date of the Third Reconsideration Order under existing application rules in part 101 of the Commission's Rules (47 CFR 101.1, *et seq.*). Operating rules were modified to permit the 31 GHz operations under the technical parameters that applied to previously authorized 31 GHz licenses.

16. The Third Reconsideration Order permitted authorization of the same stations and services requested in the dismissed applications, but prohibited expansion of the authorized operations beyond the scope of the initial license. The new licensees and the existing 31 GHz licensees were directed to share the band with each other consistent with such authorizations under the previous rules. However, all operations in the new licenses will be authorized on a secondary basis to LMDS operations, and any such new 31 GHz operations are required not to interfere with LMDS operations and to accept any interference from LMDS. The Commission concluded that these unique circumstances prevented any adverse impact on LMDS operations to be provided in the 31 GHz band and on the future licensing of the band under the LMDS service rules.

17. Only entities that had applications dismissed when the Second Report and Order was adopted were eligible to refile such applications under the previous 31 GHz application rules for secondary authorization to LMDS. Similar treatment was not accorded to entirely new applications for future licensing under the previous 31 GHz services, because that would not alleviate concerns of potential harm to LMDS or benefit such future licensees in the face of incompatible LMDS operations. The Third Reconsideration Order, however, recognized the important public interest objectives of governmental entities that requested ongoing licensing of the 31 GHz band under the previous 31 GHz service rules for traffic control systems that meet Federal goals to reduce vehicular traffic congestion and air pollution. Several alternative means were identified by which such governmental entities may still acquire authorization for spectrum use or can otherwise obtain the traffic services they need.

18. The Third Reconsideration Order reviewed the Order on Reconsideration issued in conjunction with the Second Report and Order that upheld the decision to dismiss several hundred waiver applications for authority to provide LMDS in the 28 GHz band under the previous 28 GHz service rules. The Commission denied petitioners' claims on further reconsideration that dismissal of their 28 GHz waiver applications was the result of retroactive rulemaking and disparate treatment, and should not have been summarily dismissed. The Commission explained that an applicant has no vested right to a continuation of the substantive standards in effect at the time an application was filed and, thus, the waiver applicants had no vested rights that were affected. In addition, unless a waiver of the rules was granted as the applicants requested, applications that failed to comply with the 28 GHz licensing rules under which they were filed may be dismissed summarily.

Supplemental Final Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act, see 5 U.S.C. 603 (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking (Second Report and Order) in this proceeding. The Commission's Supplemental Final Regulatory Flexibility Analysis (SFRFA) in this Third Reconsideration Order reflects revised or additional information to that contained in the FRFA. The SFRFA thus is limited to matters raised in response to the Second Report and Order that are granted on reconsideration in the Third Reconsideration Order. This SFRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 846 (1996), codified at 5 U.S.C. 601 *et seq.*

I. Need For and Objectives of the Action

20. The actions taken in this Third Reconsideration Order are in response to petitions for reconsideration or clarification of the service rules, except competitive bidding rules, adopted in the Second Report and Order to implement the new Local Multipoint Distribution Service (LMDS) in the 28 GHz and 31 GHz frequency bands. The petitions are denied, except the petitions seeking reconsideration of the decision to dismiss the pending applications requesting authorization of 31 GHz services under the previous service rules. The rule changes adopted in the Third Reconsideration Order allow the dismissed applicants to refile their applications for the same 31 GHz authorization, but on a secondary basis to LMDS. The rule changes are intended to permit the limited 31 GHz services requested in the dismissed applications that include traffic control systems, among other services in the public interest, while reaffirming the Commission's decision to terminate future licensing of new applications under the previous 31 GHz service rules and designate the 31 GHz band for LMDS, which offers a wide array of telecommunications and video programming distribution services.

II. Summary of Significant Issues Raised by the Public in Response to the Final Regulatory Flexibility Statement

21. No comments were received in direct response to the FRFA. In response generally to the Second Report and Order, the Commission received petitions, as well as *ex parte* letters and letters in support, that seek reconsideration, and also received oppositions to those petitions. Sierra Digital Communications, Inc (Sierra) requests that the dismissed 31 GHz applications be reinstated and the licensees given the same interference protections and relocation procedure that the Commission accorded incumbent 31 GHz licensees when it redesignated the 31 GHz band for LMDS. Sierra argues that the potential public interest benefits in authorizing the requested services in the dismissed applications, which include public safety services and public expenditures, outweigh any benefits that may come from licensing 31 GHz for LMDS free of the requested services. Nevada Department of Transportation (Nevada DOT) requests that its applications and the applications of the Las Vegas Cities (Cities) for a traffic control system be granted on a temporary basis and secondary to LMDS in order to allow the implementation of equipment that was purchased and installed and to provide public safety services while the licensees seek an alternative technology or frequency band.

22. CellularVision USA, Inc. (CellularVision) and Texas Instruments (TI) oppose the requests. They contend that authorization of the 31 GHz operations in the dismissed applications is inconsistent with the decision to designate the 31 GHz for LMDS and that the operations would interfere with LMDS, result in enforcement problems for LMDS, and precipitate other applications for similar relief.

III. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

23. The rule changes adopted in the Third Reconsideration Order would apply to a specific number of entities that had pending applications for authorization of 31 GHz services on file that were dismissed when the Commission adopted the Second Report and Order on March 11, 1997. We estimate that there are approximately 10 dismissed applicants with several dismissed applications, based on Commission records. The dismissed applicants are permitted to refile the dismissed applications and obtain a license to provide the 31 GHz services designated in the band before the Commission designated the band for LMDS. No new applicants may request such 31 GHz authorization. Also, no new applications may be filed by the dismissed applicants, which may only refile the dismissed applications.

24. The FRFA found that the rules adopted at that time would apply to all incumbent 31 GHz licensees providing 31 GHz services under the previous 31 GHz service rules. The Commission determined the description and estimate of the number of small entities among the total number of 31 GHz licensees based on the licensed services and their qualifications as small entities. Of the total number of 86 licensees, 59 were Local Television Transmission Service (LTTS) licensees, 8 were private business licensees, and 19 were governmental entities. To determine which of the licensees qualified as small entities, the Commission estimated the number of governmental entities with populations less than 50,000, but was unable to determine which of LTTS licensees or private business licensees were small. To ensure that no small interests were overlooked, the Commission assumed that most of the licensees were small entities and estimated that at least 50 of the 86 licensees to be small entities.

25. Since the revisions adopted in the Third Reconsideration Order do not apply to incumbent 31 GHz licensees, the estimates of small entities in the FRFA is not affected and does not need to be adjusted. The revisions instead apply to the small and specific number of dismissed applicants that requested 31 GHz licenses and are permitted to refile for the same services requested in the dismissed applications. There are a variety of dismissed applicants, including governmental entities and private businesses. Inasmuch as the total number of dismissed applicants is very small and only ten are estimated, the Commission assumed that all of these are small entities in order to ensure that no small interests are overlooked.

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

26. The dismissed applicants have the option to refile applications for the same services requested in the dismissed applications within 60 days following the effective date of the Third Reconsideration Order. Not all of the dismissed applicants may decide to refile their dismissed applications. The filing fees were refunded to the dismissed applicants that paid fees. The applicants may only apply for the same stations and services contained in the dismissed applications, and the licenses will be secondary to LMDS licenses. All of the dismissed applications requested service authorizations that are governed by the established licensing, operating, and technical rules and procedures in part 101 of the Commission's Rules (47 CFR 101.1 *et seq.*). Thus, the data

required for refiling the dismissed applications were collected on the dismissed applications and the refiling requirement does not require new information nor impose any undue burdens on the dismissed 31 GHz applicants, including small businesses.

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

27. The rule changes adopted in the Third Reconsideration Order are in response to petitions for reconsideration filed by entities that, for purposes of this analysis, we have considered to be small entities. The changes minimize any significant economic impact on small entities consistent with our objectives in adopting the rule changes and consistent with the comments we received.

28. The requests of Sierra, Nevada DOT, and other commenters are granted to permit the 31 GHz operations requested in the dismissed applications. Although the Commission determined that terminating future licensing under the 31 GHz rules is consistent with the public interest in designating the 31 GHz band for LMDS, the Commission found that permitting the operations reflected in the dismissed applications and modified by the Order is an exception based on unique circumstances that is in the public interest. Nevada DOT demonstrates that dismissal of the considerable number of applications to implement the Las Vegas traffic control system would not spare the unnecessary expenses identified in the Second Report and Order, but rather would prevent the use of purchased and installed equipment until a replacement technology is found. To the extent that applicants have already invested in constructing these systems, the system could be implemented during the inception of LMDS without substantial additional investment for retooling or relocation at this time.

29. Although Sierra requests that the Commission reinstate the dismissed applications, the Commission decided that providing the dismissed applicants with the opportunity to refile the applications is a more reasonable approach to licensing the dismissed applications. The filing fees were returned to the dismissed applicants that paid fees. The Third Reconsideration Order reaffirmed the dismissal of the pending applications, but without prejudice to their being refiled within 60 days of the effective date of the Third Reconsideration Order to provide applicants time to consider whether to refile. Circumstances have changed since the pending applications were filed and reinstated applications may not reflect the applicant interests or intentions. The new licenses will be secondary to LMDS licenses and limited to the scope of the services authorized, without modification for expansion. Dismissed applicants that do not wish to operate in this manner have the option to not reapply.

30. The Commissioners decided to permit the dismissed applicants to refile the applications for licensed authorization under the established licensing procedures in part 101, which governed the dismissed applications. Licenses will be issued for a 10-year period and may be renewed, which provides Nevada DOT more opportunity to implement its services than the temporary license it requested. As for CellularVision's concern that allowing the refiling of the dismissed applications will encourage the filing of similar applications, only the applications that were dismissed in the Second Report and Order may be refiled and they are limited to the same stations and services contained in the pending applications. The number of applicants are very few and the scope of their services is already identified in the dismissed applications, so that uncertainties about the impact of the refiling opportunity should be reduced.

31. The Commission decided to authorize any licenses based on the dismissed applications on a secondary basis to LMDS, so that such 31 GHz licensees may not interfere with LMDS and must accept any interference from LMDS. As noted, the Commission considered the concerns of CellularVision and TI about potential interference with LMDS operations. Under a license that is secondary to LMDS licenses, the licensees are prevented from adversely impacting LMDS and are required to modify their systems to eliminate interference or seek alternative access to frequencies. As the Commission concluded, it is in the public interest to allow these important traffic control facilities to continue to operate as long as they do not interfere with future LMDS operations. In addition, the new licensees may provide service to the full extent permitted under the license, but are not permitted any expansion or increase in operations, further minimizing any impact of the new 31 GHz services on LMDS.

32. Thus, the Commission declined to grant Sierra's request to accord the new licensees the same interference protection against LMDS that the Commission adopted in the Second Report and Order for non-LTTS licensees in the outer 150 megahertz segment of the 31 GHz band. That protection was based on the needs of existing 31 GHz licensees that had well-established traffic control systems or private business services that were licensed before LMDS was designated for the band, circumstances which do not apply here. Moreover, Nevada DOT requests that the dismissed applications, including the considerable number of its own and those of the Cities, be subject to secondary status to LMDS to accommodate LMDS concerns and facilitate the authorization of the dismissed applications in light of the redesignation of the band for LMDS. On balance, permitting the licensing of the limited operations requested in the few dismissed applications on a secondary basis to LMDS will prevent the undue economic hardships to small entities that seek to implement the proposed services, while preventing any chilling effect on the potential development of LMDS in 31 GHz by new LMDS licensees that are small entities.

VI. Report to Congress

33. The Commission will send a copy of this Supplementary Final Regulatory Flexibility Analysis, along with the Third Reconsideration Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). A copy of the Third Reconsideration Order and this SFRFA (or summary thereof) be sent to the Chief Counsel for Advocacy for the Small Business Administration.

Ordering Clauses

34. *Accordingly,* it is ordered that the actions of the Commission herein are taken pursuant to sections 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, 47 U.S.C. 154(i), 257, 303(r), 309(j).

35. *It is further ordered* that the late-filed letters of CommPare, Inc., CSG Wireless, Inc., State of Nevada Department of Transportation, Parsons Transportation Group, Inc., and Westec Communications, Inc., are accepted.

36. *It is further ordered* that the Petitions for Reconsideration filed by the Independent Alliance, LBC Communications, LDH International, Inc., M3 Illinois Telecommunications Corporation, the Rural Telecommunications Group, Sierra Communications, Inc., and Webcel Communications, Inc., are granted to the extent indicated herein and otherwise are denied.

37. *It is further ordered* that the Motion for Stay Pending Review of Petition for Reconsideration filed by LDH International, Inc., is denied.

38. *It is further ordered* that the Commission's Rules are amended as set forth in the Rule Changes.

39. *It is further ordered* that the applications that were dismissed in the Second Report and Order are permitted to be refiled under the terms and conditions in this Third Reconsideration Order and shall be filed no later than 60 days following the effective date of this Order.

40. *It is further ordered* that the provisions of this Order and the Commission's Rules, as amended in the Rule Changes, shall become effective 60 days after publication in the **Federal Register**.

41. *It is further ordered* that the Director, Office of Public Affairs, shall send a copy of this Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a).

List of Subjects in 47 CFR Part 101

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 101 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 101—FIXED MICROWAVE SERVICE

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

Authority: 47 U.S.C. 154, 303, 309(j), unless otherwise noted.

2. Section 101.57 is amended by revising paragraph (a)(1) to read as follows:

§ 101.57 Modification of station license.

(a)(1)(i) Except as provided in paragraph (a)(1)(ii) of this section and in § 101.59, no modification of a license issued pursuant to this part (or the facilities described thereunder) may be made except upon application to the Commission.

(ii) The provisions of paragraph (a)(1)(i) of this section shall not apply in the case of:

(A) Licenses authorized for operation in the 31,000–31,300 MHz band prior to March 11, 1997;

(B) Non-Local Multipoint Distribution Service licenses authorized for such operation in the band pursuant to applications refiled no later than April 27, 1998; and

(C) The Local Multipoint Distribution Service as provided in § 101.61(c)(10).

* * * * *

3. Section 101.103 is amended by adding paragraph (b)(3) as follows:

§ 101. 103 Frequency coordination procedures.

* * * * *

(b) * * *

(3) Non-LMDS operations in the entire 31,000–31,300 MHz band licensed after March 11, 1997, based on applications refiled no later than April 27, 1998 are unprotected with respect to each other and subject to harmful interference from each other.

(i) Such operations and any operations licensed prior to March 11, 1997, in the band are unprotected with respect to each other and subject to harmful interference from each other.

(ii) Such operations are licensed on a secondary basis to LMDS operations licensed in the band, may not cause interference to LMDS operations, and are not protected from interference from LMDS operations.

(iii) Such operations licensed on a point-to-point basis may not be extended or otherwise modified through the addition of point-to-point links. Such operations licensed on a point-to-radius basis may add additional stations within the licensed area.

* * * * *

4. Section 101.107 is amended by revising footnote 8 in paragraph (a) to read as follows:

§ 101.107 Frequency tolerance.

(a) * * *

[8] For stations authorized prior to March 11, 1997, and for non-Local Multipoint Distribution Service stations authorized pursuant to applications refiled no later than April 27, 1998, the transmitter frequency tolerance shall not exceed 0.030 percent.

* * * * *

5. Section 101.113 is amended by revising footnote 8 in paragraph (a) to read as follows:

§ 101.113 Transmitter power limitations.

(a) * * *

[8] For stations authorized prior to March 11, 1997, and for non-Local Multipoint Distribution Service stations authorized pursuant to applications refiled no later than April 27, 1998, the transmitter output power shall not exceed 0.050 watt.

* * * * *

6. Section 101.147 is amended by revising footnote 16 in paragraph (a) and by revising the introductory text of paragraph (u) to read as follows:

§ 101.147 Frequency assignments

(a) * * *

[16] As of June 30, 1997, frequencies in these bands are available for assignment only to LMDS radio stations, except for non-LMDS radio stations authorized pursuant to applications refiled no later than April 27, 1998.

* * * * *

(u) *31,000–31,300 MHz.* Stations licensed in this band prior to March 11, 1997, may continue their authorized operations, subject to license renewal, on the condition that harmful interference will not be caused to LMDS operations licensed in this band after June 30, 1997. Non-LMDS stations licensed after March 11, 1997, based on applications refiled no later than April 27, 1998 are unprotected and subject to harmful interference from each other and from stations licensed prior to March 11, 1997, and are licensed on a secondary basis to LMDS. In the sub-bands 31,000–31,075 MHz and 31,225–31,300 MHz, stations initially licensed prior to March 11, 1997, except in LTTS, and LMDS operations authorized after June 30, 1997, are equally protected against harmful interference from each other in accordance with the provisions of § 101.103(b). For stations, except in LTTS, permitted to relocate to these sub-bands, the following paired frequencies are available: * * *

* * * * *

7. Section 101.803 is amended by revising note 7 of paragraph (a) and revising note 9 of paragraph (d) to read as follows:

§ 101.803 Frequencies.

(a) * * *

[7] As of June 30, 1997, frequencies in this band only are available for assignment to LMDS radio stations, except for non-LMDS radio stations authorized pursuant to applications refiled no later than April 27, 1998. Stations authorized prior to June 30, 1997, may continue to operate within the existing terms of the outstanding licenses, subject to renewal. Non-LMDS stations authorized pursuant to applications refiled no later than April 27, 1998 shall operate on an unprotected basis and subject to harmful interference from similarly licensed stations or stations licensed prior to June 30, 1997, and on a secondary basis to LMDS radio stations.

(d) * * *

* * * * *

[9] As of June 30, 1997, frequencies in this band only are available for assignment to LMDS radio stations, except for non-LMDS stations authorized pursuant to applications refiled no later than April 27, 1998. Stations authorized prior to June 30, 1997, may continue to operate within the existing terms of the outstanding licenses, subject to renewal. Non-LMDS stations authorized pursuant to applications refiled no later than April 27, 1998 shall operate on an unprotected basis and subject to harmful interference from each other or stations licensed prior to June 30, 1997, and on a secondary basis to LMDS radio stations.

* * * * *

[FR Doc. 98–4750 Filed 2–24–98; 8:45 am]

BILLING CODE 6712–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50615C; FRL–5757–2]

RIN 2070–AB27

Organotin Lithium Compound; Final Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described as an organotin lithium compound which is the subject of premanufacture notice (PMN) P–93–1119. This rule would require certain persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing, importing, or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: This rule is effective March 27, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

This final SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of P–93–1119 for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use''. EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354) and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provisions which apply to this SNUR. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a ''User Fee Rule'' (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting SNUR notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to these documents for further information.

III. Background and Response to Comments

EPA published a direct final SNUR for the chemical substance, which was the subject of PMN P–93–1119 in the **Federal Register** of May 27, 1994 (59 FR 27474). EPA received a notice of intent to submit adverse comments for this chemical substance following publication. Therefore, as required by § 721.160, the final SNUR for P–93–1119 was withdrawn on June 7, 1995 (60 FR 29992) (FRL–4916–3) and a proposed rule on the substance was issued on June 7, 1995 (60 FR 30050) (FRL–4916–4).

The background and reasons for the SNUR are set forth in the preamble to the proposed rule including EPA's response to comments to the direct final rule and the change to the proposed SNUR based on those comments and data submitted. EPA received no additional comments to the proposed rule, therefore, EPA is issuing the final rule.

IV. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rule. Because this SNUR was first published on May 27, 1994, as a direct final rule, that date will serve as the date after which uses would be considered to be new uses. If uses which had commenced between that date and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses that would be regulated through this SNUR after March 1, 1995, would have to cease any such activity before the effective date of this rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person would be considered to have met the requirements of the SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities,

these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

V. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance at the time of the direct final rule. The analysis is unchanged for the substance in the final rule. The Agency's complete economic analysis is available in the public record for this final rule (OPPTS–50615C).

VI. Public Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–50615C (including 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 Confidential Business Information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA NonConfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

VII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special considerations of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid OMB control number. The information collection requirements related to this action have already been approved by OMB pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burdens requiring additional OMB approval. The public reporting burden for this collection of information is estimated to average 100 hours per response. The burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has previously certified, as a generic matter, that the promulgation of a SNUR does not have a significant adverse economic impact on a substantial number of small entities. The Agency's generic certification for promulgation of new SNURs appears on June 2, 1997 (62 FR 29684) (FRL–5597–1) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 13, 1998.

Ward Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.9668 to subpart E to read as follows:

§ 721.9668 Organotin lithium compound.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as an organotin lithium compound (PMN P–93–1119) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N = 1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 98–4790 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

Proposed Rules

Federal Register
Vol. 63, No. 37
Wednesday, February 25, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1485

Agreements for the Development of Foreign Markets for Agricultural Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations applicable to the Market Access Program (MAP) authorized by section 203 of the Agricultural Trade Act of 1978. This proposed rule would incorporate into the MAP allocation process the level of export contributions made by U.S. industry participants; authorize reimbursement of certain travel expenses for brand participants and certain necessary packaging and labeling design expenses; extend the activity payment deadline following the end of an activity plan year; establish a 5-year limit, per country, on CCC assistance for brand promotion by single companies; and permit reimbursement to participants based upon issuance of a credit memo as an alternative to a transfer of funds.

DATES: Written comments must be received by March 27, 1998 to be assured of consideration.

ADDRESSES: Comments should be submitted to: Kent Sisson, Director, Marketing Operations Staff, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Avenue, SW., Ag Box 1042, Room 4932S, Washington, DC 20250–1042. Fax: (202) 720–9361.

FOR FURTHER INFORMATION CONTACT: Kent Sisson or Denise Fetters at (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. It has been determined that this proposed rule would not have an annual economic effect in excess of $100 million; would not cause a major increase in costs to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule would have preemptive effect with respect to any State or local laws, regulations or policies which conflict with such provisions or which otherwise impede their full implementation; does not have retroactive effect; and does not require administrative proceedings before suit may be filed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (see the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule because CCC is not required by any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule.

Paperwork Reduction Act

The information collection requirements for participating in the MAP were approved for use by the Office of Management and Budget (OMB) through April 30, 2000, and assigned OMB No. 0551–0027. This proposed rule would not impose new information collection requirements.

Background

The MAP is authorized by section 203 of the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5623), which directs the Commodity Credit Corporation (CCC) to establish ''a program to encourage the development, maintenance, and expansion of commercial markets for agricultural commodities through cost-share assistance to eligible trade organizations.'' CCC implements this provision by entering into agreements with non-profit trade associations, private organizations, State agencies, and cooperatives. These agreements provide for sharing the costs of overseas advertising, technical assistance, and other export promotion activities, and may include either generic or brand promotions.

On February 1, 1995, CCC published a final rule in the **Federal Register** (60 FR 6352) governing the operations of the MAP. Since publication of that rule, CCC has had ongoing discussions with program participants concerning program improvements. Some of the changes proposed herein are based on these discussions.

CCC proposes to take State and industry contributions into consideration during the MAP allocation process. Currently, such contributions are not considered in the allocation process. This approach does not recognize the value and significance of contributions made by the States and industries in support of foreign market development efforts. Therefore, CCC is proposing to amend § 1485.14(c)(4) to include State and industry export promotion contributions in the MAP allocation process. In order to protect the integrity of the allocation process, CCC also proposes to amend § 1485.21 to make the participant responsible to CCC for the full contribution upon which the allocation would be based. In other words, the regulations would require the participant to pay to CCC the difference between the amount actually contributed and the amount specified in the allocation approval letter.

Section 1485.16(d)(3) currently disallows reimbursement for costs associated with the design and production of packaging, labeling, and origin identification. However, CCC believes that when changes in packaging, labeling, or origin identification are necessary to meet another country's importing requirements, reimbursement is appropriate. Therefore, this rule proposes to amend § 1485.16(d)(3) and to add a § 1485.16(b)(11) which specifically authorizes reimbursement of necessary costs associated with the design and production of packaging,

labeling, and origin identification. The participant will be responsible for demonstrating that the change was necessitated by foreign importing requirements. CCC will not reimburse any cost for creative artwork and design.

MAP participants currently must transfer payment for expenditures within 4 months of the completion of the activity plan year in order to be reimbursed. For activities which occur near the end of he activity plan year, some participants occasionally fail to meet the 4-month deadline due to delays in receiving the necessary paperwork, such as invoices or purchase orders, from their overseas counterparts. Extending the period of time for payment to 6 months would facilitate participant compliance and still allow for efficient program management. Because reimbursement for these approved activities effectuates the goals of the program, CCC believes that extending the deadline to 6 months is justifiable and proposes such amendment to § 1485.16(h)(3).

CCC currently will not reimburse brand participants for any travel expenses. CCC believes that company participation in a trade show is a crucial step for entering new export markets. Because international travel can be expensive, small firms sometimes must forego attending trade shows which could greatly increase their chances for successful market entry and result in actual sales. To encourage trade show participation by brand participants, CCC is proposing to amend section 1485.16 to authorize reimbursement for the air travel and per diem associated with participation in foreign trade shows. Other travel costs would not be reimbursed. Reimbursement would be limited to travel and per diem expenses for no more than two representatives of the brand participant. Travel and per diem expenses would not be reimbursed unless the participant is an exhibitor.

The MAP currently limits any company to five years of CCC assistance per country per product for brand promotion. CCC believes, however, that it can expand export opportunities more effectively by limiting each company to five years of brand promotion in any country. In other words, after five years of receiving assistance from CCC for brand promotion in a given country, a company would ''graduate'' from the program in that country. Such company would remain eligible to participate in any other country in which it had received brand promotion assistance for less than five years. This would allow CCC to share its limited resources with a wider variety of American exporters and in a wider variety of markets. After five years of assistance in a country, a company should have established itself in that country and be able to finance 100 percent of its costs. CCC proposes to amend § 1485.14(d)(2) accordingly. CCC will calculate this five-year period as is done under the current rule.

Finally, another participant suggestion is to accept credit memos as documentation for participant reimbursement claims. Credit memos are widely used in business transactions throughout the world; however, CCC does not currently accept such memos as proof of eligible promotion expenditures. CCC had been concerned that monitoring compliance might be difficult if credit memos were allowed. After careful examination and review, including consultation with the Office of Inspector General, CCC believes it can adopt and implement audit controls to permit the use of credit memos while adequately protecting CCC's interests.

CCC believes this policy regarding credit memos prevents some participants, in particular small businesses who would prefer to pay for certain promotional activities using credit memos, from deriving the full benefits of the program. Therefore, CCC proposes to amend § 1485.20(a)(3)(vi) to accept credit memos as supporting documentation for reimbursement and auditing purposes. CCC proposes to add a definition of ''credit memo'' as a notice that a vendor has decreased an amount owed for promotional expenditures at the time the credit memo is issued. CCC also proposes to add a definition of ''expenditure,'' in § 1485.11, to clarify that an expenditure can be either a transfer of funds or a payment via a credit memo in lieu of a transfer of funds. This rule also proposes conforming changes to accompany the six proposed substantive changes discussed herein.

List of Subjects in 7 CFR Part 1485

Agricultural commodities, Exports.

In consideration of the foregoing, the Commodity Credit Corporation proposes to amend 7 CFR part 1485 as follows:

PART 1485—[AMENDED]

1. The authority citation for 7 CFR 1485 continues to read as follows:

Authority: 7 U.S.C. 5623; 7 U.S.C. 5662–5663 and sec. 1302, Pub. L. 103–66, 107 Stat. 330.

Subpart B—Market Promotion Program

2. Section 1485.11 is amended by deleting the paragraph designations and adding the following two new definitions in alphabetical order:

§ 1485.11 Definitions.

* * * * *

Credit memo—a notice that a vendor has decreased an amount owned for promotional expenditures at the time the credit memo is issued.

* * * * *

Expenditure—the transfer of funds or payment via a credit memo in lieu of a transfer of funds.

* * * * *

3. Section 1485.14 is amended by removing paragraph (d)(3) and revising paragraphs (c)(4) and the first sentence of (d)(2) to read as follows:

§ 1485.14 Application approval and formation of agreements.

* * * * *

(c) * * *

(4) Level of participant's State's, and industry's contributions;

* * * * *

(d) * * *

(2) CCC will not provide assistance to a single company for brand promotion in a single country for more than five years. * * *

* * * * *

4. Section 1485.16 is amended by removing paragraph (a)(2); redesignating paragraph (a)(3) as paragraph (a)(2); adding paragraphs (b)(11) and (12); and revising paragraphs (a)(1), (b)(9), (d)(3), and (h)(3) to read as follows:

§ 1485.16 Reimbursement rules.

(a) * * *

(1) The expenditure was made in furtherance of an approved activity; and

* * * * *

(b) * * *

(9) Part-time contractors such as demonstrators, interpreters, translators and receptionists to help with the implementation of promotional activities such as trade shows, in-store promotions, food service promotions, and trade seminars;

* * * * *

(11) The design and production of packaging, labeling or origin identification, if necessary to meet the importing requirements in a foreign country; and

(12) Air travel not to exceed the full fare economy rate and per diem as allowed under the U.S. Federal Travel Regulations (41 CFR parts 301 through 304) for no more than two representatives of a single brand participants to participate as trade show exhibitors.

* * * * *

(d) * * *

(3) The design and production of packaging, labeling or origin

identification, except as described in paragraph (b)(11) of this section.

* * * * *

(h) * * *

(3) all expenditures were made for the activity within 6 months following the end of the activity plan year.

5. Section 1485.20 is amended by revising paragraph (a)(3)(vi) to read as follows:

§ 1485.20 Financial management, reports, evaluations and appeals.

(a) * * *

(3) * * *

(vi) Documentation with accompanying English translation supporting each reimbursement claim, including original evidence to support the financial transactions such as canceled checks, receipted paid bills, contracts or purchase orders, per diem calculations, travel vouchers, and credit memos; and

* * * * *

6. Section 1485.21 is revised to read as follows:

§ 1485.21 Failure to make required contribution.

An MAP participant's contribution requirement will be specified in the MAP allocation letter and the activity plan approval letter. The amount specified will be in the amount of contribution to be furnished by the applicant and other sources as indicated in the participant's application. The MAP participant shall pay to CCC in dollars the difference between the amount actually contributed and the amount specified in the allocation approval letter. An MAP participant shall remit such payment within 90 days after the end of its activity plan year

Signed at Washington, DC, on February 9, 1998.

Lon Hatamiya,

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 98–4706 Filed 2–24–98; 8:45 am]

BILLING CODE 3410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0999]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for public comment proposed amendments to Regulation C (Home Mortgage Disclosure). The proposed amendments: modify the Loan Application Register to prepare for ''year 2000'' data systems conversion; delete the requirement to enter the reporting institution's parent company on the Transmittal Sheet; and make certain other technical changes to the regulation and reporting forms.

DATES: Comments must be received on or before April 27, 1998.

ADDRESSES: Comments should refer to Docket No. R–0999, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Pamela C. Blumenthal, Staff Attorney, or John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) *only,* contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Board's Regulation C (12 CFR Part 203) implements the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801 *et seq.*). The regulation requires most mortgage lenders located in metropolitan statistical areas (MSAs) to report annually to federal supervisory agencies, and disclose to the public, information about their home mortgage and home improvement lending activity.

II. Discussion of Amendments

A. Year 2000 Changes

Among items reported on the HMDA Loan Application Register (HMDA–LAR), institutions are required to enter the date of application and the date action was taken. Currently, these dates are to be entered using two digits for the year, in the form MM/DD/YY. As part of the interagency Year 2000—Century Date Change program, the Board, on behalf of the agencies responsible for HMDA compliance, has begun modifying software to avoid the confusion of a date in the 21st century with a date in the 20th century—by adding two digits to represent the century. For example, January 15, 2002, would be reflected as 01/15/2002 rather than 01/15/02. Accordingly, the Board proposes to revise the HMDA–LAR form and the instructions (Appendix A to Regulation C) to require the date of application and date of action taken to be entered in the form MM/DD/CCYY.

The paper version of the HMDA–LAR model form in Appendix A shows sample transactions, the first an originated loan and the second a denied application. In both examples, the ''date application received'' and ''date action taken'' fields contain dates from 1992. Similarly, the instructions relating to these two fields contain references to 1992 dates. To update these examples and instructions, as well as to remind reporting institutions of the change to a four-character year in the date fields, the proposed amendments replace ''92'' with ''1999'' in the examples and instructions.

B. Deletion of Parent Company Information

The Transmittal Sheet (TS) that accompanies the HMDA–LAR currently calls for the name and address of the parent company, if any, of the institution submitting HMDA data. The Board proposes to amend the TS by deleting the requirement to enter the name and address of the submitting institution's parent company, given that in most cases this information is available from the bank structure information already collected by the agencies.

C. Reassignment of Functions of Farmers Home Administration

One of the items of information reported on the HMDA–LAR about a loan or application is the type of loan. Similarly, for loans sold, the lender reports the type of purchaser of the loan. The code sheet lists the Farmers Home Administration (FmHA) as one of the categories (as an insurer or purchaser of loans).

Reorganization within the Department of Agriculture has resulted in the functions of the FmHA being reassigned to two new units, the Farm Service Agency and the Rural Housing Service. For ''type of loan,'' the Board proposes to replace the references to the Farmers Home Administration or FmHA (in the code sheet for the HMDA–LAR form and in the instructions regarding type of loan) with a reference to ''Farm Service Agency or Rural Housing Service'' (or ''FSA/RHS''). With regard to ''type of

purchaser,'' the successor agencies to FmHA do not purchase loans. A secondary market entity that does purchase loans, the Federal Agricultural Mortgage Corporation, is not currently included in the list. Accordingly, the Board proposes to revise the references to FmHA, as a purchaser of loans, to refer instead to the Federal Agricultural Mortgage Corporation or FAMC.

In the collection and reporting of 1998 data, institutions should use the existing codes for FmHA to refer to loans guaranteed by FSA or RHS, or to loans that have been sold to FAMC, as applicable.

D. Paperwork Reduction Act Requirements

Regulations issued by the Office of Management and Budget (OMB) to implement the Paperwork Reduction Act (5 CFR Part 1320) contemplate that regulations imposing data collection requirements include control numbers assigned by OMB. Currently, Regulation C, the instructions for the HMDA–LAR and TS, and the TS form itself contain an OMB control number (7100–0247) assigned to the Federal Reserve in connection with HMDA reporting requirements. The Board is making a technical amendment to the regulation, the instructions, and the TS form—adding the control numbers assigned to the Office of the Comptroller of the Currency (1557–0159), the Federal Deposit Insurance Corporation (3064–0046), and the Office of Thrift Supervision (1550–0021). The National Credit Union Administration and the Department of Housing and Urban Development are in the process of obtaining OMB control numbers; these numbers will be added at a later time. The amendment also includes a number of other minor technical changes in the instructions and the TS form.

E. Clarification Regarding Coverage of Nondepository Lending Institutions

The Board proposes a technical amendment to clarify the coverage of nondepository institutions. The definition of ''financial institution'' under Regulation C includes nondepository lending institutions that, in the preceding calendar year, originated home purchase loans or refinancings of home purchase loans in an amount of 10 percent or more of the institution's total loan origination volume, measured in dollars. The definition is stated in § 203.2(e)(2) and in paragraph I.D. of Appendix A to the regulation. Even if a nondepository institution meets the definition of ''financial institution,'' however, it is not covered by Regulation C unless the institution either had assets over $10 million or originated 100 or more home purchase loans, including refinancings of home purchase loans, during the preceding calendar year. The instructions (see paragraph I.C. of Appendix A) refer expressly to refinancings, but § 203.3(a)(2)(ii) does not. Some institutions have suggested to the Board that including a reference to refinancings in § 203.3 would be useful.

The Board's notice at the time the 100-loan test was added to Regulation C made clear that refinancings of home purchase loans are included in calculating whether the coverage threshold was reached. (See 57 FR 56963, December 2, 1992.) Accordingly, the Board proposes adding a reference to refinancings of home purchase loans to § 203.3(a)(2)(ii), to conform to paragraph I.C. of Appendix A.

F. Adjustment in Exemption Threshold for Depository Institutions

The Board is required to adjust the exemption threshold for depository institutions annually based on the annual percentage change in the Consumer Price Index. In December 1997, the Board amended the Regulation C staff commentary, adjusting the exemption threshold for depository institutions for 1998 data collection to $29 million (62 FR 66259, December 18, 1997). (The figure for 1997 data collection was $28 million.) Thus, depository institutions with assets of $29 million or less as of December 31, 1997, are exempt from data collection in 1998. The Board is amending the regulation and the instructions for the HMDA–LAR to conform.

G. Effective Date of Amendments

The Board proposes to make the final amendments effective for data collected in calendar year 1998, which will be submitted to supervisory agencies by March 1, 1999. The personal computer data entry software available from the supervisory agencies for 1998 data collection already reflects the amendments relating to four-digit year and the deletion of parent company information. The Board believes that private sector software vendors (and institutions that have developed their own software) have modified their HMDA data entry software in a similar manner, or are in the process of doing so. Accordingly, the Board believes that making these amendments effective for 1998 data will not be burdensome to reporting institutions. However, the Board requests comment from any institutions that may have a problem in complying.

Other amendments in this proposal make changes to Regulation C that are technical or that merely clarify existing rules; the Board does not believe any of these changes would impose compliance burdens on reporting institutions.

These proposed amendments do not affect the reporting of calendar year 1997 data, which are due no later than March 1, 1998; the requirements for data collected in 1997 remain unchanged.

III. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 604), the Board's Office of the Secretary has reviewed the proposed amendments to Regulation C. Overall, the amendments are not expected to have a significant impact on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

IV. Paperwork Reduction Act

A. Paperwork Burden

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Board has reviewed the proposed rule under authority delegated to the Board by the Office of Management and Budget. 5 CFR 1320 Appendix A.1.

The proposed revisions to the information collection requirements are found in 12 CFR 203.1, 203.3, and Appendix A to Part 203 and implement the data collection and reporting requirements established by the Home Mortgage Disclosure Act. The proposed amendments would make several technical changes in the reporting requirements of Regulation C; these changes are expected to have no impact on reporting burden. The proposed amendments would also clarify existing requirements of the regulation; these amendments would have no impact on reporting burden.

Regulation C applies to all types of financial institutions and other mortgage-lending institutions that meet the coverage tests. Under the Paperwork Reduction Act, however, the Board accounts for the paperwork burden associated with Regulation C only for state member banks, their subsidiaries, subsidiaries of bank holding companies, and other entities regulated by the Federal Reserve. Any estimates of paperwork burden for other respondents are provided by the federal agency or agencies that supervise them.

The Board estimates that the effect of the amendments on the burden per response is negligible. The estimated burden per response varies from 10 to

10,000 hours, depending on individual circumstances, with estimated averages of 202 hours for state member banks and 160 hours for mortgage banking subsidiaries. The Board expects to receive HMDA–LARs covering 1997 data from 515 state member banks and 106 mortgage banking subsidiaries. Therefore, the total hour burden for institutions the Federal Reserve supervises is 120,990. Since asset data for December 31, 1997 is not yet available, the Board cannot yet estimate the number of respondents who will submit 1998 data or the total annual burden for 1998.

B. OMB Control Number

Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and an organization is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers applicable to the HMDA–LAR data collection are as follows: Office of the Comptroller of the Currency, 1557–0159 (approval expires September 30, 1998); Federal Deposit Insurance Corporation, 3064–0046 (approval expires July 31, 2000); Office of Thrift Supervision, 1550–0021 (approval expires December 31, 1999); and Federal Reserve System, 7100–0247 (approval expires May 31, 2000). OMB control numbers and expiration dates for the National Credit Union Administration and the Department of Housing and Urban Development are pending.

List of Subjects in 12 CFR Part 203

Banks, Banking, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation C. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.

Pursuant to the authority granted in section 305(a) of the Home Mortgage Disclosure Act, 12 U.S.C. 2804(a), and for the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 203 as set forth below:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. § 203.1 would be amended by revising the last sentence of paragraph (a) to read as follows:

§ 203.1 Authority, purpose, and scope.

(a) *Authority.* * * * The information-collection requirements have been approved by the U.S. Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and have been assigned OMB [No.] ►Numbers 1557–0159, 3064–0046, 1550–0021,◄ and 7100–0247► for institutions reporting data to the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the Federal Reserve System, respectively; numbers for the National Credit Union Administration and the Department of Housing and Urban Development are pending◄.

3. § 203.3 would be amended as follows:

a. Paragraphs (a)(1) introductory text and (a)(2) introductory text are republished;

b. Paragraph (a)(1)(ii) would be revised; and

c. Paragraph (a)(2)(ii) would be revised.

The proposed revisions read as follows:

§ 203.3 Exempt institutions.

(a) *Exemption based on location, asset size, or number of home purchase loans.* (1) A bank, savings association, or credit union is exempt from the requirements of this regulation for a given calendar year if on the preceding December 31:

(i) * * *

(ii) The institution's total assets were at or below the asset threshold established by the Board. For data collection in [1997]►1998◄, the asset threshold is [$28]►$29◄ million as of December 31, [1996]►1997◄. * * *

(2) A for-profit mortgage lending institution (other than a bank, savings association, or credit union) is exempt from the requirements of this regulation for a given calendar year if:

(i) * * *

(ii) The institution's total assets combined with those of any parent corporation were $10 million or less on the preceding December 31, and the institution originated fewer than 100 home purchase loans ►(including refinancings of home purchase loans)◄ in the preceding calendar year.

4. In appendix A to part 203 under the heading PAPERWORK REDUCTION ACT NOTICE, the undesignated paragraph would be revised to read as follows:

Appendix A to Part 203—Form and Instructions for Completion of HMDA Loan/Application Register

* * * * *

Paperwork Reduction Act Notice

[Public reporting burden for collection of this information is estimated to vary from 10 to 10,000 hours per response, with an average of 202 hours per response for state member banks and 160 hours per response for mortgage banking subsidiaries, including time to gather and maintain the data needed and to review instructions and complete the information collection.] This report is required by law (12 USC 2801–2810 and 12 CFR 203). An agency may not conduct or sponsor, and an organization is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control [number] ►Numbers◄ for this information collection [is] ►are 1557–0159, 3064–0046, 1550–0021, and◄ 7100–0247 ► for institutions reporting data to the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the Federal Reserve System, respectively; numbers for the National Credit Union Administration and the Department of Housing and Urban Development are pending◄. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to [Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551;] ►the respective agencies◄ and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Appendix A to Part 203—[Amended]

5. Appendix A to Part 203 would be amended as follows:

a. Paragraph I.A.2. would be revised;

b. The first sentence of Paragraph V.A.2. and paragraph V.A.3. would be revised;

c. Paragraph V.B.3. introductory text would be revised; and

d. Paragraph V.E.1. introductory text is republished and paragraph V.E.1.4. would be revised.

The proposed revisions read as follows:

I. Who Must File a Report

A. Depository institutions

1. * * *

2. For data collection in [1997]►1998◄, the asset threshold is [$28]►$29◄ million in total assets as of December 31, [1996]►1997◄.

* * * * *

V. Instructions for Completion of Loan/Application Register

A. Application or Loan Information

1. * * *

2. *Date application received.* Enter the date the loan application was received by your institution by month, day, and year, using numerals in the form MM/DD/►CC◄YY (for example, 01/15/[92]►1999◄). * * *

3. *Type.* Indicate the type of loan or application by entering the applicable code from the following:

1—Conventional (any loan other than FHA, VA [or FmHA] ►, FSA, or RHS◄ loans)

2—FHA-insured (Federal Housing Administration)
3—VA-guaranteed (Veterans Administration)
4—[FmHA-insured (Farmers Home Administration)] ►FSA/RHS-guaranteed (Farm Service Agency or Rural Housing Service)◄

* * * * *

B. Action Taken

* * * * *

3. *Date of action*. Enter the date by month, day, and year, using numerals in the form MM/DD/►CC◄YY (for example, 02/22/[92]►1999◄).

* * * * *

E. Type of Purchaser

1. Enter the applicable code to indicate whether a loan that your institution originated or purchased was then sold to a secondary market entity within the same calendar year:

* * * * *

4—[FmHA (Farmers Home Administration)]FAMC (Federal Agricultural Mortgage Corporation)

* * * * *

6. In Appendix A, the LOAN/APPLICATION REGISTER Transmittal Sheet would be revised to read as follows:

BILLING CODE 6210–01–P

LOAN/APPLICATION REGISTER

Form FR HMDA-LAR.
OMB [No.] ►Nos. 1557-0159 (OCC), 3064-0046 (FDIC), 1550-0021 (OTS), and ◄ 7100-0247 ►(FRB); NCUA and HUD numbers pending◄. [Approval expires May 31, 2000.]

TRANSMITTAL SHEET

You must complete this transmittal sheet (please type or print) and attach it to the Loan/Application Register, required by the Home Mortgage Disclosure Act, that you submit to your supervisory agency.

Reporter's Identification Number	Agency Code	Reporter's Tax Identification Number	Total line entries contained in attached Loan/Application Register
|_|_|_|_|_|_|_|_|_|_| -	|_|	|_|_| - |_|_|_|_|_|_|_|	_____

The Loan/Application Register that is attached covers activity during the year _____ and contains a total of ___ pages.

Enter the name and address of your institution. The disclosure statement that is produced by the Federal Financial Institutions Examination Council will be mailed to the address you supply below:

_____
Name of Institution

_____
Address

_____
City, State, ZIP

Enter the name, telephone number, and facsimile number of a person who may be contacted about questions regarding your register:

_____ (___) _____ (___)_____
Name Telephone Number Facsimile Number [(if applicable)]

[If your institution is a subsidiary of another institution or corporation, enter the name of your parent:

_____
Name

_____
Address

_____
City, State, ZIP]

An officer of your institution must complete the following section.

I certify to the accuracy of the data contained in this register.

_____ _____ _____
Name of Officer Signature Date

7. In Appendix A, the LOAN/APPLICATION REGISTER would be revised to read as follows:

LOAN/APPLICATION REGISTER Page___of___

Name of Reporting Institution

City, State, ZIP

Form FR HMDA–LAR

Reporter's Identification Number

Agency Code

All columns (except Reasons for Denial) must be completed for each entry. See the instructions for details.

Application or Loan Information						Action Taken		Property Location				Applicant Information A = Applicant CA = Co-Applicant						
												Race or National Origin		Sex				
Application or Loan Number	Date Application Received (mm/dd/ccyy)	Type	Purpose	Owner Occupancy	Loan amount in thousands	Type	Date (mm/dd/ccyy)	Four-Digit MSA Number	Two-Digit State Code	Three-Digit County Code	Six-Digit Census Tract	A	CA	A	CA	Gross Annual Income in thousands	Type of Purchaser of Loan	Reasons for Denial (Optional)
Example of Loan Originated																		
LB-6874399	01/15/1999	2	1	1	65	1	02/22/1999	8840	51	059	4219.85	3	8	1	4	24	7	
Example of Application Denied																		
0123456789-98765432100	03/20/1999	1	1	1	125	3	04/30/1999	0450	01	015	002100	5	4	2	1	55	0	415

BILLING CODE 6210–01–C

8. In Appendix A, the LOAN/APPLICATION REGISTER CODE SHEET would be revised to read as follows:

Loan/Application Register Code Sheet

Use the following codes to complete the Loan/Application Register. The instructions to the HMDA–LAR explain the proper use of each code.

Application or Loan Information

Type:

1—Conventional (any loan other than FHA,VA or FmHA loans)
2—FHA-insured (Federal Housing Administration)
3—VA-guaranteed (Veterans Administration)
4—[FmHA-insured (Farmers Home Administration)] ►FSA/RHS-guaranteed (Farm Service Agency or Rural Housing Service)◄

Purpose:

1—Home purchase (one-to-four family)
2—Home improvement (one-to-four family)
3—Refinancing (home purchase or home improvement, one-to-four family)
4—Multifamily dwelling (home purchase, home improvement, and refinancings)

Owner-Occupancy:

1—Owner-occupied as a principal dwelling
2—Not owner-occupied
3—Not applicable

Action Taken:

1—Loan originated
2—Application approved but not accepted
3—Application denied by financial institution
4—Application withdrawn by applicant
5—File closed for incompleteness
6—Loan purchased by your institution

Applicant Information

Race or National Origin:

1—American Indian or Alaskan Native
2—Asian or Pacific Islander
3—Black
4—Hispanic
5—White
6—Other
7—Information not provided by applicant in mail or telephone application
8—Not applicable

Sex:

1—Male
2—Female
3—Information not provided by applicant in mail or telephone application
4—Not applicable

Type of Purchaser

0—Loan was not originated or was not sold in calendar year covered by register
1—FNMA (Federal National Mortgage Association)
2—GNMA (Government National Mortgage Association)
3—FHLMC (Federal Home Loan Mortgage Corporation)
4—[FmHA (Farmers Home Administration)] FAMC ►(Federal Agricultural Mortgage Corporation)◄
5—Commercial bank
6—Savings bank or savings association
7—Life insurance company
8—Affiliate institution
9—Other type of purchaser

Reasons for Denial (Optional)

1—Debt-to-income ratio
2—Employment history
3—Credit history
4—Collateral
5—Insufficient cash (downpayment, closing costs)
6—Unverifiable information
7—Credit application incomplete
8—Mortgage insurance denied
9—Other

By order of the Board of Governors of the Federal Reserve System, February 18, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–4609 Filed 2–24–98; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWA–5]

RIN 2120–AE97

Proposed Establishment of Cincinnati/Northern Kentucky International Airport Class B Airspace Area and Revocation of Cincinnati/Northern Kentucky International Airport Class C Airspace Area, Covington, KY; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM); correction.

SUMMARY: This correction inserts at the end of the proposed rule a copy of the Cincinnati/Northern Kentucky International Airport Class B airspace area map, which was inadvertently omitted.

SUPPLEMENTARY INFORMATION:

On February 10, 1998 (63 FR 6818), the FAA published in the **Federal Register** an NPRM to establish a Class B airspace area at the Cincinnati/Northern Kentucky International Airport and revoke the existing Class C airspace area. Specifically, the FAA is proposing to establish a Class B airspace area that would consist of airspace within a 25-mile radius of the Cincinnati/Northern Kentucky International Airport. The airspace would extend from the surface or higher up to and including 8,000 feet above mean sea level. The FAA is proposing this action to enhance safety, reduce the potential for midair collisions, and to better manage air traffic operations into, out of, and through the Cincinnati/Northern Kentucky area.

Correction to the Proposed Amendment

On February 10, 1998, the FAA published in the **Federal Register** an NPRM to extablish a Class B airspace area at the Cincinnati/Northern Kentucky International Airport and revoke the existing Class C airspace area [63 FR 6818]. This correction inserts the attached Cincinnati/Northern Kentucky International Airport Class B airspace area map at the end of the NPRM on page 6823, volume 63, number 27.

Issued in Washington, DC on February 17, 1998.

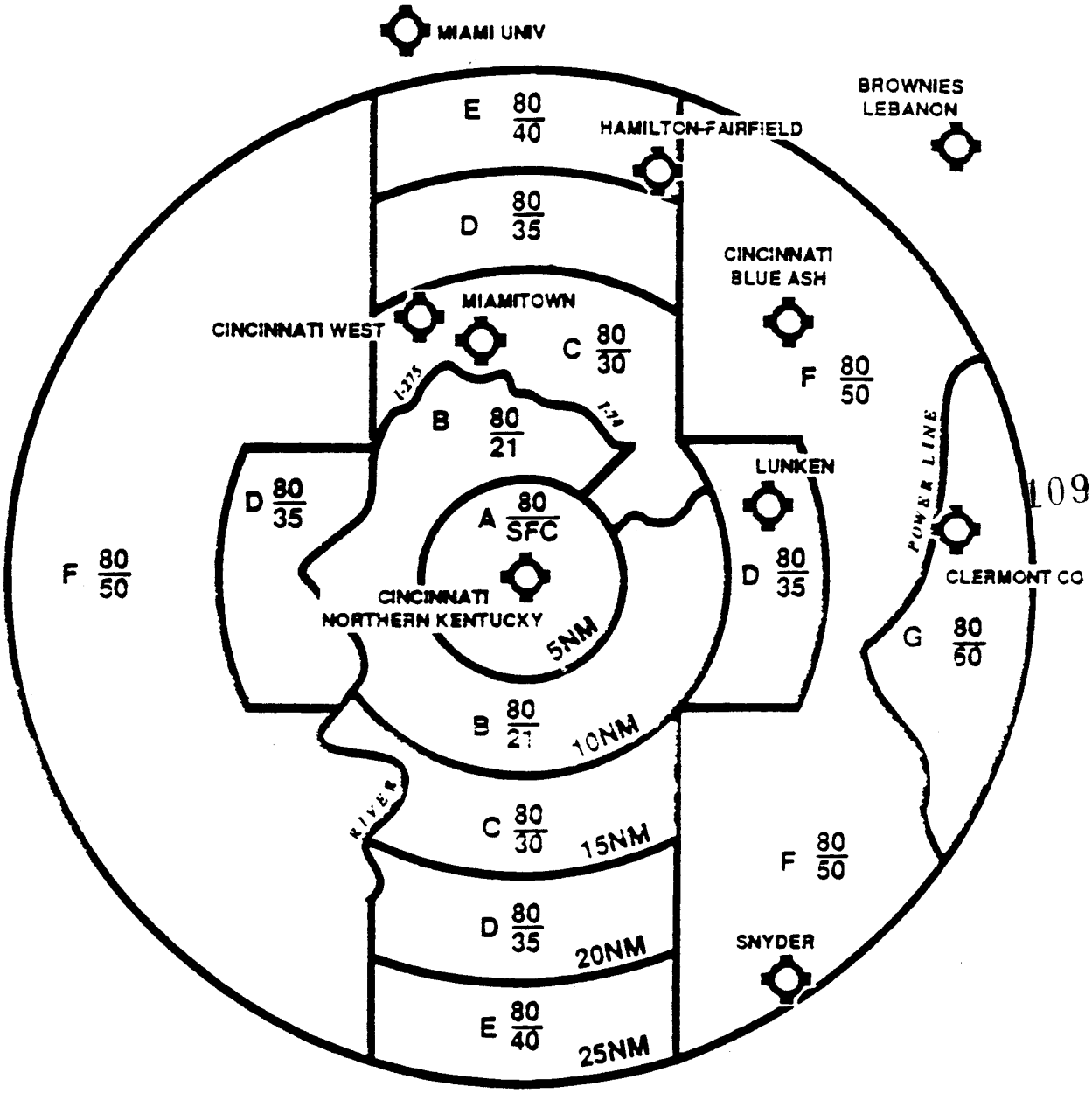
Donald P. Byrne,

Assistant Chief Counsel for Regulations Division.

BILLING CODE 4910–13–M

COVINGTON, KENTUCKY
Cincinnati Class B Airspace Area
COVINGTON/CINCINNATI/NORTHERN KENTUCKY INTERNATIONAL AIRPORT
AIRPORT ELEVATION - 897 - FEET

(Not to be used for navigation)



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Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
ATP-220

[FR Doc. 98–4483 Filed 2–24–98; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–17]

Proposed Establishment of Class E Airspace; Stevensville, MT

AGENCY: Federeal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would establish Class E Airspace at Stevensville, MT. The establishment of Class E airspace is necessary for the development of a new Standard Instrument Approach Procedure (SIAP) utilizing the Global Positioning System (GPS) at the Stevensville Airport, Stevensville, MT. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed to accommodate this SIAP and for Instrument Flight Rules (IFR) operations to the airport. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before April 13, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 97–ANM–17, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–17, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–ANM–17.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future MPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR 71) to establish Class E airspace at Stevensville, MT. This amendment would provide airspace necessary to fully encompass the GPS–A SIAP to the Stevensville Airport, Stevensville, MT. This amendment proposes to make a 700-foot Class E area around the Stevensville Airport, with an extension to the northwest and an extension to the southeast, to meet necessary airspace criteria for aircraft transitioning between the terminal an en route environments. The FAA establishes Class E airspace extending upward from 700 feet AGL, where necessary, to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide safe and efficient use of the navigable airspace, to promote safe flight operations under IFR at the Stevensville Airport, and between the terminal and en route transition stages. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E 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 would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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.

* * * * *

ANM MT E5 Stevensville, MT [New]

Stevensville Airport, MT
(Lat. 46°31′30″ N, long. 114°03′04″ W)

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 46°46′00″ N, long. 114°07′00″ W; to lat. 46°46′00″ N, long. 113°58′00″ W; to lat. 46°40′00″ N, long. 113°50′00″ W; to lat. 46°30′00″ N, long. 113°50° 00″ W; to lat. 46°24′00″ N, long 113°58′00″ W; to lat. 46°24′00″ N, long. 114°10′00″ W; to lat. 46°40′00″ N, long. 114°10′00″ W; thence to point of beginning, excluding that portion within the Missoula, MT Class E airspace area.

* * * * *

Issued in Seattle, Washington, on February 2, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98– 4769 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–20]

Proposed Revision of Class E Airspace, Livingston, MT, and Butte, MT, and Removal of Class E Airspace, Coppertown, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposed rule would combine the Coppertown, MT, Class E airspace area with the existing Butte, MT, Class E airspace area. This combined airspace area would be designated the Butte, MT, Class E airspace area. This proposal would also amend the adjacent Class E Airspace at Livingston, MT, by providing additional controlled airspace to accommodate the development of new Standard Instrument Approach Procedures (SIAP) utilizing the Global Positioning System (GPS) at the Livingston Airport.

DATES: Comments must be received on or before April 13, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 97–ANM–20, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 97–ANM–20, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2577.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–ANM–20.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR 71) to remove Coppertown, MT, Class E airspace while revising Class E airspace at Livingston, MT, and Butte, MT. The proposal enlarges Butte, MT, airspace by combining it with Coppertown, MT, airspace. The incorrectly named Coppertown, MT, airspace does not serve an airport, has no associated town, and is solely a navigational aid located close to Butte, MT. This amendment would also provide the additional airspace necessary to fully encompass the GPS–A SIAP to the Livingston Airport, Livingston, MT. Additionally, this amendment proposes to revise the common airspace boundaries where Livingston, MT, and Butte, MT, airspace areas meet in order to better distribute the airspace serving the respective airports and to provide for easier cartography. The intended effect of this proposal would be to provide safe and efficient use of the navigable airspace and to promote safe Instrument Flight Rules operations between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E 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 would be published subsequently in the Order.

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

significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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.

* * * * *

ANM MT E5 Coppertown, MT [Removed]

* * * * *

ANM MT E5 Butte, MT [Revised]

Bert Mooney Airport, Butte, MT
(Lat. 45°57′17″ N, long, 112°29′51″ W)

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 46°20′30″ N, long. 112°48′33″ W; to lat. 46°10′30″ N, long. 113°07′03″ W; to lat. 45°57′05″ N, long. 112°47′43″ W; to lat. 45°51′20″ N, long. 112°27′33″ W; to lat. 46°03′20″ N, long. 112°20′03″ W; to lat. 46°18′30″ N, long. 112°30′33″ W; thence to point of beginning; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 45°35′00″ N, long. 113°05′00″ W; to lat. 46°37′00″ N, long. 113°05′00″ W; to lat. 46°37′00″ N; long. 112°26′00″ W; to lat. 46°16′00″ N, long. 112°00′00″ W; to lat. 45°35′00″ N, long. 112°00′00″ W; thence to point of beginning; excluding that airspace within Federal airways, and the Helena, MT, the Dillion, MT, and the Missoula, MT, Class E airspace areas.

ANM MT E5 Livingston, MT [Revised]

Mission Field, Livingston, MT
(Lat. 45°41′58″ N, long. 110°26′54″ W)

That airspace extending upward from 700 feet above the surface within a 4.2-mile radius of the Livingston Airport, and that airspace bounded by a line beginning at lat. 45°40′30″ N, long. 110°15′20″ W; to lat 45°47′30″ N, long. 110°15′30″ W; to lat. 45°47′30″ N, long. 110°23′00″ W; to lat. 46°02′20″ N, long. 110°31′00″ W; to lat. 45°58′00″ N, long. 110°47′15″ W; to lat. 45°38′45″ N, long. 110°37′00″ W, thence to point of beginning and that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 46°16′00″ N, long. 112°00′00″ W; to lat. 46°37′00″ N, long. 111°30′00″ W; to lat. 46°37′00″ N, long. 110°43′00″ W; to lat. 46°00′00″ N; to long. 110°29′00″ W; to lat. 46°00′00″ N, long. 109°30′00″ W; to lat. 45°30′00″ N, long. 109°30′00″ W; to lat. 45°30′00″ N, long. 112°00′00″ W; thence to point of beginning, excluding that airspace within Federal airways, the Helena, MT, and the Billings, MT, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on February 2, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–4768 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–95–028]

Drawbridge Operating Regulation; Red River, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice; withdrawal of proposed rule.

SUMMARY: The Coast Guard is withdrawing a notice of proposed rulemaking to amend the regulation for the draws of the two swing span railroad bridges over the Red River, miles 227.0 and 228.2, near Shreveport, Louisiana. The proposed rule did not meet the reasonable needs of navigation. The Coast Guard is withdrawing the notice of proposed rulemaking and terminating this rulemaking.

DATES: The proposed rule is withdrawn effective February 25, 1998.

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

FOR FURTHER INFORMATION CONTACT:

Mr. David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine St., New Orleans, LA, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 8, 1996, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (61 FR 15437). The NPRM proposed to change the requirement that the draws of the two swing span railroad bridges over the Red River, miles 227.0 and 228.2, near Shreveport, Louisiana, be opened on signal for passage of vessels, Monday through Friday, during daylight hours only, with five days prior written notice. The draws presently open on signal with 48 hours advance notice.

The Coast Guard received 12 letters in response to the NPRM objecting to the proposed rule. The majority of the respondents objected to a five day advanced notice opening requirement as burdensome. Respondents indicated this was particularly true given the number of stabilization projects and increased trade on this stretch of the Red River. The applicant was given an opportunity to address the objections. The applicant has not addressed the concerns of these objectors and has not offered an alternative proposal.

The Coast Guard agreed with the comments that the proposal was too burdensome and did not meet the reasonable needs of vessel traffic. The Kansas City Southern Railway Company, owner of one of the bridges in question, has not offered an alternative proposal. The Coast Guard is, therefore, withdrawing the notice of proposed rulemaking and terminating further rulemaking on this proposal (CGD08–95–028).

Dated: February 10, 1998.

T.W. Josiah,

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

[FR Doc. 98–4835 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22 and 59

[FRL–5966–7]

RIN 2020–AA13

Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is today proposing technical amendments and other refinements to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 CFR part 22, including the addition of new rules for administrative proceedings not governed by section 554 of the Administrative Procedure Act.

DATES: Comments must be submitted on or before April 27, 1998.

ADDRESSES: Comments should be submitted in writing to Enforcement and Compliance Docket and Information Center (2201A), Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460 or via electronic mail to crop-comments@epamail.epa.gov. Comments submitted on paper must be submitted in triplicate.

EPA will make available, both in paper form and on the internet, a record of comments received in response to this document. The official docket will be a paper record of all comments received in writing or by electronic mail. This record may be reviewed at room 4033 of the Ariel Rios Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20044. Persons interested in reviewing the comments must make advance arrangements to do so by calling 202–564–2614. A reasonable fee may be charged by EPA for copying docket materials. The Agency also will publish a copy of the official docket on the Office of Enforcement and Compliance Assurance's internet home page at http:\\www.epa.gov\oeca\r*egstat2.html. The Agency intends that this internet docket should duplicate the official paper record, however, if technological or resource limitations make it infeasible to include one or more comments on the internet docket, the internet docket will identify those comments available only in the official paper docket.

FOR FURTHER INFORMATION CONTACT: Scott Garrison (202–564–4047), Office Enforcement and Compliance Assurance, Office of Regulatory Enforcement (2248A), U.S. Environmental Protection Agency, Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

I. Background

The Consolidated Rules of Practice (''CROP'') at 40 CFR part 22 were promulgated in 1980 to establish uniform procedural rules for administrative enforcement proceedings required under various environmental statutes to be held on the record after opportunity for a hearing in accordance with section 554 of the Administrative Procedure Act, 5 U.S.C. 551 et seq. (''APA''). Aside from the addition of statute-specific amendments to subpart H (see e.g., Rules of Practice Governing the Administrative Assessment of Class II Civil Penalties Under the Clean Water Act, 55 FR 23838 (1990), codified at 40 CFR 2.38), the CROP have not been substantially revised since their initial promulgation. Today's proposal would correct a number of inconsistencies and ambiguities in the procedures which have become apparent through experience with the CROP. In addition, the Agency proposes to update and modernize the procedures to make them more ''user-friendly'' and to aid in streamlining administrative practice.

On July 1, 1991, EPA proposed a separate set of procedures for the administrative assessment of penalties where a hearing on the record under APA section 554 is not required, commonly referred to as ''non-APA'' enforcement actions. See 56 FR 29996. These procedures, to be codified at 40 CFR part 28, were authorized by Congress in various statutes. *Id.* The proposed ''part 28'' procedures were designed to provide a quick and understandable process by which to resolve non-APA enforcement actions, while protecting the basic due process rights of a respondent. *Id.* at 29997 (discussion of constitutional due process requirements as established in *Matthews* v. *Eldridge*, 424 U.S. 319 (1976)). EPA subsequently issued guidance in September, 1991, to the EPA Regional Offices calling for use of the proposed part 28 procedures for Class I penalty actions under section 309(g) of the Clean Water Act (''CWA'') and, several months later, for Class I penalty actions under section 311(b)(6) of the CWA. Although use of these procedures did result in quicker resolution of administrative penalty cases than had occurred before, Agency experience revealed that the majority of EPA Regions were following, with some modification, the CROP procedures for non-APA enforcement actions, in large measure out of familiarity with the CROP. A side-by-side comparison of the proposed part 28 with the CROP reveals many similar sections and procedures.

The proposed part 28 introduced a number of useful concepts to EPA's administrative practice, such as limitations on written legal arguments or statements (§ 28.8), a more clearly described commenter role for certain CWA and Safe Drinking Water Act (''SDWA'') cases, expansion of information exchange and restrictions on formal discovery (§ 28.24), a more structured default procedure (§ 28.21), and simplified and expedited settlement procedures (§ 28.22). Many of these concepts are the basis for today's proposed revisions to the APA procedures of the CROP. *See, e.g.,* proposed § 22.18(a) ''Quick resolution'' provisions. Given the many similarities between the CROP and proposed part 28, as well as the Agency's long-standing goal of enhancing administrative efficiency, the Agency believes that maintaining two stand-alone sets of procedures for its administrative enforcement practice which contain more similarities than differences would be inefficient and confusing. The specific requirements appropriate to non-APA enforcement actions can be presented effectively and efficiently as a short subpart to the CROP. Accordingly, today's proposal includes in subpart I modifications to the basic CROP suitable for non-APA proceedings. EPA expects to withdraw the part 28 proposal upon issuance of these CROP amendments as a final rule.

Similarly, the proposed revisions to the CROP would supersede and replace the anticipated rules governing non-APA hearings on field citations under section 113(d)(3) of the Clean Air Act (''CAA''). On May 3, 1994, EPA published the proposed Field Citation Program to be codified at 40 CFR 59. 59 FR 22776. EPA expects that the part 59 Field Citation Program will be promulgated as a final rule before the completion of this CROP rulemaking. Subpart B of part 59, ''Rules Governing Hearings on Field Citations,'' will govern CAA section 113(d)(3) proceedings until these CROP revisions become final. EPA expects that upon promulgation of the CROP revisions as a final rule, subpart B of part 59 would be repealed and the revised CROP would be used for CAA section 113(d)(3) proceedings.

In addition, in order to implement the SDWA Amendments of 1996, EPA anticipates that it will soon repeal subpart J of 40 CFR part 142, ''Procedures for PWS Administrative Compliance Orders.'' Section 142.208 of that subpart stated that the CROP procedures are to apply to administrative actions enforcing compliance orders issued under section 1414(g) of the SDWA, 42 U.S.C. 300g–3. That instruction is now part of this proposed rulemaking, and EPA intends to use the relevant CROP procedures proposed below as procedural guidance for SDWA section 1414(g)(3)(B) administrative enforcement actions during the interim period before final promulgation of revisions to the CROP.

On December 11, 1996, EPA proposed to modify the procedures for termination of National Pollutant Discharge Elimination System (''NPDES'') permits issued under the CWA and for permits issued under Subtitle C of the Resource Conservation and Recovery Act (''RCRA''). 61 FR 65268. EPA proposed to substitute the procedures contained in the CROP governing revocation, termination and suspension of other EPA permits for the existing procedures in part 124, subpart E (which cover only termination of NPDES and RCRA Subtitle C permits). EPA proposed two changes to the CROP to implement this proposal: (1) EPA proposed to insert the word ''termination'' or ''terminate'' as appropriate wherever the existing CROP refers to ''revocation or suspension'' or ''revoke or suspend'' permits; (2) EPA proposed to add a set of supplemental rules at § 22.44 to cover NPDES or RCRA permit terminations. *See* 60 FR 65280 for a discussion of this proposal. The comment period on this proposal closed on February 10, 1997. For the convenience of the public, today's proposal reflects all the changes to the CROP EPA has previously proposed, with some minor editorial changes. EPA is not, however, soliciting new comments on changes previously proposed, nor will EPA respond to any such comments in the final rule to this proposal. Any comments on the proposal to terminate NPDES or RCRA permits using the CROP procedures should be directed to the docket for that proposal, referenced in the December 11, 1996 document. It should be noted, however, that such comments will be considered late-filed.

II. Proposed Revisions

A. Revisions to Part 22

1. Statement of authority

The ''Authority'' section is reorganized in numeric order, and updated to include additional authorities. To the extent that these additional authorities change the scope of the CROP, they are discussed below in regard to § 22.01(a).

2. Scope of the Rules

Section 22.01(a): The phrase ''Consolidated Rules of Practice'' would be substituted for other phrases such as ''these rules of practice,'' ''these rules,'' and ''this part,'' for consistency here in paragraph (a) and throughout the CROP. The first sentence would also be revised to clarify that these procedures apply only to administrative adjudications. Substantive changes to the scope of the CROP are discussed in detail below.

The scope section will mandate that the Agency shall use the CROP procedures for all administrative adjudicatory proceedings listed therein. Although the Agency does not commit itself to apply these procedures to administrative actions other than those listed in the scope, where it has discretion to do so, the Agency may elect to informally apply these procedures for other adjudications not listed. The Agency has, however, attempted to make the proposed scope a complete list of all the proceedings likely to be commenced subject to the CROP. Note, too, that the CROP only creates a set of procedures for use in the exercise of some of EPA's statutory enforcement authorities, and neither extends nor limits the substantive jurisdiction of the Agency. Many provisions of the CROP reflect policy choices by the Agency to exercise less than the full scope of its statutory and constitutional authority (e.g., extending to 30 days the deadline for all answers (§ 22.15), procedures for issuance of default orders (§ 22.17)). As such, these limitations on the Agency's authority apply only in proceedings under the CROP, and the Agency may modify these requirements in future rulemakings.

Section 22.01(a)(2): The CROP would be expanded to include field citation proceedings under 42 U.S.C. 7413(d)(3), as discussed above. Part 22 currently applies to penalty proceedings under section 7413(d)(1), and the proposed revision would expand the scope to include all of section 7413(d).

Section 22.01(a)(3): A reference to 33 U.S.C. 1415(f) inadvertently omitted from the 1980 CROP is added for clarity and consistency.

Section 22.01(a)(4): This paragraph is revised to clarify which sections of the Solid Waste Disposal Act (SWDA) authorize the various proceedings. The scope is expanded by inclusion of proceedings to suspend or revoke a permit under sections 3005(d) and 3008(h) (42 U.S.C. 6925(d) and 6928(h)) as proposed in the Agency's December 11, 1996, proposal noted above (60 FR 65280). The scope is also expanded to include assessment of administrative civil penalties under 42 U.S.C. 6961 within the CROP. Reference to 42 U.S.C. 6992d is deleted, because the demonstration program for medical wastes and its accompanying regulations (40 CFR part 259) expired on July 22, 1991. The scope is revised to clarify that the CROP applies to the issuance of compliance orders under section 3008(a) or section 9006(a) of the SWDA (42 U.S.C. 6928(a) or 6991e(a)).

Additionally, the paragraph would be revised to specify that the CROP is applicable to both the assessment of civil penalties and the issuance of compliance orders pursuant to section 4005(c)(2) of the SWDA (42 U.S.C. 6945(c)(2)). That section, enacted as part of the 1984 Hazardous and Solid Waste Amendments, authorizes EPA to enforce the Subtitle D prohibition against open dumping in certain circumstances. Although section 4005(c)(2) refers to the enforcement authorities available under section 3008, the proposed revision would clarify that the CROP would apply to these actions.

The procedures governing most SWDA corrective action orders appear at 40 CFR part 24, but under certain circumstances the CROP may apply. A new subparagraph (B) would clarify that the CROP generally does not apply to SDWA section 3008(h) corrective action orders, but only to those that are part of a proceeding commenced under the CROP for claims under section 3008(a), to suspend or revoke authorization to operate under section 3005(e), or for penalties for non-compliance with a section 3008(h) order. A new subparagraph (C) would clarify that the CROP procedures generally do not apply to corrective action orders authorized under SWDA section 9003(h)(4) (42 U.S.C. 6991b(h)(4)), except where the Agency includes such orders in a complaint seeking civil penalties pursuant to section 9006. All other corrective action orders are subject to the part 24 procedures.

Section 22.01(a)(5): A reference would be added to include proceedings to assess civil administrative penalties pursuant to section 207 of the Asbestos

Hazard Emergency Response Act (''AHERA''), codified as Title II of the Toxic Substance Control Act, 15 U.S.C. 2647. The CROP was amended June 5, 1989, to add § 22.47, a supplemental rule governing administrative penalty proceedings under AHERA section 207, however, there was no corresponding amendment to § 22.01(a). 54 FR 24112. The proposed revision would make clear that such proceedings are governed by the CROP.

Section 22.01(a)(6): Section 4301(b) of the Oil Pollution Act of 1990 amended section 311(b)(6) of the CWA to allow administrative penalty proceedings. This proposed rule would expand the scope of the CROP to include proceedings to assess administrative civil penalties under section 311(b)(6). The limitation to Class II proceedings would be dropped from the scope, requiring use of the CROP for non-APA Class I proceedings as well as Class II penalty proceedings, under both sections 309(g) and 311(b)(6) of the CWA. Special provisions regarding the non-APA Class I proceedings would appear in subpart I of the CROP. The proposed revision of § 22.01(a)(6) also reflects the addition of proceedings to terminate a permit issued under section 402(a) of the CWA, as proposed in the December 11, 1996 FR notice discussed above. 60 FR 65,268. Pursuant to that proposed rule, the existing part 124 procedures for terminating permits would be supplanted by the CROP.

Section 22.01(a)(9): A reference would be added to include proceedings for the assessment of civil administrative penalties under 42 U.S.C. 1423(c) and 1447(b) within the scope of the CROP. A further reference would be added regarding the issuance of any order requiring both compliance and the assessment of a civil penalty under 42 U.S.C. 1423(c). These references reflect the amendments to the Safe Drinking Water Act, Public Law 104–182, 110 Stat. 1613 (1996), which affect administrative penalty assessment against public water systems and federal facilities.

Section 22.01(a)(10): A reference would be added to include proceedings for the assessment of civil penalties or the issuance of compliance orders under section 5 of the Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C. 14304). The Mercury-Containing and Rechargeable Battery Management Act would phase out the use of mercury in batteries and provide for the efficient and cost-effective collection and recycling or proper disposal of batteries regulated under the Act. Section 5 of the Act authorizes administrative enforcement for violations of the Act, except for section 104 of the Act, which is enforceable under the Solid Waste Disposal Act.

Section 22.01 (b): A reference would be added to include the new subpart I, and to provide that subpart H or I provisions will supersede any conflicting provisions in subparts A—G.

Section 22.01(c): This provision would be amended to empower the Environmental Appeals Board the authority to resolve procedural matters not covered in the CROP because it has been designated by the Administrator to perform this function.

3. Definitions

Section 22.03(a): Surplus language would be deleted from the definition of ''Act''. No substantive change is intended.

A definition of ''Business confidentiality claim'' would be added in order to specifically link the treatment of confidential business information (''CBI'') in CROP proceedings to the general provisions for CBI in 40 CFR part 2, subpart B. This amendment will clarify that the same protections that apply to use of CBI in other Agency actions will apply in proceedings under the CROP.

A definition of ''Clerk of the Board'' would be added to identify the Clerk of the Environmental Appeals Board, who should receive service of pleadings and documents in matters pending before the Board.

A definition of ''Commenter'' would be being added for purposes of administrative civil penalty actions under Section 309(g) of the Clean Water Act, Class II administrative civil penalty actions under Section 311(b)(6) of the Clean Water Act, and for actions under Section 1423(c) of the Safe Drinking Water Act, in order to provide commenter procedures required by those Acts.

The definition of ''Complainant'' would be revised to add references to the provisions covering commencement of a proceeding and the content and amendment of a complaint.

The definition of ''Complaint'' would be deleted, as it is fully covered by the operative provisions of the rule at § 22.14.

The definition of ''Consent Agreement'' would be deleted, as it is fully covered by the operative provisions of the rule at § 22.18(b)(2).

The address of the Environmental Appeals Board would be deleted from its definition, as redundant with § 22.30(a).

The definition of ''Final Order'' would be clarified by specifically including Consent Orders issued pursuant to § 22.18.

The definition of ''Hearing Clerk'' would be amended to update the mailing address.

The definition of ''Initial Decision'' would be expanded to include references to the operative sections of the CROP at §§ 22.17(c), 22.20(b) and 22.27, thereby distinguishing initial decisions from other decisions rendered by a Presiding Officer.

The definition of ''permit'' would be expanded to include permits issued under Section 402(a) of the Clean Water Act and Section 3005(d) of the Resource Conservation and Recovery Act, consistent with the December 11, 1996, proposed rule (60 FR 65,268). As used in the CROP, the term ''permit'' would also apply to authority to operate under interim status pursuant to section 3005(e) of the Resource Conservation and Recovery Act.

The definition of ''Presiding Officer'' would be clarified and amended to provide that, until an answer is filed, the Regional Judicial Officer serves as Presiding Officer. This change is one of form only, as § 22.16(c) of the existing Rule allows the Regional Administrator or a delegate to rule on motions until an answer is filed, and in practice this authority is delegated to Regional Judicial Officers. The definition also would be amended to allow Regional Judicial Officers to preside in proceedings under subpart.

The definition of ''Regional Administrator'' would be revised for clarity and to eliminate unnecessary language. EPA would delete from the existing rule the provision defining the term ''Regional Administrator'' to refer to the Environmental Appeals Board in cases commenced at EPA Headquarters. In the interests of clarity, the proposed revisions would specifically refer to the Regional Administrator where the CROP assigns responsibilities to the Regional Administrator, and to the EAB wherever the CROP assigns responsibilities to the EAB. Only one responsibility assigned to the Regional Administrators under the CROP would not also be assigned to the EAB for cases commenced at EPA Headquarters, which is the responsibility of designating Regional Judicial Officers. EPA does not anticipate any need to provide for a Regional Judicial Officer to preside in non-APA proceedings commenced at EPA Headquarters. EPA anticipates that it will use non-APA procedures primarily for cases expected to be routine and raising few, if any, new issues of law. EPA expects to rely on Administrative Law Judges to act as Presiding Officers in all cases initiated

at EPA Headquarters, because current Agency plans do not call for EPA Headquarters to initiate significant numbers of routine cases or cases which raise no significant new issues of law. For the few instances where Headquarters-based Complainants seek to file non-APA cases, such cases could be filed with a Regional Hearing Clerk and adjudicated by the appropriate Regional Judicial Officer.

The definition of ''Regional Hearing Clerk'' would be clarified as it pertains to cases initiated at EPA Headquarters. The Regional Office addresses now appear in Appendix A.

Redundant language would be removed from the definition of ''Regional Judicial Officer''.

4. Roles of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.

Section 22.04(a): The heading would be amended, and the entire section would be revised to clarify the roles of the Environmental Appeals Board, Regional Judicial Officers, and Presiding Officers in administrative enforcement proceedings under the CROP. The proposed changes better describe current practice. Paragraph (a) would be amended to clarify that the Administrator has delegated to the Environmental Appeals Board the authority to rule on appeals, and that in all cases except those in which the Environmental Appeals Board has referred a matter to the Administrator, appeals and motions must be directed to the Environmental Appeals Board to be considered. The word ''direction,'' an uncorrected typographical error in the existing CROP, would be amended to ''discretion.''

Section 22.04(b): The section would be amended to clarify the role and authority of the Regional Judicial Officer, to whom the authority to act in a given proceeding is delegated by the Regional Administrator. This authority includes acting as Presiding Officer in non-APA administrative enforcement cases, acting as Presiding Officer in APA cases prior to the filing of respondent's answer and request for a hearing, and approving settlements of proceedings under the CROP.

EPA proposes to delete the prohibition that Regional Judicial Officers ''shall not be employed by the Region's Enforcement Division or by the Regional Division directly associated with the type of violation at issue in the proceeding'', because Regional reorganizations have made this language obsolete. EPA's Regional Offices currently have a variety of different organizational structures, and these organizational structures may continue to evolve. Accordingly, EPA proposes to substitute a more generally applicable requirement which makes no mention of organizational structures: The Regional Judicial Officer shall not ''have any interest in the outcome of'' any case in which he or she serves as Regional Judicial Officer. EPA interprets this clause broadly, as prohibiting anyone who has any financial interest, personal interest, or career interest in the outcome of the action from serving as Regional Judicial Officer. EPA believes this should provide the Regional Judicial Officers sufficient independence to conduct a fair hearing, because in EPA's experience no Regional Judicial Officer has been subject to improper influence by Agency officials. The limitation placed on the Regional Judicial Officer regarding any ''factually related hearing'' also would be deleted, because the Agency believes it improper to disqualify a Regional Judicial Officer merely because that person has participated in a hearing where similar facts were at issue.

EPA intends that the Regional Judicial Officers should be, and are in fact, fully independent of improper influence. Nevertheless, EPA requests suggestions as how this independence should be described in § 22.04(b). Commenters should be cognizant of the fact that the EPA employees who serve as Regional Judicial Officers will have duties other than acting as Regional Judicial Officer, because workloads do not generally warrant exclusive assignments to that position. One possible alternative to the language proposed would be a mandate that a Regional Judicial Officer ''shall not be directly supervised by any person who directly supervises the prosecution of the case.'' Such a requirement would provide a more definite standard than the standard that is proposed, however it would be at odds with Agency's reinvention efforts to remove layers of management, minimize institutional barriers, promote cross-media training and promote multimedia enforcement.

Section 22.04(c): Surplus language would be deleted. No substantive change is intended by this revision.

Section 22.04(d): Several clarifications are made by deleting surplus and confusing language. The proposed rule would require parties to first request that a Regional Administrator, a member of the Environmental Appeals Board, or the Presiding Officer disqualify himself or herself before requesting that a higher Agency official disqualify that person. Although requests for disqualification are very rare, the proposed rule would reduce unnecessary delay and burdens by requiring that requests for disqualification first be made directly to the person whose disqualification is sought. If the request is denied, then the reviewing official would have more information upon which to base a ruling than if the initial request were made directly to the reviewing official. The proposed rule would also authorize the Environmental Appeals Board, rather than the Administrator, to review requests for disqualification of Regional Administrators and Presiding Officers. If a motion to disqualify a member of the Environmental Appeals Board is denied, a party may appeal that ruling to the Administrator.

EPA also requests comment on another possible change in the disqualification procedures which is not included in the text of the proposed rule published today. Under the proposed rule, both the interlocutory appeal procedures of § 22.29 and the procedures for appeal of an initial decision at § 22.30 would apply where a Presiding Officer denies a motion for disqualification. EPA is considering a prohibition on interlocutory appeals of motions for disqualification, in order to avoid unnecessary delay. After issuance of an initial decision, the parties would still have the right of appealing any adverse ruling or order of the Presiding Officer, including a refusal to disqualify himself or herself, pursuant to § 22.30. This change would make the CROP consistent with Federal court practice. See 28 U.S.C. 1292 (decisions regarding disqualification not included in the interlocutory review authority of the Courts of Appeals), *U.S.* v. *Gregory,* 656 F.2d 1132, 1136 (5th Cir. 1981) (interlocutory review of disqualification decision not available), *Dubnoff* v. *Goldstein,* 385 F.2d 717, 721 (2d Cir. 1967)(''A determination of a District Judge not to disqualify himself is ordinarily reviewable only on appeal from a final decision on the [underlying cause of action].''). The Agency requests comment on this potential revision of the CROP.

5. Filing, Service, and Form of Pleadings and Documents; Business Confidentiality Claims

Section 22.05: The heading would be revised to include business confidentiality claims.

Section 22.05(a): The paragraph would be revised to clarify that the original and a copy of each pleading or other document intended to be part of the record of the proceeding shall be filed with the Regional Hearing Clerk or Clerk of the Environmental Appeals Board. Providing both an original and a copy makes it easier for the hearing

clerks to maintain both a record file and a public viewing file, in order to assure public access without risk of altering the official record. The paragraph also would be revised to clarify when a pleading or document is ''filed.'' Requirements regarding service, as distinct from filing, are deleted from § 22.05(a)(2) and moved to § 22.05(b); the remaining sentence concerning certificates of service would be renumbered as § 22.05(a)(3). The existing § 22.05(a)(3) would be renumbered § 22.05(a)(2), and surplus language deleted. The Agency solicits comments on whether electronic filing and service should be allowed, and if so, under what conditions.

Section 22.05(b): The paragraph would be amended to consolidate and clarify service requirements, and to require a copy of each pleading or document to be served on the Presiding Officer. In paragraph (b)(1), the provisions regarding service of the complaint are changed to clarify who must be served when serving a natural person, a domestic or foreign corporation, a partnership or unincorporated association, an officer or agency of the United States, a state or local unit of government or a state or local officer, agency, department, corporation or other instrumentality. The proposed rule allows service of the complaint by any reliable commercial delivery service that provides written verification of delivery.

Paragraph (b)(2) would be amended to allow service of all pleadings and documents other than the complaint by any reliable commercial delivery service. The provision regarding mail would be revised to reflect the fact that both certified mail and return receipt requested are varieties of first class mail. The phrase ''pleadings and documents'' is used here and throughout the proposed rule to include all filings by the parties. The heading would be amended to reflect the change.

Section 22.05(c): Paragraph (c)(2) would be changed to require more information on the first page of every pleading and to require tables of contents and tables of authorities for all legal briefs and memoranda greater than twenty pages in length (excluding attachments) to simplify processing and review. Grammatical changes and clarifications are made in paragraphs (c)(3) and (4). In paragraph (c)(5), the provision which allowed Hearing Clerks to determine the adequacy of documents would be deleted, leaving that authority solely with Presiding Officers or the Environmental Appeals Board.

Section 22.05(d): A new paragraph would be added to specify the treatment of information claimed as Confidential Business Information (''CBI'') in documents filed in CROP proceedings, and to link that treatment with the CBI rules of 40 CFR part 2, subpart B. The purpose is to facilitate the use of CBI as evidence while appropriately preserving the confidentiality of the information. Paragraph (d)(1) provides that any business confidentiality claim shall be made in the manner prescribed by 40 CFR 2.203(b). A person who files a document with a Regional Hearing Clerk without making such a claim places that document in the public record, where it is available to the public for inspection and copying pursuant to § 22.09. After a document has been placed in the public record, a subsequent claim of confidentiality will not be effective. This clarifies the obligations of the claimant and makes clear which procedures to follow, as well as the consequences for failure to follow these procedures.

Paragraph (d)(2) describes in more detail how pleadings or documents containing information claimed confidential are to be filed with the Regional Hearing Clerk, and the contents of such documents, in order to assure that such documents are properly filed and the information within such documents protected. The requirement that parties file two versions of pleadings or documents, one containing the information claimed confidential and a second redacted version, does not preclude a party from filing a single document that merely references, without disclosing, confidential information filed in earlier documents.

Paragraph (d)(3) describes the procedures for service of pleadings of documents containing claimed-confidential information on the Presiding Officer, complainant, parties, amici, or representatives thereof authorized to receive confidential information, and makes clear that only a redacted version of any pleading or document may be served on a party, amici, or other representative thereof not authorized to receive the confidential information. Paragraph (d)(4) provides that only the redacted version of a pleading or document with claimed-confidential information will become part of the public record, and further provides that an EPA officer or employee may disclose information claimed confidential only as provided by 40 CFR part 2.

6. Filing and Service of Rulings, Orders and Decisions

Section 22.06: The requirements regarding service of rulings, orders and decisions have been changed to allow the more flexible service of these documents by first class mail or any reliable commercial delivery service. References to the Regional Judicial Officer are deleted as surplusage.

7. Computation and Extension of Time

Section 22.07: In paragraph (a), ''holidays'' would be clarified to mean federal holidays. Paragraph (b) would be revised to require that any motion for an extension of time be filed sufficiently in advance of the due date so as to allow other parties the opportunity to respond and to allow the Presiding Officer or the EAB reasonable opportunity to issue an order. The reference to ''the Regional Administrator'' would be deleted as surplusage. In paragraph (c), the ''mail box'' rule for service would be expanded to encompass the other reliable commercial delivery services authorized in § 22.05(b). Under the proposed revision, as under the existing CROP, it is implicit that personal service is complete upon personal service, without need for a signed receipt.

8. Ex Parte Discussion of Proceeding

Section 22.08: New language would be included to explicitly allow a decision maker who has formally recused himself from all adjudicatory functions to engage in ex parte functions. For purposes of this provision, the Agency would consider the approval of consent agreements and issuance of consent orders to be adjudicatory functions.

9. Examination of Documents Filed

Section 22.09: Extraneous language would be deleted and the reference to waiver of costs for duplication of documents would be clarified.

10. Intervention and Amicus Curiae

Section 22.11: The section heading would be amended to include amicus curiae motions. Paragraph (a)(1) would be amended to more specifically describe the process for intervening, and would make the standard for intervention equivalent to the standard used in the Federal courts, Rule 24(a)(2) of the Federal Rules of Civil Procedure. The final sentence in paragraph (c) of the existing CROP (''The intervenor shall become a full party to the proceeding upon the granting of leave to intervene.'') is intentionally omitted. This would grant the Presiding Officer the discretion to allow an intervenor to become a party as to part, but not all, of a proceeding. An additional five days is given to file a response to a motion to intervene, for consistency with proposed changes to § 22.16. The

changes to paragraph (a) permit the deletion of paragraphs (c) and (d). Paragraph (b) describes the procedures for motion for leave to file an amicus brief, and fifteen days is given to file a response to an amicus brief. EPA requests comment as to the appropriateness of these intervention provisions.

11. Consolidation and Severance

Section 22.12: The phrase ''by motion or sua sponte'' would be deleted as surplusage, and perhaps confusing to persons not trained in the law. No substantive change is intended by this revision. Paragraph (a) would be amended to clarify that proceedings brought pursuant to the non-APA procedures of subpart I may be consolidated with an action brought under the APA procedures. This paragraph prohibits the use of the non-APA procedures for hearing any action which is the result of a consolidation of an APA proceeding and non-APA proceeding. Under these circumstances, only the APA procedures of the CROP (subpart A—H) are appropriate.

The Agency considered, but rejected as unnecessary, expressly prohibiting under § 22.12 the consolidation of actions if such consolidation could result in the total penalty exceeding any applicable cap on penalty amounts. The existing language is sufficient to prevent consolidation in such circumstances because such a result would ''adversely affect the rights of parties engaged in otherwise separate proceedings.''

12. Commencement of a Proceeding

Section 22.13: The heading would be amended, and the section revised, to clarify how an administrative enforcement proceeding is commenced. For cases where pre-commencement negotiations result in settlement of a cause of action, paragraph (b) would provide for the simultaneous commencement and conclusion of a case upon the issuance of a consent order (provided that, in accordance with § 22.18(b)(2), the consent agreement contains that information required in a complaint set forth in § 22.14(a)(1)–(3)). Negotiations with alleged violators prior to the formal filing of a complaint may in some cases lead to more efficient and expeditious resolution of cases. See, e.g., Executive Order No. 12778 on Civil Justice Reform (56 FR 55195, October 25, 1991). Where such negotiations are productive, the filing of a consent agreement and consent order would be sufficient to commence a case, and requiring a separate filing of a complaint would merely waste paper. In cases subject to the Clean Water Act or Safe Drinking Water Act public comment provisions, this streamlined approach would not permitted. The original language of this section would be deleted as duplicative of the statutory authorizations to commence proceedings.

13. Complaint

Section 22.14: EPA proposes to consolidate paragraphs (a) and (b) of the existing CROP into a single paragraph governing the content of all complaints for assessment of civil penalties, for revocation, termination or suspension of permits, and for compliance and corrective action orders. As used here and in §§ 22.17 and 22.27, ''compliance or corrective action order'' includes orders requiring immediate compliance or corrective action, and orders establishing schedules for compliance or corrective action within a specified period of time.

Paragraph (a)(4) would be amended to present in a single paragraph the content requirements for all complaints, whether they seek penalties, compliance or corrective action orders, or permit actions. New language would expressly permit the filing of a complaint without specifying in the complaint the precise penalty sought, as an alternative to pleading a specific penalty. Where complainant elects not to demand a specific penalty in the complaint, complainant is nonetheless obligated to provide a brief explanation of the severity of each violation alleged and a citation to the statutory penalty authority applicable for each violation alleged in the complaint.[1] This notice pleading option would provide the Agency with added flexibility in issuing a complaint under circumstances where only the violator possesses information crucial to the proper determination of the penalty, for example, the economic benefit the violator derived from its noncompliance or the effect of a penalty on its ability to remain in business. Complaints following the notice pleading approach would give respondents in administrative enforcement proceedings at least as much notice of their potential liability as they would receive in most enforcement proceedings filed in the Federal courts. Complementary changes to §§ 22.17(b) and 22.19(a) assure that, where the Agency employs this notice pleading approach, the Agency will specify a penalty demand in its prehearing information exchange and in any motion for default. As is the case in judicial enforcement proceedings, this notice pleading option is fully compatible with the Agency's long-standing practice of working with respondents toward a fair resolution of enforcement actions.

Paragraph 22.14(a)(5) would combine the right-to-hearing provisions presently in § 22.14 (a)(6) and (b)(6), as well as new language to accommodate hearings on the appropriateness of proposed compliance or corrective action orders. The sentence requiring a copy of the CROP to accompany each complaint served would be deleted and placed in a separate § 22.14(b). The requirement of § 22.14(a)(5) in the existing CROP would be moved to § 22.14(a)(4)(i). Paragraph (a)(6) would require the complainant to specify in the complaint whether the non-APA procedures in subpart I shall apply to the proceeding. If a complaint does not contain an explicit statement that subpart I applies, the ensuing proceeding shall be conducted in conformance with section 554 of the APA.

The original paragraph (b) would be merged into the new paragraph (a). The revised paragraph (b) would contain the requirement, currently in § 22.14 (a)(6) and (b)(6), that a copy of the CROP accompany each complaint.

The text originally in paragraph (c) would be deleted, and subsequent provisions renumbered so that the text presently in § 22.14(d) would appear in 22.14(c), with minor changes. The existing provision would be deleted to avoid the possibility of conflict with the notice pleading option proposed under § 22.14(a)(4)(ii). The Agency's proposed deletion of this provision does not signal any general intent to abandon applicable penalty pleading policies. The Agency's penalty authority remains subject to any statutory penalty criteria, regardless of changes to the CROP, so deletion of the existing paragraph (c) should have no substantive effect on the penalties that would be assessed.

Paragraph (d) would contain the provision presently in paragraph (e), with minor revisions. The Agency considered, but is not proposing, language specifically allowing the withdrawal of a complaint without prejudice, because such language is not necessary. The existing language of this section does not establish a specific standard that the Presiding Officer must apply when considering a motion to withdraw a complaint without

[1] For example, a citation to the statutory penalty authority might state the following: ''For the violations alleged herein, in accordance with 15 U.S.C. 2615(a), complainant seeks a penalty of up to $25,000 for each day the violations continue, taking into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and other matters as justice may require.''

prejudice, and so, the ''good cause'' standard generally applicable to motions applies. The good cause standard would allow withdrawal of a complaint without prejudice in circumstances where, for example, information obtained after the commencement of the case indicates that the proper penalty should exceed an applicable penalty cap, thereby allowing the Agency to refile the case in a forum that would permit assessment of the proper penalty.

14. Answer

Section 22.15: The requirements for filing and serving copies of an answer are clarified in paragraph (a). Also, the time allowed for the filing of an answer would be changed from 20 days to 30 days. RCRA, the SDWA, and the CWA authorize 30 days to file an answer. The discrepancy between these statutory authorities and § 22.15 has caused confusion, particularly in cases involving alleged violations of more than one statute (multimedia cases), as to which time limitation applies to the overall cause of action. To avoid any potential conflict, for all causes of action, the requirement would be changed to allow answers to be filed within 30 days of service of the complaint. EPA proposes to add to paragraph (b) a new clause requiring that the answer state the basis for opposing any proposed penalty, compliance or corrective action order, or permit revocation, termination or suspension. This requirement would not add significantly to respondents' existing burdens, as it is both consistent with good pleading practice and implicit in the existing rule. Paragraph (c) would be rewritten for clarity. No substantive change is intended.

15. Motions

Section 22.16: Paragraph (a) would be revised to place explicit limits on motion practice and to provide a common understanding that the routine practice shall be the filing of a motion, a response and a reply, without any further briefing. Any further responsive documents concerning the motion would be allowed only by order of the Presiding Officer or EAB. The present CROP is silent as to whether additional briefing or argument is permitted after the filing of a response to a motion. To the extent that such replies are presently allowed, there is no limit on the time for filing a reply, nor any limit to the total number of replies. With an endless series of replies possible, neither the Presiding Officer nor the parties can be sure when a motion is ripe for decision.[2] The proposed amendments are intended to establish more control over motion practice in an effort to simplify the proceeding, and to reduce delays and litigation costs. EPA believes that a motion-response-reply structure is both necessary and sufficient to present the issues fully for the Presiding Officer. The proposed rule specifically provides the movant an opportunity for a reply because responses to motions often raise issues not addressed in the motion itself. The proposed rule then limits the scope of the reply to those issues raised in the response, in order to avoid giving an unfair advantage to the movant. For those instances where this motion-response-reply format may not be appropriate, the Presiding Officer may order an alternative approach.

The proposed rule would amend paragraph (b) to expand the time for filing a response to a motion from 10 days to 15 days. EPA anticipates that this change will improve the quality of the responses, better clarifying the issues and thereby promoting judicial economy. The proposed rule also would allow 10 days for the filing of a reply, reflecting the fact that the movant has already had an opportunity to anticipate possible objections to its motion and that somewhat less time should be needed to address such new issues as might be raised in the response. The clause pertaining to extensions of time would be deleted as redundant with §§ 22.07(b) and 22.04(c).

Paragraph (c) would be revised to clarify who renders decisions at the different stages of a proceeding. The provision concerning oral argument on motions would be deleted from this section and placed in a separate § 22.16(d), and expanded to acknowledge that Presiding Officers, as well as the EAB, have the discretion to order oral argument on motions.

16. Default

Section 22.17: The heading would be changed, and the entire section reorganized, for purposes of clarity. Paragraph (a) would describe how a party may be found in default, and the consequences of such a finding. The provisions in the current paragraph (a) describing when penalty monies come due, or when a permit revocation, termination or suspension becomes effective, would be moved to paragraph (d).

New paragraph (b) addresses content requirements for motions for default. It includes a requirement that where the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and must put into the record the legal and factual grounds for the relief requested. This amendment accommodates the changes made in § 22.14, above, and provides for those instances in which the complaint does not contain a specific penalty proposal.

Paragraph (c) would be revised to describe the default order itself. It would provide that a default order shall be an initial decision, and treated in all respects under the CROP as an initial decision. Paragraph (c) would result in one substantive change rules regarding default orders, in regard to the standards for granting relief. Section 22.17(a) of the existing rule appears to require that a default order automatically assess the penalty proposed in the complaint, or automatically revoke or terminate the permit according to the conditions proposed in the complaint. The proposed revision would remove this apparent restriction on the Presiding Officers' discretion so that they may assure that the relief ordered is supported by the administrative record. In order to make it clear that supporting the relief proposed in a default case should be less burdensome on the Agency than it would be if the respondent chose to contest the case, the language of the revised paragraph (c) would require that the Presiding Officer grant the relief requested unless the record clearly demonstrates that the requested relief is inconsistent with the Act. The Agency would still be required to make a prima facie case in regard to the appropriateness of the proposed relief, as well as in regard to liability. The proposed change would not affect determinations of liability in default, which would remain subject to the ''preponderance of the evidence'' standard of § 22.24.

Subsection (d) would describe the respondent's obligations once default has been entered regarding payment of any penalty, revocation, termination or suspension of any permit, and compliance or corrective action requirements. The existing rule does not describe or explain these sanctions, and the Agency believes therefore that these new provisions provide additional clarity and information to a potentially defaulting party, and make much more clear the consequences of default. The existing rule requires payment of the penalty within 60 days after the default order was issued. This conflicts with the

[2] See, e.g., In the Matter of McLaughlin Gormley King, et al., Docket Nos. FIFRA 94–H–10 through 94–H–15, where a motion to dismiss was followed by a response, a reply, a sur-reply, a supplemental reply, and a second sur-reply.

Federal Claims Collection Standards, which require payment within 30 days after the date the order was issued, unless EPA decides an extension is appropriate. See 4 CFR 102.13(g). The proposed rule therefore requires payment within 30 days after the date the default order becomes final.

17. Quick Resolution; Settlement; Alternative Dispute Resolution

Section 22.18: This section would be substantially revised to provide expedited resolution procedures, and to clarify the process and effect of formal settlements. Paragraph (a) would provide a quick resolution process, whereby a respondent can bring the case to a close at any time simply by paying the amount proposed in the complaint. Any respondent wishing to resolve an action without filing an answer need only pay the proposed penalty within 30 days of receipt of the complaint. In cases where an answer has been filed, the respondent may resolve the action by paying the penalty proposed in the complaint. This will provide respondents the option of resolving minor and uncontested violations without engaging an attorney, much in the manner of a parking ticket. EPA anticipates that this quick resolution procedure may be of particular interest to small businesses, and recognizing that small businesses may need additional time to raise cash to pay a penalty, the provision would allow respondents 60 days from receipt of the complaint to pay the penalty without having to file an answer. In order to exercise this option, a respondent would need to file a written statement within 30 days of receiving the complaint wherein respondent promises to pay the penalty in full within 60 days from receipt of the complaint.

The commenter rights provisions of section 309(g) and 311(b)(6) of the Clean Water Act, and section 1423(c) of the Safe Drinking Water Act do not permit resolution of a case until the public has had opportunity to comment on the complaint. Commenters could provide information indicating that the violations are more serious than indicated in the administrative complaint. In order to give meaning to the public comment requirements, and to allow EPA the opportunity to act upon any such comments before resolution of a case, a respondent would not be permitted to take advantage of the quick resolution provision in a commenter-eligible action until ten days after the period for public comment has closed.

Paragraph (b) would clarify the existing settlement process, and is divided into three paragraphs. The first paragraph (b)(1), concerning discussions of settlement, incorporates existing provisions with minor editorial changes, the most significant of which corrects a citation to § 22.16 which should refer to § 22.15. Paragraph (b)(2) would specify that consent agreements be in writing, and that they include all terms and conditions of settlement. The content requirements of a consent agreement are also clarified to include compliance order or corrective action requirements, and an express waiver of the respondent's right to a hearing and appeal of the consent order. This clarification is important, so that respondents enter into settlement agreements with a full understanding that an agreement to settle involves waiving rights to a hearing and rights of appeal. Paragraph (b)(2) also establishes additional content requirements for consent agreements in cases where the complainant proposes to simultaneously commence and conclude a case through filing of a consent agreement and consent order pursuant to § 22.13(b), as a result of successful settlement through negotiations conducted before a complaint is issued. These additional content requirements should assure that the public record clearly identifies the causes of action upon which such cases are based. Paragraph (b)(3) would be revised to expressly provide that an administrative action is settled only when the Regional Judicial Officer or Regional Administrator, or, in cases commenced at EPA Headquarters, the Environmental Appeals Board, approves a consent agreement and issues a consent order. This provision is added to eliminate any uncertainty as to who has authority to conclude a proceeding.

Paragraph (c) would provide that the effect of settlements and full payment of proposed penalties is limited to those facts and violations specifically alleged in the complaint, and reserves the Agency's right to pursue injunctive relief or criminal sanctions. These provisions merely make explicit the existing law of res judicata and claim preclusion, and reflect the Agency's routine practice in settlement of cases. The statutes authorizing administrative proceedings simultaneously define the limits of the Agency's jurisdiction in those proceedings to the assessment of penalties, the issuance of corrective action or compliance orders, or the revocation, termination or suspension of permits. None of the statutes administered by EPA grant to an administrative tribunal the authority to assess criminal sanctions or compel injunctive relief. Because the statutes authorizing administrative proceedings expressly limit the Agency's authority in those proceedings, the settlement of a proceeding commenced under part 22 cannot limit the Agency's right to pursue relief that is beyond the scope of part 22. See generally Restatement (Second) of Judgments § 83 comment g (1982). Accordingly, adding this provision to the CROP does not significantly alter respondents' rights.

Paragraph (d) would recognize use of alternative dispute resolution proceedings. The Agency encourages use of alternative dispute resolution in appropriate circumstances, both as a fair means of resolving enforcement actions and as a method of reducing transaction costs for all parties. The designation of a neutral (who would not be the Presiding Officer) would not divest the Presiding Officer of overall responsibility for the case. The Presiding Officer would retain during dispute resolution proceedings all of the powers and duties assigned under § 22.04(c), including the authority to bring the case to hearing if circumstances so warrant. The Agency has considered including language specifying the impact of dispute resolution proceedings on deadlines, but instead proposes to leave this to the discretion of the Presiding Officer. As needed, the parties may request temporary stays of proceedings and extensions of deadlines.

Other requirements of the CROP (e.g., the consent agreement and consent order provisions of § 22.18(b), the ex parte prohibitions of § 22.08, the public comment provisions of § 22.38) also would continue to apply, notwithstanding any dispute resolution process.

18. Prehearing Information Exchange; Prehearing Conference; Other Discovery

Section 22.19: EPA proposes to substantially restructure and revise this section for ease of use and to make information exchange more timely and efficient. Paragraphs (a) and (b) would be reversed in order from the existing CROP, reflecting the fact that information exchange is more common than, and usually precedes, a prehearing conference. The Agency proposes to expand the scope of the standard prehearing information exchange in order to expedite resolution of cases.

The requirements for prehearing exchange would now appear in paragraph (a). In addition to the information required to be exchanged under § 22.19(b) of the existing CROP, EPA proposes that each party should be required to exchange all information it considers relevant to the assessment of

a penalty. This provision would apply whether or not the complainant identifies a specific penalty in the complaint. In addition, for penalty cases where the complainant has not specified a penalty in the complaint, the proposed rule would require that the complainant shall specify a proposed penalty and state the basis for that proposed penalty. EPA requests comment on whether it is necessary for complainant to specify a proposed penalty in prehearing exchange. As noted above, EPA has proposed to allow notice pleading under § 22.14(a)(4)(ii) in order to allow EPA to issue complaints even where it is unable to obtain information from the violator which is necessary to confidently determine the appropriate penalty. Although EPA anticipates that respondents will provide such information during the course of settlement discussions, it is possible that in some cases the necessary information will not be available until respondent submits its prehearing exchange, or even later. If the complainant is in no better position to propose a penalty at prehearing exchange than it was at the time it filed the complaint, there is little value to such a requirement. EPA requests comment on the utility of this requirement, and on the merits of allowing complainant to postpone for an additional 30 days, or indefinitely, the making of a specific penalty demand.

EPA's proposal would change the rules regarding the exchange of witness lists and documents in order to facilitate supplementing and amending prehearing exchange prior to hearing. In so doing, the proposed rule would make more clear the distinction between the filing of prehearing exchange and the admission of information into evidence. In order to prevent undue burden and delay caused by last minute supplements or amendments of the prehearing information exchange, the Agency considered proposing restrictions on amendments to prehearing exchange within 30 days of the hearing date. The Agency instead proposes that all barriers to amending prehearing exchange should be dropped in the interest of full and complete exchange of information between the parties (*see* § 22.19(f)), and proposes under § 22.22(a) to tighten the standards for admitting into evidence information that was not timely exchanged.

The Agency requests comment on the merits of requiring by rule that the parties simultaneously perform their prehearing information exchange 90 or 120 days after the filing of the answer. Making prehearing exchange automatic, rather than dependent on assignment of an ALJ and on the ALJ's issuance of an prehearing exchange order, could expedite administrative practice and move cases to a more rapid resolution. Although an early deadline could prompt the parties to focus intently on settlement at the earliest stages of a proceeding, it could also lead to wasted resources if parties were compelled to submit voluminous prehearing exchanges despite imminent settlements.

The Agency has considered, but is not proposing, amendments concerning the timing of prehearing exchange. The Agency has considered the merits of requiring that complainant file its prehearing exchange before respondent, relative to the merits of requiring that prehearing exchange be made simultaneously by both parties. Allowing respondent to submit its prehearing exchange several weeks after receiving complaint's prehearing exchange might allow respondent to focus its prehearing exchange more narrowly on what it perceives to be the weakest points of the complainant's case, thereby conserving respondent's resources and clarifying the key issues in dispute. In contrast, the traditional, simultaneous prehearing exchange gives both parties equal incentive to settle before incurring the expense and effort of preparing the exchange. Staggering the prehearing exchange creates a disparate incentive, such that the party designated to make the later exchange may adopt a ''wait-and-see'' attitude, preferring to review the papers of the party designated to submit first before accepting a settlement offer it knows to be in its best interest or before even engaging in serious settlement discussions. In this manner, sequential prehearing exchange can delay or even impede settlement, and causes the lead party to incur unnecessary expenditures of resources. EPA believes that the disadvantages of sequential prehearing exchange outweigh the anticipated benefits in the great majority of cases.

The disadvantages of a sequential prehearing exchange do not, however, compel the conclusion that prehearing exchange must necessarily be simultaneous in every case. There may be instances where the circumstances suggest that a case might be more expeditiously resolved if prehearing exchange were structured in some other manner. Accordingly, the Agency does not propose to make either simultaneous or sequential prehearing exchange the mandatory and exclusive option, but instead would continue to allow the Presiding Officer some discretion regarding the timing of the prehearing exchange required under this rule.

Paragraph (b) would describe the purpose of any prehearing conference which may be held, and is substantially similar to paragraph (a) of the existing CROP. The revisions would no longer compel the Presiding Officer to require the parties to ''appear at a conference before him,'' but instead would make the nature of the conference more flexible.

In paragraph (c), the phrase ''upon motion or sua sponte'' would be deleted as surplusage, and as potentially confusing. In paragraph (d), additional surplus language would be deleted. No substantive changes are intended. Paragraph (e) from the existing CROP would be deleted as surplusage, as § 22.04(c) (5), (8) and (10) give the Presiding Officer ample authority in these matters.

Under the proposed revisions, as well as the existing CROP, § 22.19 is designed to streamline exchanges of information by the parties and to discourage dilatory tactics and unnecessary and time-consuming motion practice. In contrast to the Federal Rules of Civil Procedure, a formal prehearing exchange of information is the primary vehicle of information exchange under the CROP. This prehearing exchange may be supplemented in certain cases by additional discovery pursuant to paragraph (e). In order to expedite the administrative hearings process, this other discovery is limited in comparison to the extensive and time-consuming discovery typical in the Federal courts.

The proposed revisions to paragraph (e) would revise the process for seeking ''other discovery''. The proposed rule would require that the party seeking discovery must file a motion which ''shall specify the method of discovery sought, provide the proposed discovery instruments and describe in detail the nature of the information and/or documents sought (and, where relevant, the proposed time and place where discovery would be conducted).'' By ''proposed discovery instruments,'' the Agency refers to the specific documents which would effectuate discovery if the Presiding Officer were to order the requested discovery (e.g., notices of deposition, depositions upon written questions, written interrogatories, requests for production of documents and things and entry upon land for inspection and other purposes, requests for admission).

The proposed revisions would also refine the substantive standards for issuance of a discovery order. First, discovery motions would only be

authorized after completion of the prehearing information exchange mandated under paragraph (a), so that ''other discovery'' supplements, rather than supplants, prehearing exchange. Second, the prohibition against discovery which would unreasonably delay the proceeding would be expanded to prohibit discovery which would unreasonably burden the other party. The Agency believes that unnecessarily burdensome discovery is inappropriate even if such discovery would not delay a proceeding. Third, the proposed rule would clarify the existing requirement that discovery seeks ''information [that] has significant probative value'', by the addition of the clause ''on a disputed issue of material fact relevant to liability or the relief sought.'' This revision is intended to clarify, rather than change, the existing requirement. See, *e.g., Chautauqua Hardware Corp.*, II EPCRA–90–0223, *Order on Interlocutory Review slip op.* at 12 (June 24, 1991) (''The phrase ''probative value'' denotes the tendency of a piece of information to prove a fact that is of consequence in the case.'')

The Agency proposes to clarify the requirement in the existing rule that prohibits discovery where ''[t]he information to be obtained is not otherwise obtainable''. The phrase ''not otherwise obtainable'' has been the source of much litigation, and the Agency proposes to substitute instead a requirement that discovery is permissible so long as it ''[s]eeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily''. This substitution should not substantively change the discovery standard, but instead make explicit the two most reasonable interpretations of ''not otherwise obtainable''. One reasonable interpretation of the ''not otherwise obtainable'' requirement is that parties should not resort to discovery until more collegial methods of obtaining information have been exhausted. The proposed change would effectively require a party to request voluntary disclosure of the information sought before seeking a discovery order. Another reasonable interpretation of ''not otherwise obtainable'' is that a party should not be burdened by discovery seeking information which is readily obtained through other sources (e.g., texts available in libraries or from the publishers, reports or materials available from other government agencies). If the rule did not encompass this interpretation of ''not otherwise obtainable'', it would unreasonably burden litigants by permitting discovery of all information that could be obtained through a party, or by completely prohibiting discovery of information that could be obtained from third parties. Instead, EPA proposes to limit discovery to ''information that is most reasonably obtained from the non-moving party''. Although this requirement would not eliminate litigation, it provides a more meaningful context than ''not otherwise obtainable'' for determining whether other discovery should be allowed.

Paragraph (e)(2) of the proposed revision would expressly prohibit discovery of a party's settlement positions and information regarding their development, specifically including penalty calculations for purposes of settlement based on Agency settlement policies. This would make explicit a limitation that already exists under the current rule, as § 22.19(f)(1)(iii) limits discovery to information that has ''significant probative value'', and existing § 22.22 prevents the introduction of evidence which would be inadmissible under Federal Rule of Evidence 408. Penalty proposals developed for settlement are offers of compromise which normally would be inadmissible under Federal Rule of Evidence 408 because they generally lack significant probative value, and in addition, because their admission would discourage settlement. In its administrative enforcement programs under the CWA and SDWA, the Agency utilizes the same settlement policies that it uses in judicial enforcement proceedings to determine the penalty amount the Agency would accept in settlement of a case. This has caused some confusion for respondents who are more familiar with the Agency's other administrative enforcement programs, which rely on penalty pleading policies, rather than settlement policies. The proposed rule would clarify that penalty calculations derived from a settlement policy, as opposed to calculations of proposed penalties from a penalty pleading policy, are not subject to discovery. This change would eliminate the potential for litigation on matters reserved for settlement discussions.

The existing CROP provides that the Presiding Officer may order depositions upon oral questions only where additional conditions, over and above those applicable to discovery in general, are met. Paragraph (e)(3) of the revised CROP would maintain this higher standard, and clarify that these requirements are in addition to those of paragraph (e)(1).

Additional conditions also apply to the issuance of a subpoena relative to other discovery, specifically, ''an additional showing of the grounds and necessity therefor.'' The standards for issuing subpoenas do not appear in § 22.19 of the existing CROP, but instead, are repeated in six separate Supplemental rules. Paragraph (e)(4) of the proposed CROP consolidates this material, allowing elimination of several supplemental rules. This change does not expand or limit the authority of the Presiding Officer, nor does it authorize issuance of subpoenas except where authorized by the Act giving rise to the cause of action.

Paragraph (e)(5) further clarifies that Freedom of Information Act (''FOIA'') requests, requests for admissions or stipulations, inspections, statutorily provided information collection requests, and administrative subpoenas issued by an authorized Agency official other than the Presiding Officer do not constitute discovery and are not restricted by the CROP. This revision does not change the CROP, because these activities have never been subject to a Presiding Officer's control. This provision should reduce uncertainty, and consequent litigation, by clarifying that these independent methods of information collection are wholly outside the Presiding Officer's authority.

Paragraph (f) would impose on each party a duty to supplement or correct prior exchanges of information when the party learns that a prior exchange is deficient. As with the subsections already described above, this subsection is intended to reinforce the practice of full and complete voluntary information exchange in order to expedite proceedings and avoid unnecessary and costly motion practice. This subsection addresses situations where a party learns that a prior response is incorrect, inaccurate or outdated. It is not intended to impose a duty on any party to continually check the accuracy of prior responses, but does prohibit knowing concealment by a party. This provision would eliminate any procedural barriers to amending prehearing exchange, however, EPA also proposes at § 22.22(a) that information that is not exchanged in a timely manner shall not be admitted into evidence. Moreover, failure to comply with a prehearing exchange order would still constitute grounds for issuance of a default order, notwithstanding these changes.

Paragraph (g) clarifies that a failure of a party to provide information within its control pursuant to an order of the Presiding Officer may lead to an inference that the information sought

would be adverse to the non-exchanging party, to exclusion of the information from evidence, or to issuance of a default order. In the existing CROP, a version of this requirement applied to information provided through other discovery, but its applicability to information provided through prehearing exchange was unclear. The proposed rule expressly applies this requirement to all information exchanges, and expressly authorizes the additional sanction that information might be excluded from evidence.

19. Accelerated Decision; Decision to Dismiss

Section 22.20: Several editorial changes are made to this section. No substantive change is intended.

20. Assignment of Presiding Officer; Scheduling the Hearing

Section 22.21: Paragraph (a) would be revised to make it clear that the Chief Administrative Law Judge presides from the time an answer is filed until he or she assigns another ALJ. This would assure that there is a Presiding Officer at every stage of a proceeding.

21. Evidence

Section 22.22(a): EPA proposes splitting this subsection into two paragraphs. Paragraph (a)(1) would addresses the admission of evidence into the record. It restates the existing standard, with only a minor editorial revision, and adds a new standard for exclusion of evidence which is not provided to opposing parties in a timely manner. It provides that the Presiding Officer shall not admit into evidence any document, exhibit, witness name or summary of expected testimony that has not been provided to all parties at least fifteen days before the hearing date, unless the non-exchanging party had good cause for failing to exchange the required information and provided the required information to all other parties as soon as it had control of the information, or had good cause for not doing so.

Paragraph (a)(2) would address treatment of confidential business information (CBI), in conformance with the Agency's general confidentiality requirements. The 40 CFR part 2, subpart B provisions regarding treatment of CBI are cross referenced and other provisions are added to clarify how and when CBI may be used as evidence in a CROP proceeding. A significant substantive change would authorize the Presiding Officer to consider CBI evidence outside the presence of a party if necessary to preserve the confidentiality of the business information. While EPA expects that the Presiding Officers will seldom need to exercise this authority, experience has demonstrated the need for it. In *In the Matter of Baker Performance,* TSCA–91–H–08, a respondent charged with manufacture of chemical substances not listed in the TSCA inventory of existing chemical substances argued that the chemicals in question were identical to chemicals already listed on the confidential TSCA inventory by competitors. This posed a dilemma for EPA, forcing EPA to choose between revealing to the respondent its competitors' trade secrets in order to prove the violation, or else foregoing full enforcement. EPA chose in that case to accept settlement on relatively unfavorable terms rather than reveal the CBI. EPA believes that allowing the independent Administrative Law Judges the discretion to review confidential evidence outside the presence of a party in similar cases would strike an appropriate balance between the right of confrontation and the statutory mandates to protect confidential business information. Other changes have been made for clarity.

Section 22.22(c): For clarity, EPA proposes that the term ''written testimony'' be substituted for ''verified statements''. As they are described in the existing paragraph (c), verified statements are in fact testimony, and differ from live testimony only to the extent that they are presented in written form. No substantive change is intended.

22. Objections and Offers of Proof

Section 22.23(b): Surplus language would be omitted in the interest of clarity. No substantive change is intended.

23. Burden of Presentation; Burden of Persuasion; Preponderance of The Evidence Standard

Section 22.24: EPA proposes to split this section into two subsections, one addressing burden of presentation and burden of persuasion, and another addressing the preponderance of the evidence standard. Paragraph (a) would revise the existing language to adopt a consistent terminology throughout its discussion of burden of presentation and burden of persuasion, and to encompass compliance orders and corrective action orders. The proposed rule would clarify that respondent bears the burden of persuasion in regard to affirmative defenses only, although it bears the burden of presentation regarding all defenses. These revisions are consistent with settled law and would not change respondents' burdens relative to the existing CROP. Paragraph (b) would consist of language from the existing CROP, without any change. The title of the section would be amended to aid readers in locating the preponderance of the evidence standard established in paragraph (b).

24. Filing the Transcript

Section 22.25: EPA proposes to add a provision disallowing motions to conform the transcript of a proceeding to the actual testimony unless filed within 20 days after notice of the availability of the transcript, in the interests of finality.

25. Initial Decision

Section 22.27: Paragraph (a) would be amended to encompass compliance orders, corrective action orders, and permit revocations, terminations and suspensions. It would further require that a copy of the initial decision be served on the Assistant Administrator for Enforcement and Compliance Assurance. Other changes are editorial, and are not intended to make substantive changes in the CROP.

Paragraph (b) would be amended to require that the Presiding Officer base the recommended penalty upon evidence in the record and in accordance with any penalty criteria set forth in the Act. A requirement that the Presiding Officer explain how the penalty corresponds to any penalty criteria set forth in the Act would be substituted for the existing requirement that the Presiding Officer explain the reasons for recommending a penalty other than the penalty proposed in the complaint. These changes will clarify the essential neutrality of the Presiding Officer, but will not result in any substantive or other procedural changes to CROP proceedings.

Paragraph (c) would be amended to clarify the circumstances under which an initial decision may become a final order of the Agency. It further clarifies that the respondent must appeal an initial decision to the EAB as a prerequisite to judicial review. This addition makes clear the point at which administrative remedies are exhausted for the purpose of appeal to Federal courts. The purpose of this latter amendment is to prevent a party from seeking judicial review prior to seeking review from EPA's administrative appellate body, the Environmental Appeals Board. This addition to the CROP is proposed to conform to the holding in *Darby* v. *Cisneros,* 509 U.S. 137 (1993). In *Darby* the Supreme Court held that in cases where the Administrative Procedure Act applies, an appeal to ''superior agency

authority'' is a prerequisite to judicial review *only* when expressly required by statute or when an agency rule requires appeal before review and the administrative action is made inoperative pending that review. Courts are not free otherwise to impose an exhaustion requirement where the agency action has already become ''final'' under section 10(c) of the APA, 5 U.S.C. 704.

The new language is an express requirement that the administrative appeals process be exhausted before a party may seek judicial review of a final agency action. Section 22.27(c) makes it clear that the initial decision of the Presiding Officer would not be operative pending review by the Environmental Appeals Board. While this holding in *Darby* applies to cases governed by section 704 of the APA, exhaustion of administrative remedies is also required in cases where APA section 10(c) is not applicable. EPA's position with regard to exhaustion of administrative remedies in CROP cases is consistent with its position on exhaustion of administrative remedies generally. See, 40 CFR 66.81 and *Bethlehem Steel Corp.* v. *EPA*, 669 F.2d 903 (1982) interpreting 40 CFR 66.81. These changes do not alter respondents' rights and do not create any right of appeal in § 22.27. Appeal is only permitted pursuant to the provisions of § 22.30.

26. Motion to Reopen a Hearing

Section 22.28: Paragraph (a) would be amended to clarify the purposes for reopening a hearing. No substantive change is intended. EPA would amend paragraph (b) to expand from 10 to 15 days the time allotted for responding to a motion to reopen a hearing, for consistency with changes to § 22.16. Other changes are made for clarity.

27. Appeal From or Review of Interlocutory Orders or Rulings

Section 22.29: EPA proposes that paragraphs (a), (b) and (c) be revised to clarify the nature of interlocutory appeals, and to allow ten days from service, rather than six days from notice, to request interlocutory review. The change in the filing deadline will give parties additional time, and it will measure that time from a date easily ascertained by all. No other substantive change is intended. Paragraph (d) would be deleted as surplusage, as the Presiding Officer's authority to stay a proceeding is inherent in § 22.04(c) and the limitations of § 22.29(d) are unnecessary.

28. Appeal From or Review of Initial Decision

Section 22.30: The procedure for filing appeals would be clarified, including, but not limited to, provisions addressing service and filing, and describing the contents of any appeal brief. Under the existing CROP, a party which is not fully satisfied by an initial decision, but who would be willing to let the decision stand as is, may feel obliged to file an appeal merely to assure that its own issues are preserved in the event that the other party appeals the initial decision on other grounds. The proposal includes a new provision whereby a party who initially declined to appeal, but who receives a notice of appeal from another party, is granted an additional 20 days to raise other issues on appeal. This change would eliminate the need for protective filings by parties who are largely content with an initial decision. Other substantive changes include extending the time to file an appeal from 20 to 30 days, and a provision expressly limiting the scope of appeals to issues raised during the course of the proceeding or by the initial decision. A new paragraph (e) specifies that the general requirements for motions at § 22.16 apply to motions made in appeals to the EAB. A new paragraph (f) would consist of language presently in § 22.31(a) concerning decisions on appeals. Moving this language into § 22.30 makes the structure of § 22.30 comparable to § 22.29. Paragraph (f) describes the scope of review by the EAB and its authority to increase or decrease a penalty, or to modify any compliance order, corrective action order, or any permit revocation, termination and suspension. The proposed revision would allow the EAB to increase the amount of a penalty assessed in a default order, but would not allow the EAB to increase the default penalty to an amount greater than that proposed in the complaint or in a motion for default, whichever is less. This change would avoid an unintended implication of the present rule, which could be interpreted as precluding the EAB from reviewing the amount of a penalty in a default order which assessed less than the penalty complainant sought.

29. Final Order

Section 22.31: Section 22.31 of the existing CROP applies to final orders on appeal only; provisions regarding other types of final orders are scattered throughout the CROP. For clarity and consistency, requirements and provisions applicable to all final orders would be consolidated in revised § 22.31. Those provisions now in § 22.31 which apply only to final orders on appeal would be moved to § 22.30, as noted above. Paragraph (a) would make clear that a final order constitutes final Agency action. It would provide that the final order resolves respondent's liability for a civil penalty, compliance or corrective action order, or the status of a permit or authority to operate, only for the violations and facts alleged in the complaint, and that it shall not affect the government's right to injunctive relief or criminal sanctions. It explicitly states that a final order will not affect a respondent's obligation to comply with all applicable provisions of the Act and regulations promulgated thereunder. These provisions do not alter respondents' rights, but merely make explicit the existing law of res judicata and claim preclusion. The Agency's routine practice is to make provisions such as these standard elements of settlement agreements. Including these provisions in the CROP would provide a clear limit to the scope of final orders, regardless of whether the final orders are consent orders, final decisions on appeal, or unappealed initial decisions.

A new paragraph (b) would clarify that final orders are effective upon issuance, except that unappealed initial decisions which become final orders pursuant to § 22.27(c) become effective at the same time they become final orders, i.e., 45 days after service of the initial decision. This clause pertains to the effective date of the order itself; the final order may establish compliance schedules, schedules for payment of penalties, dates of termination of permits, etc., notwithstanding this clause. Paragraphs (c) and (d) establish penalty payment schedules and effective dates for other relief, respectively, which shall apply unless the final order specifies otherwise. The existing rule requires payment of the penalty within 60 days after the order was received. This conflicts with the Federal Claims Collection Standards, which require payment within 30 days after the date the order was issued, unless EPA decides an extension is appropriate. See 4 CFR 102.13(g). The proposed rule therefore requires payment within 30 days after the effective date of the final order. Paragraph (c) also would require payment of penalties directly to U.S. Treasury lockboxes, rather than to the Hearing Clerks, and would make applicable to all proceedings a provision currently in § 22.39(d) regarding assessment of interest on overdue penalties. This Subsection would

specify that the collection of interest on overdue payments shall be in accordance with the Debt Collection Act, 31 U.S.C. 3717, which is applicable whether or not it is referenced in part 22. The Agency requests comment on whether the CROP should address payment of penalties by electronic transfer of funds, and if so, what procedures would be appropriate.

A new paragraph (e) would make explicit that although a respondent may choose to conclude an administrative proceeding by settlement or by allowing an initial decision to become final without appeal to the Environmental Appeals Board, each of these options falls short of exhausting the opportunities available within the CROP for administrative review. This revision would not substantively change the requirements of exhaustion of remedies, nor would it alter respondents' rights. This subsection would simply assure that respondents have notice that appeal of the final order to the Federal courts is not available where a respondent settles a case pursuant to § 22.18 or fails to exercise its right to appeal an initial decision to the Environmental Appeals Board pursuant to § 22.30.

Paragraph (f) would provide that a final order of the Environmental Appeals Board issued to a department, agency, or instrumentality of the United States pursuant to § 22.30 shall become effective (and ''final'' as that term is used in 42 U.S.C. 6961(b)(2)) thirty days after its service upon the parties, in order that the head of the affected department, agency, or instrumentality may request a conference with the Administrator. If the department, agency, or instrumentality requests a conference with the Administrator, then the Administrator's ensuing decision would become the final order. Essentially the same provision appeared in § 22.37(g), the Solid Waste Disposal Act supplemental rule. It is moved into § 22.31 in order that the same procedure also would be applicable to penalty actions brought against federal facilities under other statutes such as the Safe Drinking Water Act (42 U.S.C. 300j-6) and the Clean Air Act (42 U.S.C. 7413(d), 7524(c) and 7545(d)(1)). In making the language of § 22.37(g) apply to proceedings commenced under other statutes, reference to the Federal Facility Compliance Act would be deleted. The Agency still intends that a final order issued in a case brought under the Solid Waste Disposal Act shall constitute a final order for purposes of the Federal Facility Compliance Act. This opportunity to confer with the Administrator is available only after the Environmental Appeals Board has issued a final order on appeal, and only if requested in writing within 30 days. A motion for reconsideration by the Environmental Appeals Board is not necessary, however, such a motion does not toll the thirty-day limit unless specifically so ordered by the Environmental Appeals Board.

30. Supplemental Rules of Practice Applicable to Proceedings Authorized Under Specific Statutes

Section 22.33: The provisions discussing subpoenas have been deleted from this supplemental rule, as well as from §§ 22.34, 22.37, 22.39, 22.40, and 22.43, allowing the elimination of this and several other supplemental rules. The procedures for subpoenas are now consolidated in § 22.19, as discussed above. The Presiding Officer's authority to issue a subpoena remains dependant on the statute giving rise to the cause of action. Owing to the fact that the subpoena provisions were the only substantive elements of this supplemental rule, the entire supplemental rule applying to TSCA proceedings would be deleted.

Section 22.34: This section would be amended to include, in addition to proceedings for civil penalty assessment under Title II of the CAA, proceedings governing the assessment of a civil penalty under section 113(d) of the CAA. The latter proceedings are presently covered by § 22.43, which mostly mirrors § 22.34. The one substantive difference, the § 22.43(b)(2) provision allowing 30 days for filing an answer, is no longer necessary as a consequence of proposed changes to § 22.15. Paragraph (a) of this supplemental rule and each of the other supplemental rules also would be amended to eliminate the implication that the supplemental rules are not part of the Consolidated Rules of Practice. The term ''final order'' would be substituted for the phrase ''administrative penalty order'' in paragraph (b), for consistency and to encompass field citations as well as administrative penalty orders issued pursuant to section 113(d)(1) of the CAA.

A new paragraph (c) would apply to default orders for failure to answer a field citation. Section 59.5(d) of the Field Citation Rule provides that when a respondent fails to file a timely answer to a field citation (and fails to offer to pay the penalty under the quick resolution procedure at § 22.18(a)(2)), the Presiding Officer shall issue a default order assessing the penalty proposed in the complaint. This provision initially was proposed in the May 3, 1994, **Federal Register** (59 FR 22776), and EPA does not seek additional comment on it at this time.

Section 22.35: In the supplemental rules governing proceedings under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA proposes to amend the venue provision of paragraph (b) to address the situation where a respondent's place of residence is outside the U.S. FIFRA regulates the domestic conduct of foreign-based pesticide registrants, manufacturers, producers, distributors, applicators, etc. Accordingly, for a person who claims a place of residence outside the U.S., EPA interprets the phrase ''place of residence'', as used in 7 U.S.C. 136l(a)(3), to mean either the person's primary place of business within the U.S., or the primary place of business of the person's U.S. agent. Paragraph (c) would be deleted for consistency with changes to § 22.27(b).

Section 22.36: The supplemental rule regarding the Marine Protection, Research and Sanctuaries Act would be deleted as surplusage in light of changes made elsewhere in the CROP to accommodate permit revocation, termination and suspension proceedings, particularly in § 22.13.

Section 22.37: The scope of this supplemental rule would be expanded to include section 3005(d) of the SWDA, which authorizes termination of permits, and section 9006, which authorizes the issuance of administrative compliance orders to address violations of Underground Storage Tank (''UST'') requirements. The notice requirements presently in paragraphs (b), (c) and (d) would be deleted as surplusage. On December 2, 1980 (45 FR 79808), EPA suspended these subsections until further notice, in response to amendments to the SWDA which eliminated the pre-complaint notice requirements from the Act. Today, EPA proposes to delete the requirements entirely. The proposed revision of § 22.15, allowing 30 days for filing an answer, would make paragraph (e) surplusage as well. A new paragraph (b) would specify that a complaint may contain a compliance order issued under section 3008(a) or section 9006(a), or a corrective action order issued under section 3008(h) or section 9003(h)(4) of the SWDA. This provision is included to make clear that in these circumstances, the complaint is an ''order'' as that term is used in the aforementioned sections of the SWDA. Any such order would automatically become a final order unless, no later than thirty (30) days after the order is served, the respondent requests a hearing pursuant to § 22.15. The provision concerning the Federal

Facilities Compliance Act contained in paragraph (g) would be moved to § 22.31(f), in order that it may be applicable to actions commenced pursuant to other statutes as well as the SWDA.

Section 22.38: In paragraph (a), the scope of this supplemental rule would be expanded to include civil penalties authorized by section 311(b)(6) of the Clean Water Act. Paragraph (b) would be amended to provide a more explicit process for implementing the statutory requirement regarding state consultation. The public notice and comment provisions would be removed from paragraphs (c), (d) and (f) and placed in a separate supplemental rule, § 22.45, which would also apply to proceedings under section 300h–2(c) of the Safe Drinking Water Act. The proposed text of § 22.45 would provide much more detailed and comprehensive process than is currently provided under § 22.38(c), (d) and (f). The applicability of § 22.45 would be noted in § 22.38(a) in order to provide additional notice that both supplemental rules apply. The provision presently in paragraph (e) would be renumbered as (c), and expanded to include proceedings under section 311(b)(6) of the Clean Water Act, consistent with changes to paragraph (a). A new paragraph (d) would require that in proceedings pursuant to section 311(b)(6) of the Clean Water Act penalties be paid into the Oil Spill Liability Trust Fund.

Section 22.39: Most of the changes to this supplemental rule are consistent with changes to other supplemental rules already discussed. In addition, language proposed to be added to the main text of the CROP at § 22.31 would be deleted from § 22.39(d) (which would be renumbered as (c)).

Section 22.40: The supplemental rule regarding the Emergency Planning and Community Right-To-Know Act would be deleted in its entirety. The subpoena provisions would be deleted from this and other supplemental rules as discussed above. In addition, the provisions regarding judicial review in paragraph (c) and collection of penalties in paragraph (d) can also be deleted as surplusage. No substantive change is intended by the deletion of this supplemental rule.

Section 22.41: The only changes to the supplemental rule regarding the Asbestos Hazard Emergency Response Act are consistent with changes to other supplemental rules already discussed. No substantive change is intended by these editorial revisions.

Section 22.42: Paragraphs (b) through (e) of the Safe Drinking Water Act supplemental rule would be deleted as surplusage. No substantive change is intended by these deletions. A new paragraph (b) would allow respondents in certain non-APA proceedings the right to choose that the hearing be conducted in accordance with section 554 of the APA, as required under section 1414(g)(3)(B) of the Safe Drinking Water Act. This provision would enable respondent to make subpart I inapplicable, notwithstanding the Agency's having commenced the proceeding under subpart I, by requesting in its answer a hearing on the record in accordance with 5 U.S.C. 554. EPA proposes that a respondent's failure to exercise this right in its answer shall constitute a waiver of that right. This limitation is necessary in order to avoid the delays, disruptions, and duplications of effort which would result if a case were reassigned from a Regional Judicial Officer to an ALJ after the proceeding was well underway.

Section 22.43: The provisions of the existing § 22.43 would be incorporated into § 22.34, as discussed above. A new supplemental rule applicable to proceedings against a federal facility pursuant to the Safe Drinking Water Act Amendments of 1996, Pub. L. No. 104–182 would be codified as § 22.43. Paragraph (b) describes the effective date of any penalty order issued under section 1447(b) of the Act. Paragraph (c) describes the public notice requirements for issuance of a final penalty order.

Section 22.44: This section presents a new supplemental rule for termination of NPDES permits issued under the Clean Water Act and for permits issued under Subtitle C of the Resource Conservation and Recovery Act. This new supplemental rule has already been proposed (60 FR 65,268), and EPA does not seek additional comment at this time.

Sections 22.45: The Agency proposes to add a new supplemental rule governing public notice and comment in proceedings under section 309(g) of the Clean Water Act and section 300h–2(c) of the Safe Drinking Water Act. The detailed procedures proposed for public notice and comment are sufficiently extensive that the Agency proposes to codify them once, in a single supplemental rule applicable to these two types of proceedings, rather than repeating the same requirements in two separate rules. This supplemental rule would complement § 22.38, such that both would apply to proceedings under section 309(g) of the Clean Water Act. These public commenter rights are separate from, and in addition to, the intervention and amicus curie provisions at § 22.11.

The substance of the proposed § 22.45 replaces and expands on the procedures presently in § 22.38 (c), (d) and (f), in order to clarify commenter provisions and to fully satisfy the statutory requirements. Section 22.45(b) would require the complainant to provide public notice and an opportunity to comment on a complaint or on a proposed consent agreement where the parties agree to settle without the filing of a complaint pursuant to § 22.13(b). This provision would require the Agency to accommodate commenters in situations where the agency proposes to settle an action without the filing of a complaint. Paragraph (b)(2) sets out the type and content of the required public notice, so that the notice will provide any potential commenter with sufficient information to make an initial determination as to whether or not he wishes to comment.

Paragraph (c) expands procedures for participation by a commenter. These procedures provide a meaningful opportunity for commenters to present evidence, as required by statute, and at the same time limit the opportunity commenters might have to delay issuance of a final order through dilatory or frivolous submissions. Paragraph (c)(1) sets out the requirements for commenter participation in a proceeding. It describes both the obligations of the commenter and those of the Presiding Officer in this context. It establishes express limits on the scope of commenter participation, and gives the Presiding Officer broad discretion to further control the extent of commenter participation. Paragraph (c)(2) sets out limitations on commenter cross-examination of witnesses, and prohibits the commenter from either participating in, or being subject to, any discovery or prehearing information exchange. Paragraph (c)(3) assures that cases are not settled before the end of a required comment period.

Paragraph (c)(4) describes the procedures governing a commenter's petition to set aside a consent order where no hearing on the merits was held. The Agency believes that this language establishes appropriate limits on such requests, while at the same time meeting the requirements of the respective statutes and avoiding inappropriate tainting of the administrative record. Paragraph (c)(4)(i) requires the complainant to provide all commenters and the Regional Administrator with a copy of the proposed consent order. The Presiding Officer and Hearing Clerk do not receive a copy of the proposed order at this juncture, in order to protect the

administrative record and assure that the Presiding Officer, who may have to adjudicate the case if settlement efforts fail, is not privy to the parties' settlement positions. Paragraph (c)(4)(ii) requires that, within 30 days of receipt of the proposed order, the commenter must provide to the Regional Administrator and the parties (but not to the Presiding Officer or Hearing Clerk) any petition to set aside the consent order. Paragraph (c)(4)(iii) then permits the complainant to withdraw the proposed order within 15 days of receipt of a petition, in order to consider the matters raised. If the complainant does not withdraw the proposed order within 15 days, the Regional Administrator shall appoint a Petition Officer to review the petition and make a determination as to the issues raised. A copy of the Regional Administrator's order of appointment shall be sent to the Presiding Officer and the parties. These procedures are designed, once again, to avoid tainting the Presiding Officer or administrative record with materials relevant to settlement negotiations only. Paragraph (c)(4)(iv) gives the complainant 30 days in which to file with the Petition Officer (*not* the Presiding Officer) the complainant's response to the petition. Copies of the response are provided to the parties and commenter(s), but not to the Presiding Officer and Hearing Clerk. Paragraph (c)(4)(v) describes the Petition Officer's duties upon receipt of complainant's response. Note here that the Petition Officer's written findings will be filed with the Hearing Clerk and Presiding Officer. Paragraph (c)(4)(vi) describes the Presiding Officer's duties where the Petition Officer rules that a hearing is required and the petition for hearing is granted. Paragraph (c)(4)(vii) describes the Petition Officer's duties where the Officer determines that a hearing is not required. Paragraph (c)(4)(viii) and (ix) describe the procedures for issuance of the consent order, for appeal of such order in the appropriate U.S. District Court, and when the order becomes final after denial of appellate review.

Sections 22.46 through 22.49: Reserved.

31. Supplemental Rules for Administrative Proceedings not Governed by Section 554 of the Administrative Procedure Act

Sections 22.50 through 22.53 comprise subpart I, which presents modifications to the main text of the CROP to facilitate use of the CROP in administrative adjudications where a hearing on the record is not required. Such adjudications are commonly referred to as ''non-APA'' proceedings in reference to the Administrative Procedure Act, of which sections 554, 556 and 557 apply only to ''adjudication[s] required by statute to be determined on the record after opportunity for an agency hearing''. 5 U.S.C. 554(a)(1). A key feature of these non-APA procedures is that the Presiding Officer need not be an Administrative Law Judge, as required in proceedings subject to APA 554, 556 and 557. Other differences include greater limitations on discovery and a prohibition on interlocutory appeals, however, it is only the absence of an Administrative Law Judge which puts the subpart I procedures outside the requirements of APA 554, 555, and 556. Owing to the retention of most of subparts A through G, the subpart I procedures provide nearly the same level of procedural protection for respondent's interests as would be available in a hearing fully conforming to the requirements of subparts A through G.

The subpart I procedures would retain the extensive prehearing exchange mandated in § 22.19(a) (requiring exchange of witness lists, summaries of expected testimony, copies of documents or exhibits, and evidence relevant to the amount of the penalty). Although courts have confirmed that there is no constitutional due process right to discovery in administrative adjudications (see e.g., Silverman v. CFTC, 549 F.2d 28 (7th Cir. 1977); NLRB v. Valley Mold Co., 530 F.2d 693 (6th Cir. 1976) cert. den. 429 US 824), the prehearing exchange under § 22.19(a) provides substantial discovery well in advance of a hearing.

The procedures provided through subpart I are adequate to assure a fair hearing, notwithstanding the absence of an ALJ, additional prehearing discovery and interlocutory review. The differences between the APA and non-APA provisions of the CROP are unlikely to affect the outcome of an administrative enforcement proceeding, and unlikely to impair the accuracy of the Agency's decisionmaking. Providing an ALJ for every case, including those lacking significant legal or factual dispute, would draw limited resources away from more complex and more significant cases. Allowing interlocutory appeals and additional discovery, such as interrogatories, depositions, requests for documents, would add significant delay to administrative enforcement and could cause extraordinary resource burdens. The absence of these additional procedural protections in non-APA proceedings poses only minor risk of impairing the regulated community's interest in fair and accurate adjudications, yet making them generally available would put substantial fiscal and administrative burdens on the government. Accordingly, EPA is not obliged to provide these additional procedural protections in non-APA proceedings in order to satisfy the requirements of the due process clause. *Matthews* v. *Eldridge,* 424 U.S. 319, 344–45 (1976); also see *Chemical Waste Management, Inc.* v. *U.S. E.P.A.,* 873 F.2d 1477 (D.C. Cir. 1989).

Although the Agency has not yet through rulemaking established formal procedures for the assessment of civil penalties through non-APA proceedings, the Agency has been conducting such proceedings under the proposed part 28 procedures and program-specific guidance. Where it is not inconsistent with other regulations, EPA intends that the procedures for non-APA proceedings proposed herein should be used in non-APA penalty proceedings pending promulgation of a final rule. Accordingly, non-APA penalty cases filed after the publication of this proposed rule should follow the procedures herein. Cases that have already commenced pursuant to the proposed part 28 procedures shall continue to be governed by the proposed part 28 procedures, however, complaints withdrawn in accordance with § 28.18(a)(1) may be refiled under the proposed CROP. In addition, a proceeding commenced under the proposed part 28 may be converted into a proceeding under the proposed CROP provided that no evidentiary hearing has been held and that all parties and the Presiding Officer agree to the change.

Section 22.50: Section 22.50 defines the scope of subpart I. Paragraph (a) indicates that the initial decision to bring a proceeding pursuant to subpart I is made by the Agency and requires that the Agency indicate such decision in the complaint. The Agency may in any case decline to apply subpart I and instead give the respondent the greater process of law afforded by a proceeding conforming to section 554 of the APA. Paragraph (a) acknowledges that the Agency may not apply subpart I where a statute requires a hearing in accordance with section 554 of the Administrative Procedure Act. Examples where Congress has authorized EPA to administratively assess penalties through proceedings that are not subject to the requirements of section 554 in certain circumstances include: CWA sections 309(g)(2)(A) and 311(b)(6)(A) & (B)(i) (33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(A) & (B)(i)); section 109(a) of the Comprehensive

Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. 9609(a)); section 325(b)(1), (c), and (d) of the Emergency Planning and Community Right-To-Know Act (EPCRA) (42 U.S.C. 11045(b)(1), (c), and (d)); SDWA section 1414(g)(3)(B) (42 U.S.C. 300g–3(g)(3)(B)); and CAA section 113(d)(3) (42 U.S.C. 7413(d)(3)); and issuance of a penalty-only order or a penalty/compliance order under SDWA section 1423(c) (42 U.S.C. 300h-2(c)). At this time, EPA does not intend to alter its present practice of providing the full APA process in CERCLA and EPCRA cases, although if circumstances warrant, the Agency may in the future exercise its authority to assess CERCLA and EPCRA penalties through non-APA proceedings. EPA welcomes comment concerning the types of CERCLA and EPCRA penalty cases for which non-APA procedures would be appropriate.

Paragraph (b) describes how the subpart works in conjunction with the preceding sections of the CROP, and also identifies those sections of the CROP which are inapplicable to a non-APA proceeding brought under subpart I.

Section 22.51: The term ''Presiding Officer'' would be defined for the purposes of a proceeding under this subpart to mean a Regional Judicial Officer, and provides that the Regional Judicial Officer shall rule on all motions, notwithstanding the provisions of § 22.16(c) which provide that post-answer motions be ruled on by the Administrative Law Judge.

Section 22.52: This section defines the parameters of information exchange for purposes of non-APA proceedings. The Agency's goal is to encourage complete and voluntary information exchange by the parties and limit unnecessary motion practice. Parties would be subject to the prehearing information exchange authorized in § 22.19(a), but most additional discovery would be prohibited under this subpart. The proposed § 22.52 would also require the respondent to provide in its prehearing exchange information in regard to any economic benefit it may have enjoyed as a result of the alleged non-compliance or a failure to act. Requiring this information up-front will help to clarify penalty issues early on, and avoid excessive and time-consuming motion practice.

The proposed § 22.52 would prohibit most additional discovery that would otherwise be allowed under § 22.19(e). Although it would prohibit most discovery, the complainant would be entitled to discovery of information concerning respondent's economic benefit of noncompliance and of financial records probative of respondent's ability to pay a penalty. Under several statutes, this information must be made part of the administrative record supporting a penalty determination, but it generally is not available to the Agency except through discovery of the respondent. Accordingly, discovery of this information must be permitted in order to prevent respondents from avoiding enforcement by simply withholding information.

Section 22.53: This section prohibits interlocutory appeals in proceedings under this subpart. The Agency sees little value in allowing interlocutory appeals in these relatively informal enforcement actions, particularly since parties to a proceeding under subpart I retain full appeal rights once an initial decision is issued. The Agency is particularly concerned that permitting interlocutory appeals would slow resolution of non-APA enforcement actions considerably.

32. Appendices

Appendix A: The Appendix would be amended to reflect the current addresses of EPA Regional Offices and EPA Headquarters.

Appendix B: This new appendix would be added to provide the addresses of EPA Regional and Headquarters lockboxes. These are the addresses to which, generally, the payments of civil penalties would be sent. The Agency requests comment on whether, and if so, how the CROP should address the electronic transfer of funds in addition to, or in lieu of, payment by check.

B. Revisions to Part 59

EPA anticipates that its May 3, 1994, proposed part 59 rule on field citations (59 FR 22776) will become final while these proposed revisions to the CROP are pending. Upon final promulgation of these revisions to the CROP, subpart B of part 59 would be superseded and deleted from the CFR.

III. Invitation of Public Comment

EPA invites comments on all aspects of the revisions proposed to part 22 and part 59. For the convenience of the reader only, EPA is publishing in its entirety part 22 as it would be revised. EPA is not proposing to readopt those portions of part 22 which would remain unchanged. This Notice of Proposed Rulemaking is limited to those changes from the existing regulations described in this Notice.

Information on the time period for submission of comments and directions for their submission may be found in the **DATES** and **ADDRESSES** sections of this document.

IV. Administrative Requirements

A. The Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities, i.e., small business, small organizations, and small governmental jurisdictions. The analysis is not required, however, where the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This regulation will impose no significant costs on any small entities, because it creates no new regulatory requirements, but instead simplifies existing procedural rules. The overall economic impact on small entities is therefore believed to be nominal, if any at all. Accordingly, I hereby certify that this proposed regulation will not have a significant impact on a substantial number of small entities.

B. Executive Order 12866

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

C. Paperwork Reduction Act

This proposed rule contains no information collection activities and, therefore, no information collection request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duties on any of these governmental entities or the private sector.

List of Subjects

40 CFR Part 22

Environmental protection, Administrative practice and procedure.

40 CFR Part 59

Environmental protection, Administrative practice and procedure, Air pollution control, Labeling, Penalties, Reporting and recordkeeping requirements.

Dated: February 6, 1998.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR parts 22 and 59 as follows:

1. Part 22 is revised to read as follows:

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS

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22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.
22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.
22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.
22.40 [Reserved]
22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).
22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued under part B of the Safe Drinking Water Act.
22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.
22.44 Supplemental rules governing the termination of permits under section 402(a) of the Clean Water Act or under section 3005(d) of the Resource Conservation and Recovery Act.
22.45 Supplemental rules governing public notice and comment in proceedings under section 309(g) of the Clean Water Act and section 300h–2(c) of the Safe Drinking Water Act.
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Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

22.50 Scope of this subpart.
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Appendix A to Part 22—Addresses of EPA Regional Offices and Headquarters
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Authority: 7 U.S.C. 136l; 15 U.S.C. 2610(c), 2615(a) and 2647; 33 U.S.C. 1319(g), 1321(b)(6) and 1342(a); 33 U.S.C. 1415(a) and (f) and 1418; 42 U.S.C. 300g–3(g)(3)(B), 300h–2(c) and 300j–6(a); 42 U.S.C. 6912, 6925, 6928, 6945(c)(2), 6961, 6991b and 6991e; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547(d), 7601 and 7607(a); 42 U.S.C. 9609; 42 U.S.C. 11045; 42 U.S.C. 14304.

Subpart A—General

§ 22.01 Scope of this part.

(a) These Consolidated Rules of Practice govern all administrative adjudicatory proceedings for:

(1) The assessment of any administrative civil penalty conducted under section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act as amended (7 U.S.C. 136l(a));

(2) The assessment of any administrative civil penalty under sections 113(d), 205(c), 211(d) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d) and 7547(d)).

(3) The assessment of any administrative civil penalty or for the revocation or suspension of any permit conducted under section 105(a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a) and (f));

(4)(i) The issuance of a compliance order pursuant to section 3008(a), section 4005(c)(2), section 6001(b), or section 9006(a), suspension or revocation of a permit pursuant to section 3005(d) or section 3008(a), or the suspension or revocation of authority to operate as an interim status facility pursuant to section 3008(h) of the Solid Waste Disposal Act (''SWDA'') (42 U.S.C. 6925(d) & (e), 6928(a) & (h), 6945(c)(2), 6961(b), and 6991e(a)); or the assessment of any administrative civil penalty under sections 3008, 4005(c)(2), 6001(b), and 9006 of the SWDA (42 U.S.C. 6928, 6945(c)(2), 6961(b), and 6991e), except as provided in 40 CFR parts 24 and 124.

(ii) The issuance of corrective action orders under section 3008(h) of the SWDA only when such orders are contained within an administrative order which:

(A) Includes claims under section 3008(a) of the SWDA; or

(B) Includes a suspension or revocation of authorization to operate under section 3005(e) of the SWDA; or

(C) Seeks penalties under section 3008(h)(2) of the SWDA for non-compliance with a order issued pursuant to section 3008(h).

(iii) The issuance of corrective action orders under section 9003(h)(4) of the SWDA only when such orders are contained within administrative orders which include claims under section 9006 of the SWDA.

(5) The assessment of any administrative civil penalty conducted under sections 16(a) and 207 of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2647).

(6) The assessment of any administrative civil penalty under sections 309(g) and 311(b)(6), or the termination of any permit issued pursuant to section 402(a) of the Clean Water Act (33 U.S.C. 1319(g), 1321(b)(6) and 1342(a));

(7) The assessment of any administrative civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609);

(8) The assessment of any administrative civil penalty under section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) (42 U.S.C. 11045);

(9) The assessment of any administrative civil penalty under sections 1414(g)(3)(B), 1423(c), and 1447(b) of the Safe Drinking Water Act as amended (42 U.S.C. 300g–3(g)(3)(B), 300h–2(c), and 300j–6(b)), or the issuance of any order requiring both compliance and the assessment of an administrative civil penalty under section 1423(c).

(10) The assessment of any administrative civil penalty or the issuance of any order requiring compliance under Section 5 of the Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C. 14304).

(b) The supplemental rules set forth in subparts H and I of this part establish special procedures for proceedings identified in paragraph (a) of this section where the Act allows or requires procedures different from the procedures in subparts A through G of this part. The procedures in any applicable subpart H or I of this part supplemental rule supersede any conflicting provisions of subparts A through G of this part.

(c) Questions arising at any stage of the proceeding which are not addressed in these Consolidated Rules of Practice shall be resolved at the discretion of the Administrator, Environmental Appeals Board, Regional Administrator, or Presiding Officer, as provided for in these Consolidated Rules of Practice.

§ 22.02 Use of number and gender.

As used in these Consolidated Rules of Practice, words in the singular also include the plural and words in the masculine gender also include the feminine, and vice versa, as the case may require.

§ 22.03 Definitions.

(a) The following definitions apply to these Consolidated Rules of Practice:

Act means the particular statute authorizing the proceeding at issue.

Administrative Law Judge means an Administrative Law Judge appointed under 5 U.S.C. 3105 (see also Pub. L. 95–251, 92 Stat. 183).

Administrator means the Administrator of the U.S. Environmental Protection Agency or his delegate.

Agency means the United States Environmental Protection Agency.

Business confidentiality claim means a confidentiality claim as defined in 40 CFR 2.201(h).

Clerk of the Board means the Clerk of the Board, Mail Code 1103B, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Commenter means any person (other than a party) or representative of such person who timely:

(1) Submits in writing to the Regional Hearing Clerk that he is providing or intends to provide comments on the proposed assessment of a penalty pursuant to sections 309(g)(4) and 311(b)(6)(C) of the Clean Water Act or section 1423(c) of the Safe Drinking Water Act, whichever applies, and intends to participate in the action; and

(2) Provides the Regional Hearing Clerk with a return address.

Complainant means any person authorized to issue a complaint in accordance with §§ 22.13 and 22.14 on behalf of the Agency to persons alleged to be in violation of the Act. The complainant shall not be a member of the Environmental Appeals Board, the Regional Judicial Officer or any other person who will participate or advise in the decision.

Consolidated Rules of Practice means the regulations in this part.

Environmental Appeals Board means the Board within the Agency described in § 1.25 of this chapter.

Final Order means:

(1) An order issued by the Environmental Appeals Board or the Administrator after an appeal of an initial decision, accelerated decision,

decision to dismiss, or default order, disposing of the matter in controversy between the parties,

(2) An initial decision which becomes a final order under § 22.27(c), or

(3) A final order or consent order issued in accordance with § 22.18.

Hearing means a hearing on the record open to the public and conducted under these Consolidated Rules of Practice.

Hearing Clerk means the Hearing Clerk, Mail Code 1900, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Initial Decision means the decision issued by the Presiding Officer pursuant to §§ 22.17(c), 22.20(b) or 22.27 resolving all outstanding issues in the proceeding based upon the record of the proceedings out of which it arises.

Party means any person that participates in a hearing as complainant, respondent, or intervenor.

Permit means a permit issued under section 102 of the Marine Protection, Research and Sanctuaries Act, section 402(a) of the Clean Water Act, or section 3005(d) of the Resource Conservation and Recovery Act, or authority to operate granted pursuant to section 3005(e) of the Resource Conservation and Recovery Act.

Person includes any individual, partnership, association, corporation, and any trustee, assignee, receiver or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

Presiding Officer means an individual who presides in an administrative adjudication until an initial decision becomes final or is appealed. The Presiding Officer shall be an Administrative Law Judge, except where §§ 22.04(b), 22.16(c) or 22.51 allow a Regional Judicial Officer to serve as Presiding Officer.

Regional Administrator means, for a case initiated in an EPA Regional Office, the Regional Administrator for that Region or any officer or employee thereof to whom his authority is duly delegated.

Regional Hearing Clerk means an individual duly authorized to serve as hearing clerk for a given region. Correspondence may be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency (address of Regional Office—see Appendix A). For a case initiated at EPA Headquarters, the term Regional Hearing Clerk means the Hearing Clerk.

Regional Judicial Officer means a person designated by the Regional Administrator under § 22.04(b).

Respondent means any person proceeded against in the complaint.

(b) Terms defined in the Act and not defined in these Consolidated Rules of Practice are used consistent with the meanings given in the Act.

§ 22.04 Roles of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.

(a) *Environmental Appeals Board.* The Environmental Appeals Board: rules on appeals from the decisions, rulings and orders of a Presiding Officer in proceedings under these Consolidated Rules of Practice; acts as Presiding Officer until the respondent files an answer in proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters; and approves settlement of proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters. The Environmental Appeals Board may refer any case or motion to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and references to the Environmental Appeals Board in these Consolidated Rules of Practice shall be interpreted as referring to the Administrator. If a case or motion is referred to the Administrator by the Environmental Appeals Board, the Administrator may consult with any EPA employee concerning the matter, provided such consultation does not violate § 22.08. Motions directed to the Administrator shall not be considered except for motions for disqualification pursuant to paragraph (d) of this section, or where the Environmental Appeals Board has referred a matter to the Administrator.

(b) *Regional Judicial Officer.* Each Regional Administrator shall designate one or more Regional Judicial Officers to act as Presiding Officer in proceedings under subpart I of these Consolidated Rules of Practice, and to act as Presiding Officer until the respondent files an answer in proceedings under these Consolidated Rules of Practice to which subpart I does not apply. The Regional Administrator may also delegate to one or more Regional Judicial Officers the authority to approve settlement of proceedings pursuant to § 22.18(b)(3). These delegations will not prevent a Regional Judicial Officer from referring any motion or case to the Regional Administrator. A Regional Judicial Officer shall be an attorney who is a permanent or temporary employee of the Agency or another Federal agency and who may perform other duties within the Agency. A Regional Judicial Officer shall not have performed prosecutorial or investigative functions in connection with, nor have any interest in the outcome of, any case in which he serves as a Regional Judicial Officer.

(c) *Presiding Officer.* The Presiding Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay.

The Presiding Officer may:

(1) Conduct administrative hearings under these Consolidated Rules of Practice;

(2) Rule upon motions, requests, and offers of proof, and issue all necessary orders;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine witnesses and receive documentary or other evidence;

(5) Order a party, or an officer or agent thereof, to produce testimony, documents, or other non-privileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences against that party;

(6) Admit or exclude evidence;

(7) Hear and decide questions of facts, law, or discretion;

(8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;

(9) Issue subpoenas authorized by the Act; and

(10) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these Consolidated Rules of Practice.

(d) *Disqualification, withdrawal and reassignment.* (1) The Administrator, the Regional Administrator, the members of the Environmental Appeals Board, the Regional Judicial Officer, or the Presiding Officer may not perform functions provided for in these Consolidated Rules of Practice regarding any matter in which they have a financial interest or have any relationship with a party or with the subject matter which would make it inappropriate for them to act. Any party may at any time by motion to the Regional Administrator request that the Regional Judicial Officer be disqualified from the proceeding. Any party may at any time by motion to the Administrator, Regional Administrator,

a member of the Environmental Appeals Board, or the Presiding Officer request that he or she disqualify himself or herself from the proceeding. If such a motion to disqualify the Regional Administrator or Presiding Officer is denied, a party may appeal that ruling to the Environmental Appeals Board. If a motion to disqualify a member of the Environmental Appeals Board is denied, a party may appeal that ruling to the Administrator. The Administrator, the Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer, or the Presiding Officer may at any time withdraw from any proceeding in which they deem themselves disqualified or unable to act for any reason.

(2) If the Administrator, the Regional Administrator, the Regional Judicial Officer, or the Presiding Officer is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in paragraph (d)(1) of this section shall be assigned as a replacement. The Administrator shall assign a replacement for a Regional Administrator who withdraws or is disqualified. Should the Administrator withdraw or be disqualified, the Regional Administrator from the Region where the case originated shall replace the Administrator. If that Regional Administrator would be disqualified, the Administrator shall assign a Regional Administrator from another Region to replace the Administrator. The Regional Administrator shall assign a new Regional Judicial Officer if the original Regional Judicial Officer withdraws or is disqualified. The Chief Administrative Law Judge shall assign a new Administrative Law Judge if the original Administrative Law Judge withdraws or is disqualified.

(3) The Chief Administrative Law Judge, at any stage in the proceeding, may reassign the case to an Administrative Law Judge other than the one originally assigned in the event of the unavailability of the Administrative Law Judge or where reassignment will result in efficiency in the scheduling of hearings and would not prejudice the parties.

§ 22.05 Filing, service, and form of pleadings and documents; business confidentiality claims.

(a) *Filing of pleadings and documents.* (1) The original and one copy of each pleading or document intended to be part of the record shall be filed with the Regional Hearing Clerk when the proceeding is before the Presiding Officer, or filed with the Clerk of the Board when the proceeding is before the Environmental Appeals Board. A pleading or document is filed when it is received by the appropriate Clerk.

(2) When the Presiding Officer corresponds directly with the parties, the original of the correspondence shall be filed with the Regional Hearing Clerk. Parties who correspond directly with the Presiding Officer shall file a copy of the correspondence with the Regional Hearing Clerk.

(3) A certificate of service shall accompany each document filed or served in the proceeding.

(b) *Service of pleadings and documents.* A copy of each pleading or document filed in the proceeding shall be served on the Presiding Officer and on each party.

(1) *Service of complaint.* (i) Complainant shall serve on Respondent, or a representative authorized to receive service on Respondent's behalf, a copy of the signed original of the complaint, together with a copy of these Consolidated Rules of Practice. Service shall be made personally, by certified mail, return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.

(ii)(A) Where respondent is a domestic or foreign corporation, a partnership, or an unincorporated association which is subject to suit under a common name, complainant shall serve an officer, partner, a managing or general agent, or any other person authorized by appointment or by Federal or State law to receive service of process.

(B) Where respondent is an officer or agency of the United States complainant shall serve the officer or agency, or as otherwise permitted by law. If the agency is a corporation, the complaint shall be served as prescribed in paragraph (b)(1)(ii)(A) of this section.

(C) Where respondent is a State or local unit of government, agency, department, corporation or other instrumentality, complainant shall serve the chief executive officer thereof, or as otherwise permitted by law. Where respondent is a State or local officer, complainant shall serve such officer.

(iii) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed receipt. Such proof of service shall be filed with the Regional Hearing Clerk immediately upon completion of service.

(2) *Service of pleadings and documents other than the complaint, rulings, orders, and decisions.* All pleadings and documents other than the complaint, rulings, orders, and decisions shall be served personally, by first class mail (including certified mail or return receipt requested), or by any reliable commercial delivery service.

(c) *Form of pleadings and documents.* (1) Except as provided herein, or by order of the Presiding Officer or of the Environmental Appeals Board there are no specific requirements as to the form of pleadings and documents.

(2) The first page of every pleading or other document (after the filing of the complaint) shall contain a caption identifying the respondent and the docket number. All legal briefs and legal memoranda greater than twenty pages in length (excluding attachments) shall contain a table of contents and a table of authorities with page references.

(3) The original of any pleading or other document (other than exhibits) shall be signed by the party filing or by its attorney or other representative. The signature constitutes a representation by the signer that he has read the pleading, letter or other document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The first pleading or document filed by any person shall contain the person's name, address, and telephone number, and those of its attorney or representative, if any. Any changes in this information shall be communicated promptly to the Regional Hearing Clerk, Presiding Officer, and all parties to the proceeding. A party who fails to furnish such information and any changes thereto shall be deemed to have waived its right to notice and service in a proceeding under these Consolidated Rules of Practice.

(5) The Environmental Appeals Board or the Presiding Officer may exclude from the record any pleading or document which does not comply with this paragraph (c) of this section. Written notice of such exclusion, stating the reasons therefor, shall be promptly given to the person submitting the document. Such person may amend and resubmit any excluded document upon motion granted by the Environmental Appeals Board or the Presiding Officer, as appropriate.

(d) *Confidentiality of Business Information.* (1) A person who wishes to assert a business confidentiality claim with regard to any information contained in any pleading or document to be filed in a proceeding under these Consolidated Rules of Practice shall assert such a claim in accordance with 40 CFR part 2 at the time that the pleading or document is filed. A pleading or document filed without a claim of business confidentiality shall

be available to the public for inspection and copying.

(2) Two versions of any pleading or document which contains information claimed confidential shall be filed with the Regional Hearing Clerk:

(i) One version of the pleading or document shall contain the information claimed confidential. The cover page shall include the information required under paragraph (c)(2) of this section and the words ''Business Confidentiality Asserted''. The specific portion(s) alleged to be confidential shall be clearly identified within the document.

(ii) A second version of the pleading or document shall contain all information except the specific information claimed confidential, which shall be redacted and replaced with notes indicating the nature of the information redacted. The cover page shall state that information claimed confidential has been deleted and that a complete copy of the pleading or document containing the information claimed confidential has been filed with the Regional Hearing Clerk.

(3) Both versions of the pleading or document shall be served on the Presiding Officer and the complainant. Both versions of the pleading or document shall be served on any party, amicus, or representative thereof, authorized to receive the information claimed confidential by the person making the claim of confidentiality. Only the redacted version shall be served on persons not authorized to receive the confidential information.

(4) Only the second, redacted version shall be treated as public information. An EPA officer or employee may disclose information claimed confidential in accordance with paragraph (d)(1) of this section only as authorized under 40 CFR part 2.

§ 22.06 Filing and service of rulings, orders and decisions.

All rulings, orders, decisions, and other documents issued by the Regional Administrator or Presiding Officer shall be filed with the Regional Hearing Clerk. All such documents issued by the Environmental Appeals Board shall be filed with the Clerk of the Environmental Appeals Board. Copies of such rulings, orders, decisions, or other documents shall be served personally, by first class mail (including by certified mail or return receipt requested) or any reliable commercial delivery service, upon all parties by the Clerk of the Environmental Appeals Board or the Regional Hearing Clerk, as appropriate.

§ 22.07 Computation and extension of time.

(a) *Computation.* In computing any period of time prescribed or allowed in these Consolidated Rules of Practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal holidays shall be included. When a stated time expires on a Saturday, Sunday or Federal holiday, the stated time period shall be extended to include the next business day.

(b) *Extensions of time.* The Environmental Appeals Board or the Presiding Officer may grant an extension of time for filing any pleading or document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative. Any motion for an extension of time shall be filed sufficiently in advance of the due date so as to allow other parties reasonable opportunity to respond and to allow the Presiding Officer or Environmental Appeals Board reasonable opportunity to issue an order.

(c) *Service by mail or commercial delivery service.* Service of the complaint is complete when the return receipt is signed. Service of all other pleadings and documents is complete upon mailing or when placed in the custody of a reliable commercial delivery service. Where a pleading or document is served by first class mail or commercial delivery service, five (5) days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive pleading or document.

§ 22.08 Ex parte discussion of proceeding.

At no time after the issuance of the complaint shall the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Regional Judicial Officer, the Presiding Officer or any other person who is likely to advise these officials in the decision on the case, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any ex parte memorandum or other communication addressed to the Administrator, the Regional Administrator, the Environmental Appeals Board, the Regional Judicial Officer, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication. The requirements of this section shall not apply to any Administrator, Regional Administrator, member of the Environmental Appeals Board, Regional Judicial Officer, or Presiding Officer who has formally recused himself from all adjudicatory functions in a proceeding.

§ 22.09 Examination of documents filed.

(a) Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during Agency business hours inspect and copy any document filed in any proceeding. Such documents shall be made available by the Regional Hearing Clerk, the Hearing Clerk, or the Environmental Appeals Board, as appropriate.

(b) The cost of duplicating documents shall be borne by the person seeking copies of such documents. The Agency may waive this cost in its discretion.

Subpart B—Parties and Appearances

§ 22.10 Appearances.

Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

§ 22.11 Intervention and amicus curiae.

(a) *Intervention.* Any person desiring to become a party to a proceeding may move for leave to intervene. A motion for leave to intervene that is filed after the exchange of information pursuant to § 22.19(a) shall not be granted unless the movant shows good cause for its failure to file before such exchange of information. Any party to the proceeding may file a response to a motion to intervene within fifteen (15) days after service of the motion for leave to intervene. The Presiding Officer shall grant leave to intervene in all or part of the proceeding if: the movant claims an interest relating to the cause of action; a final order may as a practical matter impair the movant's ability to protect that interest; and the movant's interest is not adequately represented by existing parties. The intervenor shall be bound by any agreements, arrangements and other matters previously made in the proceeding unless otherwise ordered

by the Presiding Officer or the Environmental Appeals Board for good cause.

(b) *Amicus Curiae.* Any person who is not a party to a proceeding may move for leave to file an amicus brief. The motion shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. If the motion is granted, the Presiding Officer or Environmental Appeals Board shall issue an order setting the time for filing such brief. Any party to the proceeding may file a response to an amicus curiae brief within fifteen (15) days after service of the amicus curiae brief.

§ 22.12 Consolidation and severance.

(a) *Consolidation.* The Presiding Officer may consolidate any or all matters at issue in two or more proceedings subject to these Consolidated Rules of Practice where: there exist common parties or common questions of fact or law; consolidation would expedite and simplify consideration of the issues; and consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings. Where a proceeding subject to the provisions of subpart I of this part is consolidated with a proceeding to which subpart I does not apply, the procedures of subpart I of this part shall not apply to the consolidated proceeding.

(b) *Severance.* The Presiding Officer may, for good cause, order any proceedings severed with respect to any or all parties or issues.

Subpart C—Prehearing Procedures

§ 22.13 Commencement of a proceeding.

(a) Any proceeding subject to these Consolidated Rules of Practice is commenced by filing with the Regional Hearing Clerk a complaint conforming to § 22.14.

(b) Notwithstanding paragraph (a) of this section, where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding not subject to the public notice and comment provisions of § 22.45 may be simultaneously commenced and concluded by the issuance of a consent agreement and consent order pursuant to § 22.18(b)(2) and (3).

§ 22.14 Content and amendment of the complaint.

(a) *Content of complaint.* Each complaint shall include:

(1) A statement reciting the section(s) of the Act authorizing the issuance of the complaint;

(2) Specific reference to each provision of the Act, implementing regulations, permit or order which respondent is alleged to have violated;

(3) A concise statement of the factual basis for alleging the violation;

(4) A description of all relief sought, including one or more of the following:

(i) The amount of the civil penalty which is proposed to be assessed, and a brief explanation of the proposed penalty;

(ii) Where a specific penalty demand is not made, a brief explanation of the severity of each violation alleged and a citation to the statutory penalty authority applicable for each violation alleged in the complaint;

(iii) A request for revocation, termination or suspension of all or part of a permit, and a statement of the terms and conditions of such revocation, termination or suspension; or

(iv) A request for a compliance or corrective action order and a statement of the terms and conditions thereof;

(5) Notice of respondent's right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of any proposed penalty, compliance or corrective action order, or permit revocation, termination or suspension; and

(6) Notice if subpart I of this part applies to such hearing.

(b) *Rules of practice.* A copy of these Consolidated Rules of Practice shall accompany each complaint served.

(c) *Amendment of the complaint.* The complainant may amend the complaint once as a matter of right at any time before the answer is filed. Otherwise the complainant may amend the complaint only upon motion granted by the Presiding Officer. Respondent shall have twenty (20) additional days from the date of service of the amended complaint to file its answer.

(d) *Withdrawal of the complaint.* The complainant may withdraw the complaint, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, the complainant may withdraw the complaint, or any part thereof, without prejudice only upon motion granted by the Presiding Officer.

§ 22.15 Answer to the complaint.

(a) *General.* Where respondent: Contests any material fact upon which the complaint is based; contends that the proposed penalty, compliance or corrective action order, or permit revocation, termination or suspension, as the case may be, is inappropriate; or contends that it is entitled to judgment as a matter of law, it shall file an original and one copy of a written answer to the complaint with the Regional Hearing Clerk and shall serve copies of the answer on all other parties. Any such answer to the complaint must be filed with the Regional Hearing Clerk within thirty (30) days after service of the complaint.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state: The circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which respondent disputes; the basis for opposing the proposed relief; and whether a hearing is requested.

(c) *Request for a hearing.* A hearing upon the issues raised by the complaint and answer shall be held if requested by respondent in its answer. If the respondent does not request a hearing, the Presiding Officer may hold a hearing if issues appropriate for adjudication are raised in the answer.

(d) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

(e) *Amendment of the answer.* The respondent may amend the answer to the complaint upon motion granted by the Presiding Officer.

§ 22.16 Motions.

(a) *General.* All motions, except those made orally on the record during a hearing, shall: be in writing; state the grounds therefor, with particularity; set forth the relief sought; and be accompanied by any affidavit, certificate, other evidence or legal memorandum relied upon. Motions shall be served as provided by § 22.05(b)(2). Upon the filing of a motion, other parties may file responses to the motion and the movant may file a reply to the response; any additional responsive documents shall be permitted only by order of the Presiding Officer or Environmental Appeals Board, as appropriate.

(b) *Response to motions.* A party's response to any written motion must be filed within fifteen (15) days after service of such motion. The movant's reply to any written response must be filed within ten (10) days after service of such response and shall be limited to issues raised in the response. The Presiding Officer or the Environmental

Appeals Board may set a shorter or longer time for response or reply, or make other orders concerning the disposition of motions. The response or reply shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. Any party who fails to respond within the designated period waives any objection to the granting of the motion.

(c) *Decision.* The Regional Judicial Officer (or in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board) shall rule on all motions filed or made before an answer to the complaint is filed. Except as provided in § 22.29(c), an Administrative Law Judge shall rule on all motions filed or made after an answer is filed and before an initial decision has become final or has been appealed. The Environmental Appeals Board shall rule as provided in § 22.29(c) and on all motions filed or made after an appeal of the initial decision is filed, except as provided pursuant to § 22.28.

(d) *Oral argument.* The Presiding Officer or the Environmental Appeals Board may permit oral argument on motions in its discretion.

§ 22.17 Default.

(a) *Default.* A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint; upon failure to comply with the information exchange requirements of § 22.19(a) or an order of the Presiding Officer; or upon failure to appear at a conference or hearing. Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing on such factual allegations. Default by complainant constitutes a waiver of complainant's right to proceed on the merits of the action, and shall result in the dismissal of the complaint with prejudice.

(b) *Motion for default.* A motion for default shall set forth the grounds for finding a party in default. Where the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested. The motion shall include as attachments any affidavit, certificate, other evidence or legal memoranda relied upon in support of the motion.

(c) *Default order.* When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party unless the record shows good cause why a default order should not be issued. This order shall constitute the initial decision under these Consolidated Rules of Practice, except that the relief proposed in the complaint or the motion for default shall be ordered unless the record clearly demonstrates that the requested relief is inconsistent with the Act. For good cause shown, the Presiding Officer may set aside a default order.

(d) *Payment of Penalty; Effective Date of Compliance or Corrective Action Orders, Revocation or Suspension of Permits.* Any penalty assessed in the default order shall become due and payable by respondent without further proceedings thirty (30) days after the default order becomes final under § 22.27(c). Any default order requiring compliance or corrective action shall be effective and enforceable without further proceedings on the date the default order becomes final under § 22.27(c). If the default order revokes or suspends a permit, the conditions of the revocation or suspension shall become effective without further proceedings on the date that the default order becomes final under § 22.27(c).

§ 22.18 Quick resolution; settlement; alternative dispute resolution.

(a) *Quick resolution.* (1) Any respondent who receives a complaint containing a specific proposed penalty may resolve the action at any time by paying the proposed penalty in full into the appropriate lockbox (see Appendix B of this part) and by filing with the Regional Hearing Clerk a copy of the check. If the respondent pays the proposed penalty in full within 30 days after receiving the complaint, then no answer need be filed. Paragraph (a) of this secttion shall not apply to any complaint which seeks a compliance or corrective action order, or to revoke, terminate or suspend a permit. In an action subject to the public comment provisions of § 22.45, this quick resolution is not available until ten (10) days after the close of the comment period.

(2) Any respondent who wishes to resolve an action by paying the proposed penalty instead of filing an answer, but who needs additional time to pay the penalty, may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving the complaint stating that the respondent agrees to pay the proposed penalty in accordance with paragraph (a)(1) of this section. The written statement need not contain any response to, or admission of, the allegations in the complaint. Within sixty days (60) days after receiving the complaint, the respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the complaint may subject the respondent to default pursuant to § 22.17.

(3) Upon receipt of payment in full, the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board, shall issue a final order. Payment by respondent shall constitute a waiver of respondent's rights to a hearing and to appeal the final order.

(b) *Settlement.* (1) The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. The parties may engage in settlement discussions whether or not the respondent requests a hearing. Settlement discussions shall not affect the respondent's obligation to file a timely answer under § 22.15.

(2) *Consent agreement.* Any and all terms and conditions of a settlement shall be recorded in a written consent agreement signed by all parties or their representatives. The consent agreement shall state that, for the purpose of the proceeding, respondent: Admits the jurisdictional allegations of the complaint; admits the facts stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; consents to the assessment of any stated civil penalty, to the issuance of any specified compliance or corrective action order, to any conditions specified in the consent agreement, and to any stated permit revocation, termination or suspension; and waives any right to a hearing and its right to appeal the consent order accompanying the consent agreement. Where Complainant elects to commence a proceeding pursuant to § 22.13(b), the consent agreement shall also contain the elements described at § 22.14(a)(1)–(3). The parties shall forward the executed consent agreement and a proposed consent order to the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board.

(3) *Consent order.* No settlement or consent agreement shall dispose of any proceeding under the Consolidated Rules of Practice without a consent order from the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board. The consent order shall ratify the parties' consent agreement and constitute a final order.

(c) *Scope of resolution or settlement.* Full payment of the penalty proposed in

a complaint pursuant to paragraph (a) of this section or settlement pursuant to paragraph (b) of this section shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Full payment of the penalty proposed in a complaint pursuant to paragraph (a) of this section or settlement pursuant to paragraph (b) of this section shall only resolve respondent's liability for Federal civil penalties for the violations and facts alleged in the complaint.

(d) *Alternative Means of Dispute Resolution.* (1) The parties may engage in any process within the scope of the Alternative Dispute Resolution Act (''ADRA''), 5 U.S.C. 581 *et seq.*, which may facilitate voluntary settlement efforts. Such process shall be subject to the confidentiality provisions of the ADRA.

(2) Dispute resolution under paragraph (d) of this section does not divest the Presiding Officer of jurisdiction and does not automatically stay the proceeding. All provisions of these Consolidated Rules of Practice remain in effect notwithstanding any dispute resolution proceeding.

(3) The parties may choose any person to act as a neutral, or may move for the appointment of a neutral. If the Presiding Officer concurs with a motion for the appointment of a neutral, the Presiding Officer shall forward the motion to the Chief Administrative Law Judge who shall designate a qualified neutral.

§ 22.19 Prehearing information exchange; prehearing conference; other discovery.

(a) *Prehearing information exchange.* Unless otherwise ordered by the Presiding Officer, each party shall provide to all parties: the names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of their expected testimony, or a statement that no witnesses will be called; and copies of all documents and exhibits which it intends to introduce into evidence at the hearing. If the proceeding is for the assessment of a penalty, complainant shall specify a proposed penalty if it has not done so in the complaint and state the basis for that penalty, and respondent shall provide all factual information it considers relevant to the assessment of a penalty (except evidence relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence). Documents and exhibits shall be marked for identification as ordered by the Presiding Officer. Documents or exhibits that have not been included and testimony that has not been summarized in prehearing information exchange may not be admitted into evidence except as provided in § 22.22(a).

(b) *Prehearing conference.* The Presiding Officer, at any time before the hearing begins, may direct the parties and their counsel or other representatives to participate in a conference before him to consider:

(1) Settlement of the case;

(2) Simplification of issues and stipulation of facts not in dispute;

(3) The necessity or desirability of amendments to pleadings;

(4) The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;

(5) The limitation of the number of expert or other witnesses;

(6) The time and place for the hearing; and

(7) Any other matters which may expedite the disposition of the proceeding.

(c) *Record of the prehearing conference.* No transcript of a prehearing conference relating to settlement shall be made. With respect to other prehearing conferences, no transcript of any prehearing conferences shall be made unless ordered by the Presiding Officer. The Presiding Officer shall prepare and file for the record a written summary of the action taken at the conference. The summary shall incorporate any written stipulations or agreements of the parties and all rulings and appropriate orders containing directions to the parties.

(d) *Location of prehearing conference.* The prehearing conference shall be held in the county where the respondent resides or conducts the business which the hearing concerns, in the city in which the relevant Environmental Protection Agency Regional Office is located, or in Washington, DC, unless the Presiding Officer determines that there is good cause to hold it at another location or by telephone.

(e) *Other discovery.* (1) After the information exchange provided for in paragraph (a) of this section, a party may move for additional discovery. The motion shall specify the method of discovery sought, provide the proposed discovery instruments, and describe in detail the nature of the information and/or documents sought (and, where relevant, the proposed time and place where discovery would be conducted). The Presiding Officer may order such other discovery only if it:

(i) Will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party;

(ii) Seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and

(iii) Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.

(2) Settlement positions and information regarding their development (such as penalty calculations based upon Agency settlement policies) shall not be discoverable.

(3) The Presiding Officer may order depositions upon oral questions only in accordance with paragraph (e)(1) of this section and upon an additional finding that:

(i) The information sought cannot be obtained by alternative methods of discovery; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(4) The Presiding Officer may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act, in accordance with paragraph (e)(1) of this section and upon an additional showing of the grounds and necessity therefor. Subpoenas shall be served in accordance with § 22.05(b)(1). Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Any fees shall be paid by the party at whose request the witness appears. Where a witness appears pursuant to a request initiated by the Presiding Officer, fees shall be paid by the Agency.

(5) Nothing in paragraph (e) of this section shall limit a party's right to request admissions or stipulations, a respondent's right to request Agency records under the Federal Freedom of Information Act, 5 U.S.C. 552, or EPA's authority under the Act to conduct inspections, issue information request letters or administrative subpoenas, or otherwise obtain information.

(f) *Supplementing prior exchanges.* A party who has made an information exchange under paragraph (a) of this section, or who has responded to a request for information or a discovery order pursuant to paragraph (e) of this section, shall promptly supplement or correct the exchange when the party learns that the information exchanged or response provided is incomplete,

inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party pursuant to this section.

(g) Where a party fails to provide information within its control as required pursuant to this section, the Presiding Officer may:

(1) Infer that the information would be adverse to the party failing to provide it;

(2) Exclude the information from evidence; or

(3) Issue a default order under § 22.17(a).

§ 22.20 Accelerated decision; decision to dismiss.

(a) *General.* The Presiding Officer may at any time render an accelerated decision in favor of a party as to any or all parts of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law. The Presiding Officer, upon motion of the respondent, may at any time dismiss an action without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the complainant.

(b) *Effect.* (1) If an accelerated decision or a decision to dismiss is issued as to all issues and claims in the proceeding, the decision constitutes an initial decision of the Presiding Officer, and shall be filed with the Regional Hearing Clerk.

(2) If an accelerated decision or a decision to dismiss is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted. He shall thereupon issue an interlocutory order specifying the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed.

Subpart D—Hearing Procedures

§ 22.21 Assignment of Presiding Officer; scheduling the hearing.

(a) When an answer is filed, the Regional Hearing Clerk shall forward the complaint, the answer, and any other documents filed in the proceeding to the Chief Administrative Law Judge who shall serve as Presiding Officer or assign another Administrative Law Judge as Presiding Officer. The Presiding Officer shall then obtain the case file from the Chief Administrative Law Judge and notify the parties of his assignment.

(b) *Notice of hearing.* If the respondent requests a hearing in his answer, or one is ordered by the Presiding Officer under § 22.15(c), the Presiding Officer shall serve upon the parties a notice of hearing setting forth a time and place for the hearing. The Presiding Officer may issue the notice of hearing at any appropriate time, but not later than twenty (20) days prior to the date set for the hearing.

(c) *Postponement of hearing.* No request for postponement of a hearing shall be granted except upon motion and for good cause shown.

(d) *Location of the hearing.* The location of the hearing shall be determined in accordance with the method for determining the location of a prehearing conference under § 22.19(d).

§ 22.22 Evidence.

(a) *General.* (1) The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, unreliable, or of little probative value, except that evidence relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence is not admissible. If, however, a party fails to provide any document, exhibit, witness name or summary of expected testimony required to be exchanged under § 22.19(a) or (f) to all parties at least fifteen (15) days before the hearing date, the Presiding Officer shall not admit the document, exhibit or testimony into evidence, unless the non-exchanging party had good cause for failing to exchange the required information and provided the required information to all other parties as soon as it had control of the information, or had good cause for not doing so.

(2) In the presentation, admission, disposition, and use of oral and written evidence, EPA officers, employees and authorized representatives shall preserve the confidentiality of information claimed confidential, whether or not the claim is made by a party to the proceeding, unless disclosure is authorized pursuant to 40 CFR part 2. A business confidentiality claim shall not prevent information from being introduced into evidence, but shall instead require that the information be treated in accordance with 40 CFR part 2, subpart B. The Presiding Officer or the Environmental Appeals Board may consider such evidence in a proceeding closed to the public, and which may be before some, but not all, parties, as necessary. Such proceeding shall be closed only to the extent necessary to comply with 40 CFR part 2, subpart B, for information claimed confidential. Any affected person may move for an order protecting the information claimed confidential.

(b) *Examination of witnesses.* Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in these Consolidated Rules of Practice or by the Presiding Officer. Parties shall have the right to cross-examine a witness who appears at the hearing provided that such cross-examination is not unduly repetitious.

(c) *Written testimony.* The Presiding Officer may admit and insert into the record as evidence, in lieu of oral testimony, written testimony prepared by a witness. The admissibility of any part of the testimony shall be subject to the same rules as if the testimony were produced under oral examination. Before any such testimony is read or admitted into evidence, the witness shall deliver a copy of the testimony to the Presiding Officer, the reporter, and opposing counsel. The witness presenting the testimony shall swear to or affirm the testimony and shall be subject to appropriate oral cross-examination.

(d) *Admission of affidavits where the witness is unavailable.* The Presiding Officer may admit into evidence affidavits of witnesses who are unavailable. The term ''unavailable'' shall have the meaning accorded to it by Rule 804(a) of the Federal Rules of Evidence.

(e) *Exhibits.* Where practicable, an original and one copy of each exhibit shall be filed with the Presiding Officer for the record and a copy shall be furnished to each party. A true copy of any exhibit may be substituted for the original.

(f) *Official notice.* Official notice may be taken of any matter which can be judicially noticed in the Federal courts and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show that such facts are erroneously noticed.

§ 22.23 Objections and offers of proof.

(a) *Objection.* Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the Presiding Officer on any objection and the reasons given for it shall be part of the record. An exception to each objection overruled shall be automatic

and is not waived by further participation in the hearing.

(b) *Offers of proof.* Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. The offer of proof for excluded documents or exhibits shall consist of the documents or exhibits excluded. Where the Environmental Appeals Board decides that the ruling of the Presiding Officer in excluding the evidence was both erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence.

§ 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.

(a) The complainant has the burdens of presentation and persuasion that the violation occurred as set forth in the complaint and that the relief sought is appropriate. Following complainant's establishment of a prima facie case, respondent shall have the burden of presenting any defense to the allegations set forth in the complaint and any response or evidence with respect to the appropriate relief. The respondent has the burdens of presentation and persuasion for any affirmative defenses.

(b) Each matter of controversy shall be decided by the Presiding Officer upon a preponderance of the evidence.

§ 22.25 Filing the transcript.

The hearing shall be transcribed verbatim. Promptly following the taking of the last evidence, the reporter shall transmit to the Regional Hearing Clerk the original and as many copies of the transcript of testimony as are called for in the reporter's contract with the Agency, and also shall transmit to the Presiding Officer a copy of the transcript. A certificate of service shall accompany each copy of the transcript. The Regional Hearing Clerk shall notify all parties of the availability of the transcript and shall furnish the parties with a copy of the transcript upon payment of the cost of reproduction, unless a party can show that the cost is unduly burdensome. Any person not a party to the proceeding may receive a copy of the transcript upon payment of the reproduction fee, except for those parts of the transcript ordered to be kept confidential by the Presiding Officer. Any party may file a motion to conform the transcript to the actual testimony within twenty (20) days after the parties are notified of the availability of the transcript.

§ 22.26 Proposed findings, conclusions, and order.

Within twenty (20) days after the parties are notified of the availability of the transcript, or within such longer time as may be fixed by the Presiding Officer, any party may submit for the consideration of the Presiding Officer, proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. The Presiding Officer shall set a time by which reply briefs must be submitted. All submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

Subpart E—Initial Decision and Motion to Reopen a Hearing

§ 22.27 Initial Decision.

(a) *Filing and contents.* After the period for filing reply briefs under § 22.26 has expired, the Presiding Officer shall issue an initial decision. The initial decision shall contain findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefor, and a recommended civil penalty assessment, compliance order, corrective action order, or permit revocation and suspension, if appropriate. Upon receipt of an initial decision, the Regional Hearing Clerk shall forward the record of the proceeding to the Hearing Clerk and shall forward copies of the initial decision to the Environmental Appeals Board and the Assistant Administrator for the Office of Enforcement and Compliance Assurance.

(b) *Amount of civil penalty.* If the Presiding Officer determines that a violation has occurred and the complaint seeks a civil penalty, the Presiding Officer shall determine the amount of the recommended civil penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act. If the Presiding Officer decides to assess a penalty different in amount from the penalty recommended to be assessed in the complaint, the Presiding Officer shall set forth in the initial decision the specific reasons for the increase or decrease. The Presiding Officer shall explain in detail in the initial decision how the penalty to be assessed corresponds to any penalty criteria set forth in the Act. If the respondent has defaulted, the Presiding Officer shall not assess a penalty greater than that recommended to be assessed in the complaint or in the motion for default, whichever is less.

(c) *Effect of initial decision.* The initial decision of the Presiding Officer shall become a final order forty-five (45) days after its service upon the parties and without further proceedings unless: a party moves to reopen the hearing; a party appeals the initial decision to the Environmental Appeals Board; a party moves to set aside a default order; or the Environmental Appeals Board elects to review the initial decision on its own initiative. An initial decision that is appealed to the Environmental Appeals Board shall not be final or operative pending the Environmental Appeals Board's issuance of a final order.

§ 22.28 Motion to reopen a hearing.

(a) *Filing and content.* A motion to reopen a hearing to take further evidence must be made no later than twenty (20) days after service of the initial decision and shall state the specific grounds upon which relief is sought. Where the movant seeks to introduce new evidence, the motion shall: state briefly the nature and purpose of the evidence to be adduced; show that such evidence is not cumulative; and show good cause why such evidence was not adduced at the hearing. The motion shall be made to the Presiding Officer and filed with the Regional Hearing Clerk.

(b) *Disposition of motion to reopen a hearing.* Within 15 (fifteen) days following the service of a motion to reopen a hearing, any other party to the proceeding may file with the Regional Hearing Clerk and serve on all other parties a response. A reopened hearing shall be governed by the applicable sections of these Consolidated Rules of Practice. The filing of a motion to reopen a hearing shall automatically stay the running of the time periods for an initial decision becoming final under § 22.27(c) and for appeal under § 22.30. These time periods shall begin again in full when the motion is denied or an amended initial decision is served.

Subpart F—Appeals and Administrative Review

§ 22.29 Appeal from or review of interlocutory orders or rulings.

(a) *Request for interlocutory appeal.* Appeals from orders or rulings other than an initial decision shall be allowed only at the discretion of the Environmental Appeals Board. A party seeking interlocutory appeal of such orders or rulings to the Environmental Appeals Board shall file a motion within ten (10) days of service of the

order or ruling, requesting that the Presiding Officer forward the order or ruling to Environmental Appeals Board for review, and stating briefly the grounds for the appeal.

(b) *Availability of interlocutory appeal.* The Presiding Officer may recommend any order or ruling for review by the Environmental Appeals Board when: (1) The order or ruling involves an important question of law or policy concerning which there is substantial grounds for difference of opinion; and (2) either an immediate appeal from the order or ruling will materially advance the ultimate termination of the proceeding; or review after the final order is issued will be inadequate or ineffective.

(c) *Decision.* If the Presiding Officer has recommended review and the Environmental Appeals Board determines that interlocutory review is inappropriate, or takes no action within thirty (30) days of the Presiding Officer's recommendation, the appeal is dismissed. When the Presiding Officer declines to recommend review of an order or ruling, it may be reviewed by the Environmental Appeals Board only upon appeal from the initial decision, except when the Environmental Appeals Board determines, upon motion of a party and in exceptional circumstances, that to delay review would be contrary to the public interest. Such motion shall be made within ten (10) days of service of an order of the Presiding Officer refusing to recommend such order or ruling for interlocutory review.

§ 22.30 Appeal from or review of initial decision.

(a) *Notice of appeal.* (1) Within 30 days after the initial decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board (Clerk of the Board (Mail Code 1103B), United States Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Hand deliveries may be made at Suite 500, 607 14th Street, NW.). Appellant shall serve a copy of the notice of appeal upon the Regional Hearing Clerk. Appellant shall simultaneously serve one copy of the notice and brief upon all other parties and amicus curiae. The notice of appeal shall summarize the order or ruling, or part thereof, appealed from. The appellant's brief shall contain tables of contents and authorities (with page references), a statement of the issues presented for review, a statement of the nature of the case and the facts relevant to the issues presented for review (with appropriate references to the record), argument on the issues presented, a short conclusion stating the precise relief sought, alternative findings of fact, and alternative conclusions regarding issues of law or discretion. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal on any issue within twenty (20) days after the date on which the first notice of appeal was served.

(2) Within twenty (20) days of service of notices of appeal and briefs under paragraph (a)(1) of this section, any other party or amicus curiae may file and serve with the Environmental Appeals Board an original and one copy of a response brief responding to argument raised by the appellant, together with reference to the relevant portions of the record, initial decision, or opposing brief. Appellee shall simultaneously serve one copy of the response brief upon each party and amicus curiae. Response briefs shall be limited to the scope of the appeal brief. Further briefs may be filed only with the permission of the Environmental Appeals Board.

(b) *Sua sponte review by the Environmental Appeals Board.* Whenever the Environmental Appeals Board determines to review an initial decision on its own initiative, it shall file notice of its intent to review that decision with the Clerk of the Environmental Appeals Board, and serve it upon the Regional Hearing Clerk and the parties within forty-five (45) days after the initial decision was served upon the parties. The notice shall include a statement of issues to be briefed by the parties and a time schedule for the filing and service of briefs.

(c) *Scope of appeal or review.* The parties' rights of appeal shall be limited to those issues raised during the course of the proceeding and by the initial decision. If the Environmental Appeals Board determines that issues raised, but not appealed by the parties, should be argued, it shall give the parties reasonable written notice of such determination to permit preparation of adequate argument. The Environmental Appeals Board may remand the case to the Presiding Officer for further proceedings.

(d) *Argument before the Environmental Appeals Board.* The Environmental Appeals Board may, at its discretion, order oral argument on any or all issues in a proceeding.

(e) *Motions on appeal.* All motions made during the course of an appeal shall conform to § 22.16 unless otherwise provided.

(f) *Decision.* The Environmental Appeals Board shall adopt, modify, or set aside the findings of fact and conclusions of law or discretion contained in the decision or order being reviewed, and shall set forth in the final order the reasons for its actions. The Environmental Appeals Board may assess a penalty that is higher or lower than the amount recommended to be assessed in the decision or order being reviewed or from the amount sought in the complaint, except that if the order being reviewed is a default order, the Environmental Appeals Board may not increase the amount of the penalty above that proposed in the complaint or in the motion for default, whichever is less. The Environmental Appeals Board may adopt, modify or set aside any recommended compliance or corrective action order or any permit revocation, termination or suspension.

Subpart G—Final Order

§ 22.31 Final order.

(a) *Effect of final order.* A final order constitutes the final Agency action in a proceeding. The final order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. The final order shall resolve respondent's liability for a civil penalty, compliance or corrective action order, or the status of a permit or authority to operate, only for the violations and facts alleged in the complaint. The final order does not waive, extinguish or otherwise affect respondent's obligation to comply with all applicable provisions of the Act and regulations promulgated thereunder.

(b) *Effective date.* A final order is effective upon filing. Where an initial decision becomes a final order pursuant to § 22.27(c), the final order is effective forty-five (45) days after the initial decision is served on the parties.

(c) *Payment of a civil penalty.* The respondent shall pay the full amount of any civil penalty assessed in the final order within thirty (30) days after the effective date of the final order unless otherwise ordered. Payment shall be made by forwarding to the appropriate lockbox (see Appendix B of this part) a cashier's check or certified check in the amount of the penalty assessed in the final order, payable to the order of the ''Treasurer, United States of America'', or in a case pursuant to § 22.1(a)(7), ''EPA, Hazardous Substances Superfund,'' in the amount assessed, and noting the case title and docket

number. Respondent shall serve copies of the check on the Regional Hearing Clerk and on complainant. Collection of interest on overdue payments shall be in accordance with the Debt Collection Act, 31 U.S.C. 3717.

(d) *Other relief.* Any final order requiring compliance or corrective action, or permit revocation, termination, or suspension, shall become effective and enforceable without further proceedings on the effective date of the final order unless otherwise ordered.

(e) *Exhaustion of remedies.* Respondent may appeal a final order as provided under the Act, except that:

(1) Where a respondent fails to appeal an initial decision to the Environmental Appeals Board pursuant to § 22.30 and that initial decision becomes a final order pursuant to § 22.27(c), respondent waives its rights to judicial review; and

(2) A respondent which elects to resolve a proceeding pursuant to § 22.18 waives its rights to judicial review.

(f) *Final orders to Federal agencies on appeal.* (1) A final order of the Environmental Appeals Board issued to a department, agency, or instrumentality of the United States pursuant to § 22.30 shall become effective thirty days after its service upon the parties unless the head of the affected department, agency, or instrumentality requests a conference with the Administrator in writing and serves a copy of the request on the parties of record within thirty days of service of the final order. In that event, a decision by the Administrator shall become the final order.

(2) A motion for reconsideration pursuant to § 22.32 shall not toll the thirty-day period described in paragraph (f)(1) of this section unless specifically so ordered by the Environmental Appeals Board.

§ 22.32 Motion to reconsider a final order.

Motions to reconsider a final order shall be filed within ten (10) days after service of the final order. Motions must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator pursuant to § 22.04(a) and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless so ordered by the Environmental Appeals Board.

Subpart H—Supplemental Rules

§ 22.33 [Reserved]

§ 22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.01 through 22.32, in administrative proceedings to assess a civil penalty conducted under sections 113(d), 205(c), 211(d), and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d), and 7547(d)). Where inconsistencies exist between this section and §§ 22.01 through 22.32, this section shall apply.

(b) *Issuance of notice.* Prior to the issuance of a final order assessing a civil penalty, the person to whom the order is to be issued shall be given written notice of the proposed issuance of the order. Such notice shall be provided by the issuance of a complaint pursuant to § 22.13.

(c) *Default on field citation.* When a respondent fails to file a timely answer to a field citation issued pursuant to 40 CFR part 59 [1] and fails to submit a timely statement under § 22.18(a)(2) of these Consolidated Rules of Practice, the Presiding Officer shall issue a default order assessing the penalty proposed in the complaint.

§ 22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.01 through 22.32, in administrative proceedings to assess a civil penalty conducted under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136*l*(a)). Where inconsistencies exist between this section and §§ 22.01 through 22.32, this section shall apply.

(b) *Venue.* The prehearing conference and the hearing shall be held in the county, parish, or incorporated city of the residence of the person charged, unless otherwise agreed in writing by all parties. For a person whose residence is outside the United States and outside any territory or possession of the United States, the prehearing conference and the hearing shall be held at the location listed in Appendix A of this part that is closest to either the person's primary place of business within the United States, or the primary place of business of the person's U.S. agent, unless otherwise agreed by all parties.

§ 22.36 [Reserved].

§ 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.01 through 22.32, in administrative proceedings under sections 3005(d) and (e), 3008, 9003 and 9006 of the Solid Waste Disposal Act (42 U.S.C. 6925(d) and (e), 6928, 6991b and 6991e) (''SWDA''). Where inconsistencies exist between this section and §§ 22.01 through 22.32, this section shall apply.

(b) *Corrective action and compliance orders.* A complaint may contain a compliance order issued under section 3008(a) or section 9006(a), or a corrective action order issued under section 3008(h) or section 9003(h)(4) of the SWDA. Any such order shall automatically become a final order unless, no later than thirty (30) days after the order is served, the respondent requests a hearing pursuant to § 22.15.

§ 22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.01 through 22.32 and § 22.45, in administrative proceedings for the assessment of any civil penalty under section 309(g) or section 311(b)(6) of the Clean Water Act (''CWA'')(33 U.S.C. 1319(g) and 1321(b)(6)). Where inconsistencies exist between this section and §§ 22.01 through 22.32, this section shall apply.

(b) *Consultation with states.* For proceedings pursuant to section 309(g), the complainant shall, within thirty days after issuing a complaint, provide the State agency with the most direct authority over the matters at issue in the case an opportunity to consult with the complainant.

(c) *Administrative procedure and judicial review.* Action of the Administrator for which review could have been obtained under section 509(b)(1) of the CWA shall not be subject to review in an administrative proceeding for the assessment of a civil penalty under section 309(g) or section 311(b)(6).

(d) Notwithstanding § 22.31(b), respondent shall make payment of a civil penalty assessed pursuant to section 311(b)(6) of the Clean Water Act, 33 U.S.C. 1321(b)(6), by sending to the address provided by the complainant a cashier's check or certified check in the amount of the penalty assessed in the final order payable to the ''Oil Spill Liability Trust Fund''.

[1] This proposed rule on field citation program published in the **Federal Register** on May 3, 1994 at 59 FR 22776.

§ 22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.10 through 22.32, in administrative proceedings for the assessment of any civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609). Where inconsistencies exist between this section and §§ 22.01 through 22.32, this section shall apply.

(b) *Judicial review.* Any person who requested a hearing with respect to a Class II civil penalty under section 109 of CERCLA and who is the recipient of a final order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia or for any other circuit in which such person resides or transacts business. Any person who requested a hearing with respect to a Class I civil penalty under section 109 of CERCLA and who is the recipient of a final order assessing the civil penalty may file a petition for judicial review of such order with the appropriate district court of the United States. All petitions must be filed within 30 days of the date the order making the assessment was issued.

(c) *Payment of civil penalty assessed.* Payment of civil penalties assessed in the final order shall be made by forwarding a cashier's check, payable to the ''EPA'', Hazardous Substances Superfund,'' in the amount assessed, and noting the case title and docket number, to the appropriate regional Superfund Lockbox Depository.

§ 22.40 [Reserved]

§ 22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).

(a) *Scope.* This section shall apply, in conjunction with §§ 22.01 through 22.32, in administrative proceedings to assess a civil penalty conducted under section 207 of the Toxic Substances Control Act (''TSCA'') (15 U.S.C. 2647). Where inconsistencies exist between this section and §§ 22.01 through 22.32, this section shall apply.

(b) *Collection of civil penalty.* Any civil penalty collected under TSCA section 207 shall be used by the local educational agency for purposes of complying with Title II of TSCA. Any portion of a civil penalty remaining unspent after a local educational agency achieves compliance shall be deposited into the Asbestos Trust Fund established under section 5 of AHERA.

§ 22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued under part B of the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.01 through 22.32, in administrative proceedings to assess a civil penalty under section 1414(g)(3)(B) of the Safe Drinking Water Act. Where inconsistencies exist between this section and §§ 22.01 through 22.32, this section shall apply.

(b) *Choice of forum.* The respondent in a proceeding subject to subpart I of this part of these Consolidated Rules of Practice has a right to elect a hearing on the record in accordance with 5 U.S.C. 554. To exercise this right, the respondent in its answer must request a hearing on the record in accordance with 5 U.S.C. 554. Upon such request, the Regional Hearing Clerk shall recaption the pleadings and documents in the record as necessary.

§ 22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.01 through 22.32, in administrative proceedings to assess a civil penalty against a federal agency under section 1447(b) of the Safe Drinking Water Act. Where inconsistencies exist between this section and §§ 22.01 through 22.32, this section shall apply.

(b) *Effective date of final penalty order.* Any penalty order issued pursuant to this section and section 1447(b) of the Safe Drinking Water Act shall become effective thirty days after issuance.

(c) *Public notice of final penalty order.* Upon the issuance of a final penalty order under this section, the Administrator shall provide public notice of the order by publication, and by providing notice to any person who requests such notice. The notice shall include:

(1) The docket number of the order;

(2) The address and phone number of the Regional Hearing Clerk from whom a copy of the order may be obtained;

(3) The location of the facility where violations were found;

(4) A description of the violations;

(5) The penalty that was assessed; and

(6) A notice that any interested person may within thirty days of the date the order becomes final, obtain judicial review of the penalty order pursuant to section 1447(b) of the Safe Drinking Water Act and the notice requirements of 40 CFR part 135.

§ 22.44 Supplemental rules governing the termination of permits under section 402(a) of the Clean Water Act or under section 3005(d) of the Resource Conservation and Recovery Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.10 through 22.32, in administrative proceedings for the termination of permits under section 402(a) of the Clean Water Act or under section 3005(d) of the Resource Conservation and Recovery Act. Where inconsistencies exist between this section and §§ 22.01 through 22.32, this section shall apply.

(b) In any proceeding to terminate a permit for cause under 40 CFR 122.64 or 270.42 during the term of the permit:

(1) The complaint shall, in addition to the requirements of § 22.14, contain any additional information specified in 40 CFR 124.8;

(2) The Director (as defined in 40 CFR 124.2) shall provide public notice of the complaint in accordance with 40 CFR 124.10, and allow for public comment in accordance with 40 CFR 124.11; and

(3) The Presiding Officer shall admit into evidence the contents of the Administrative Record described in 40 CFR 124.9, and any public comments received.

§ 22.45 Supplemental rules governing public notice and comment in proceedings under section 309(g) of the Clean Water Act and section 300h–2(c) of the Safe Drinking Water Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.01 through 22.32, in administrative proceedings for the assessment of any civil penalty under section 309(g) of the Clean Water Act (33 U.S.C. 1319(g)), and under section 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300h–2(c)). Where inconsistencies exist between this section and §§ 22.01 through 22.32, this section shall apply.

(b) *Public notice—General.* Complainant shall provide the public with notice of any complaint filed seeking the assessment of a civil penalty. Such notice shall be provided within 30 days following proof of service of the complaint on the respondent. Where the parties agree to settlement of an action without the filing of a complaint pursuant to § 22.13(b), complainant shall provide the public with notice of the proposed consent agreement at least 30 days before it will be finalized.

(2) *Type and Content of Public Notice.* The Complainant shall provide public notice of the complaint (or the proposed consent agreement if § 22.13(b) is applicable) by a method reasonably calculated to provide notice, and shall also provide notice to any person who

requests such notice. The notice shall include:

(i) The docket number of the complaint;

(ii) The name and address of the complainant and respondent, and the address of the Regional Hearing Clerk from whom information on the action may be obtained and to whom appropriate comments may be directed;

(iii) The location of the site or facility from which the violations are alleged, and any applicable permit number;

(iv) A description of the violation alleged and the relief sought;

(v) A notice that persons may submit comments on the complaint to the Regional Hearing Clerk, and the deadline for such submissions.

(c) *Comment by a person who is not a party.* The following provisions apply in regard to comment by a person not a party to a proceeding:

(1) *Participation in Proceeding.* (i) Any person wishing to participate in the proceedings must notify the Regional Hearing Clerk within 30 days of public notice. The person must provide his name, complete mailing address, and state that he wishes to participate in the action.

(ii) The Presiding Officer shall provide notice of any hearing on the merits to any person who has met the requirements of paragraph (c)(1)(i) of this section at least 20 days prior to the scheduled hearing.

(iii) Commenters may present written comments for the record at any time prior to the close of the record.

(iv) Commenters wishing to present evidence at a hearing on the merits shall notify, in writing, the Presiding Officer and the parties of their intent at least 10 days prior to the scheduled hearing. This notice must include a copy of any document to be introduced, a description of the evidence to be presented, and the identity of any witness (and qualifications if an expert), and the subject matter of the testimony.

(v) In any hearing on the merits, a commenter may present evidence, including direct testimony subject to cross examination by the parties.

(vi) The Presiding Officer shall have the discretion to establish the extent of commenter participation in any other scheduled activity.

(2) *Limitations.* A commenter may not cross-examine any witness in any hearing and shall not be subject to or participate in any discovery or prehearing exchange.

(3) *Quick Resolution and Settlement.* No proceeding subject to the public notice and comment provisions of paragraphs (b) and (c) of this section may be resolved or settled until ten (10) days after the close of the comment period provided in paragraph (d)(1) of this section.

(4) *Petition to Set Aside a Consent Order.*

(i) Complainant shall provide to each commenter, by certified mail, return receipt requested, but not to the Regional Hearing Clerk or Presiding Officer, a copy of the proposed consent order.

(ii) Within 30 days of receipt of the proposed consent order a commenter may present to the Regional Administrator (or, for cases commenced at EPA Headquarters, the Environmental Appeals Board), and to the parties, a petition to set aside the consent order and an objection to resolution of the action without a hearing on the basis that material evidence was not considered. Copies of the petition shall not be sent to the Regional Hearing Clerk or the Presiding Officer. The adequacy of the amount of the penalty to be paid in resolution of the action is not, by itself, grounds for a petition for a hearing.

(iii) Within 15 days of receipt of a petition, the complainant may, with notice to the Regional Administrator or Environmental Appeals Board and to the commenter, withdraw the proposed consent order to consider the matters raised in the petition. If the complainant does not give notice of withdrawal within 15 days of receipt of the petition, the Regional Administrator or EAB shall assign a Petition Officer to consider and rule on the petition. The Petition Officer shall be another Presiding Officer, not otherwise involved in the case. Notice of this assignment shall be sent to the parties, and to the Presiding Officer.

(iv) Within 30 days of assignment of the Petition Officer, the complainant shall present to the Petition Officer a copy of the complaint and a written response to the petition. A copy of the response shall be provided to the parties and to the commenter, but not to the Regional Hearing Clerk or Presiding Officer.

(v) The Petition Officer shall review the petition, and complainant's response, and shall file with the Regional Hearing Clerk, with copies to the parties, the commenter, and the Presiding Officer, written findings as to:

(A) The extent to which the petition states an issue relevant and material to the issuance of the consent order;

(B) Whether complainant adequately considered and responded to the petition; and

(C) Whether a resolution of the action by the parties is appropriate without a hearing.

(vi) Upon a finding by the Petition Officer that a hearing is appropriate, the Presiding Officer shall order that the proposed consent order be set aside and shall establish a schedule for a hearing.

(vii) Upon a finding by the Petition Officer that a resolution of the action without a hearing is appropriate, the Petition Officer shall deny the petition and:

(A) File with the Regional Hearing Clerk;

(B) Send copies to the parties and the commenter; and

(C) Publish, as required by law, an order denying the petition and stating the reasons for such denial.

(viii) Upon a finding by the Petition Officer that a resolution of the action without a hearing is appropriate, the Regional Administrator may issue the consent order, which shall become final 30 days after both the order denying the petition and a properly signed consent order are filed with the Regional Hearing Clerk, unless further petition for review is filed by a notice of appeal in the appropriate United States District Court, with coincident notice by certified mail to the Administrator and the Attorney General. Written notice of appeal also shall be filed with the Regional Hearing Clerk, and sent to the Presiding Officer and the parties.

(ix) If judicial review of the consent order is denied, the consent order shall become final 30 days after such denial has been filed with the Regional Hearing Clerk.

§§ 22.46—22.49 [Reserved].

Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

§ 22.50 Scope of this subpart.

(a) *Scope.* This subpart applies to any adjudicatory proceedings where the complainant designates in the complaint that subpart I shall apply, except that the procedures of this subpart shall not apply in any case where the Act makes the proceeding subject to section 554 of the Administrative Procedure Act, 5 U.S.C. 554.

(b) *Relationship to other provisions.* Sections 22011 through 22.45 apply to proceedings under this subpart, except for the following provisions which do not apply: §§ 22.11, 22.16(c), 22.21(a), and 22.29. The provisions of this subpart shall supersede any conflicting provisions of subparts A through G of this part. The provisions of subpart H of this part shall supersede any conflicting provisions of this subpart or of subparts A through G of this part.

§ 22.51 Presiding Officer.

The Presiding Officer shall be a Regional Judicial Officer. The Presiding Officer shall rule on all motions until an initial decision has become final or has been appealed.

§ 22.52 Information exchange and discovery.

Respondent's information exchange pursuant to § 22.19(a) shall include information on any economic benefit resulting from any activity or failure to act which is alleged in the administrative complaint to be a violation of applicable law, including its gross revenues, delayed or avoided costs. Discovery under § 22.19(e) shall not be authorized, except for discovery of information concerning respondent's economic benefit from alleged violations and information concerning respondent's ability to pay a penalty.

§ 22.53 Interlocutory orders or rulings.

Interlocutory review as set forth in § 22.29 is prohibited.

Appendix A to Part 22—Addresses of EPA Regional Offices and Headquarters

Environmental Protection Agency, *Region I*—John F. Kennedy Federal Building, One Congress Street, Boston, MA 02203.
Environmental Protection Agency, *Region II*—290 Broadway, New York, NY 10007–1866.
Environmental Protection Agency, *Region III*—841 Chestnut Building, Philadelphia, PA, 19107.
Environmental Protection Agency, *Region IV*—Atlanta Federal Center, 100 Alabama Street, S.W., Atlanta, GA 30365.
Environmental Protection Agency, *Region V*—77 West Jackson Boulevard, Chicago, IL 60604-3590.
Environmental Protection Agency, *Region VI*—First Interstate Bank Tower and Fountain Place, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202–2733.
Environmental Protection Agency, *Region VII*—726 Minnesota Avenue, Kansas City, KS, 66101.
Environmental Protection Agency, *Region VIII*—999 18th Street, Suite 500, Denver, CO 80202-2466.
Environmental Protection Agency, *Region IX*—75 Hawthorne Street, San Francisco, CA 94105.
Environmental Protection Agency, *Region X*—1200 6th Avenue, Seattle, WA 98101.
Environmental Protection Agency, *Headquarters*, 401 M Street, S.W., Washington, D.C. 20460.

Appendix B to Part 22—Addresses of Regional and Headquarters Lockboxes

Superfund (all Regions)—(Mellon Bank) EPA—Superfund, PO Box 371003, Pittsburgh, PA 15251–7003
Region I—(Mellon Bank) EPA Region I Hearing Clerk, PO Box 360197, Pittsburgh, PA 15251-6197
Region II—(Mellon Bank) EPA Region II Hearing Clerk, PO Box 360188, Pittsburgh, PA 15251–6188
Region III—(Mellon Bank) EPA Region III Hearing Clerk, PO Box 360515, Pittsburgh, PA 15251–6515
Region IV—(The Citizens and Southern National Bank) EPA Region IV Hearing Clerk, PO Box 100142, Atlanta, GA 30384
Region V—(The First National Bank of Chicago) EPA Region V Hearing Clerk, PO Box 70753, Chicago, Il 60673
Region VI—(Mellon Bank) EPA Region VI Hearing Clerk, PO Box 360582, Pittsburgh, PA 15251–6582
Region VII—(Mellon Bank) EPA Region VII Hearing Clerk, PO Box 360748, Pittsburgh, PA 15251–6748
Region VIII—(Mellon Bank) EPA Region VIII Hearing Clerk, PO Box 360859, Pittsburgh, PA 15251–6859
Region IX—(Mellon Bank) EPA Region IX Hearing Clerk, PO Box 360863, Pittsburgh, PA 15251–6863
Region X—(Mellon Bank) EPA Region X Hearing Clerk, PO Box 360903, Pittsburgh, PA 15251–6903
Headquarters—(Mellon Bank) EPA Headquarters Hearing Clerk, PO Box 360277, Pittsburgh, PA 15251–6277.

PART 59—[AMENDED]

1. The authority citation for Part 59 continues to read as follows:

Authority: 42 U.S.C. 7413(d)(3).

2. Part 59 proposed on May 3, 1994 at (59 FR 22776) is amended by removing subpart B.

[FR Doc. 98–4520 Filed 2–24–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300619; FRL–5772–7]

RIN 2070–AB78

Prometryn; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish tolerances for residues of prometryn in or on carrots under its own initiative to harmonize tolerances with Canada under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1966 (Pub. L. 104–170).

DATES: Comments, identified by the document control number [OPP–300619], must be received on or before March 27, 1998.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, M St., SW, Washington, DC 20460. In person, bring comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit V. of this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-5697, e-mail: tompkins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA is proposing under its own initiative that 40 CFR 180.222 be amended by establishing tolerances for residues of the herbicide prometryn, 2,4-bis(isopropylamino)-6-methylthio-s-triazine in or on carrots at 0.1 parts per million (ppm) without a U.S. registration under the Federal Insecticide Fungicide Act (FIFRA), as amended for carrots imported from Canada.

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, 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.

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 prometryn, and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of prometryn and its metabolite on carrots at 0.1 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 prometryn are discussed below.

1. A rat acute oral study with a LD_{50} of 1,802 milligrams/kilogram (mg/kg) for males and a LD_{50} of 2,076 mg/kg for females

2. A 28-day mice pilot feeding study with a No Observed Effect Level (NOEL) of 450 milligrams/kilogram/day (mg/kg/day) and a Lowest Observed Effect Level (LOEL) of 1,500 mg/kg/day based on decreased body weights.

3. A 21-day dermal toxicity study with a NOEL and LOEL greater than of 1,000 mg/kg/day the highest dose tested (HDT).

4. A 102-week chronic feeding/carcinogenicity study in mice with a Systemic NOEL of 100 mg/kg/day for females and a Systemic LOEL of 300 mg/kg/day for females based on decreased body weight gain. No effects were observed in males. Although significant toxicity was observed only in females, the Health Effects Division Reference Dose (RfD) committee considered the study adequate since (1) levels were close to one-half the limit dose in mice; (2) no effects were noted in the study to warrant repeating the study at high dose levels; and (3) all tumors noted with other members of the s-triazine class were mainly in rats and not mice.

5. A 2-year rat chronic feeding/carcinogenicity study with a Systemic NOEL of 29.45 mg/kg/day for males and 37.25 mg/kg/day for females and a Systemic LOEL of 60.88 mg/kg/day for males and 80.62 mg/kg/day for females based on decreased body weight and body weight gain and an increase in the incidence of renal lesions (mineralized concretions) in males. prometryn was not oncogenic under the conditions of the study.

6. A 106-week dog feeding study with a NOEL of 3.75 mg/kg/day and a LOEL of 37.5 mg/kg/day based on degenerative hepatic changes, renal tubule degeneration, and bone marrow atrophy. Prometryn was not oncogenic under the conditions of the study.

7. A developmental toxicity study in rats with a Maternal and Developmental NOEL of 50 mg/kg and a Maternal LOEL of 250 mg/kg based on salivation and decreases in body weight and food consumption. The Developmental LOEL is 250 mg/kg/day based on significantly decreased and incomplete ossification in the sternebrae and metacarpals.

8. A developmental toxicity study in rabbits with a Maternal and Developmental NOEL of 12 mg/kg/day and a Maternal LOEL of 72 mg/kg based on based on decreased food consumption, and the Developmental LOEL of 72 mg/kg/day, based on increased fetal resorptions.

9. A two-generation reproduction study in rats with a Parental Systemic NOEL of 0.6 mg/kg/day in males and 0.7 mg/kg/day in females and a Parental Systemic LOEL of 47.8 mg/kg/day in males and 53.6 mg/kg/day in females based on decreased food consumption, body weight and body weight gain. The Reproductive Systemic NOEL is 0.65 mg/kg/day and the Reproductive Systemic LOEL is approximately 50 mg/kg/day, based on decreased pup weight.

10. An Ames *salmonella* test, prometryn was negative for gene mutation up to cytotoxic solubility limits (1,000-2,000 µg/plate). A chromosomal aberration *in vivo* Chinese hamster bone marrow test, prometryn was negative for nuclear anomalies (micronuclei) when animals were dosed orally up to 5,000 mg/kg. Prometryn was negative for bacterial DNA repair and gene mutation up to precipitating levels (1,000 µg/plate). An unscheduled DNA synthesis test prometryn was negative (measured as UDS) in rat hepatocytes cultured *in vitro* up to cytotoxic levels (156.25 µg/mL).

11. Rat metabolism studies showed that radio labeled prometryn is distributed in blood greater than spleen greater than lungs (the three highest tissues measured). Distribution is not dosage-dependant. It is extensively metabolized with less than 2% of recovered ^{14}C radioactivity representing the parent compound. Twenty-eight metabolites were identified in the urine, and 28 in the feces. Ten metabolites were identified in both urine and feces. Prometryn is excreted predominantly in the urine and feces, with slightly higher concentrations in the urine. The 7-day recovery of ^{14}C radioactivity averaged 95% for all dosing groups.

B. Toxicological Endpoints

1. *Acute toxicity*. The developmental NOEL of 12 mg/kg/day from a developmental study was recommend for the acute dietary risk assessment.

2. *Short - and intermediate - term toxicity*. The developmental NOEL of 12 mg/kg/day from a developmental study was recommend for the short- and intermediate- term dermal and inhalation risk assessments.

3. *Chronic toxicity*. EPA has established the RfD for prometryn at 0.04 mg/kg/day. This RfD is based on upon the chronic feeding study in dogs with a NOEL of 3.75 mg/kg/day with a 100-fold safety factor to account for interspecies extrapolation and intraspecies variability.

4. *Carcinogenicity*. The Health Effects Division Reference Dose (RfD) Committee classified prometryn as a

Group E chemical (no evidence of human carcinogenic potential).

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.222(a)) for the residues of prometryn, 2,4-bis(isopropylamino)-6-methylthio-s-triazine, in celery at 0.5 ppm; corn forage, fresh corn and corn grain at 0.25 ppm; cotton at 1 ppm: cottonseed at 0.25 ppm; and pigeon peas at 0.25 ppm.. Tolerances with regional registration have been established (40 CFR 180.222(b)) for the residues of prometryn in dill at 0.3 ppm and parsley at 0.1 ppm. Risk assessments were conducted by EPA to assess dietary exposures and risks from prometryn as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a 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. The Margin of Exposure (MOE) value for females (13 years and older) was 1,200,000. This value is significantly higher than the Agency's level of concern of 100 which is adequate to ensure protection for females 13 and older..

ii. *Chronic exposure and risk.* Assuming 100% of the crop are treated and residues are at tolerance levels the theoretical maximum residue contribution (TMRC) from the established and proposed tolerances is 0.000056 mg/kg/day and utilizes less than 1% of the RfD for the U.S. Population. For exposure of the most highly exposed subgroup in the population, non-nursing infants, the TMRC is 0.0016 mg/kg/day which utilizes less than 1% of the RfD.

2. *From drinking water.* Despite the potential for exposure through drinking water, EPA has concluded that the percentage of the RfD that will be utilized by dietary exposure (including drinking water exposure) to residues of prometryn does not exceed 100% for any of the population subgroups. Considering food only, the population subgroup with the largest percentage of the RfD occupied is 0.0000056 mg/kg/day at < 1% of the RfD. Therefore taking into account the completeness and reliability of the toxicity data and the conservative exposure assessment, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to prometryn residues.

3. *From non-dietary exposure.* Prometryn is currently not registered for residential use such as turf and ornamentals. Therefore there is no expectation of non-occupational residential exposures.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Prometryn is a member of the triazine class of pesticides. Other members of this class include atrazine, simazine, cyanazine, prometon, propazine, metribuzin, hexazinone, ametryn, terbutryne, dipropetryn, and ethiozin.

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 prometryn has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. The Agency has determined that there are no metabolites of toxicological concern associated with prometryn. For the purposes of this tolerance action, therefore, EPA has not assumed that prometryn has a common mechanism of toxicity with other substances.

D. 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 prometryn, 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. 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 MOE and uncertainty factor (usually 100 for inter- and intra-species variability)) and not the additional tenfold MOE/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 MOE/safety factor.

ii. *Developmental and reproductive toxicity studies.* The pre- and post-natal toxicology data base for prometryn is complete with respect to current toxicological data requirements. The results of these studies indicate that infants and children are not more

sensitive to exposure, based on the results of the oral rat and rabbit developmental toxicity studies and the 2-generation reproductive toxicity study in rats. The developmental studies in rats and rabbits both have the maternal NOELs and LOELs, respectively, and demonstrate that no prenatal extra sensitivity is present. However, based on the developmental effects observed in rabbits, an acute dietary risk assessment was performed for women age 13 and older. The MOE was calculated as 1,200,000. Therefore, EPA concludes that reliable data support use of the standard 100-fold margin of exposure/uncertainty factor and that an additional tenfold safety factor is not needed to protect infants and children.

2. *Acute risk*. The acute aggregate dietary MOE was calculated to be 1,200,000 for females age 13 and older (accounts for both maternal and fetal exposure), the population subgroup of concern. The MOE calculations were based on the developmental NOEL in rabbits of 12 mg/kg. This risk assessment assumed 100% of the crop was treated with tolerance level residues on all treated crops consumed, resulting in a significant over estimate of dietary exposure. The large acute dietary MOE calculated for females age 13 and older provides assurance the there is a reasonable certainty of no harm for infants and children to prometryn.

3. *Chronic risk*. Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to prometryn from food will utilize less than 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. There are no chronic exposure scenarios of non-dietary uses of prometryn which would contribute to the aggregate risk. Taking into account the completeness and reliability of the toxicity data and the conservative exposure assessment, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to prometryn residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of prometryn in plants and animals is adequately understood for purposes of this tolerance.

B. Analytical Enforcement Methodology

An adequate analytical method, gas chromatograph is available in PAM Vol. II, for plant to enforce the tolerance expression.

C. Magnitude of Residues

The nature of the residue in plants is adequately understood for the purposes of this tolerance. Secondary residues in animals commodities are not expected to exceed existing tolerances as result to this use in Canada.

D. International Residue Limits

There are no Codex or Mexican limits for prometryn on carrots. This proposal will harmonize tolerances with 0.1 pm Canadian maximum limit for residues in carrots.

E. Rotational Crop Restrictions

Since the use is on carrots grown in Canada, rotational crop issues are not relevant.

IV. Conclusion

There are presently no actions pending against the continued registration of this chemical. Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR 180.222 would protect the public health. Therefore, it is proposed that tolerances be established for residues of prometryn in carrots at 0.1 ppm.

V. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300619] (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 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis 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 from of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper from. Accordingly, EPA will transfer any copies of comments received electronically into printed, paper from 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.

VI. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, EPA has determined that this proposed rule is not ''significant'' and is therefore not subject to OMB review. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: February 17, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be 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 § 180.222 by amending paragraph (a) by alphabetically adding the following commodity to the table to read as follows:

§ 180.222 Prometryn; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	* *
Carrots[1]	0.1
* * * * *	* *

[1]There are no U.S. registrations as of February 25, 1998 for use on carrots.

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[FR Doc. 98–4804 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 50

RIN 0930–ZA00

Simplification of Grant Appeals Process

AGENCY: HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to 42 CFR Part 50, Subpart D, the Indian Health Service (IHS) and the Substance Abuse and Mental Health Services Administration (SAMHSA) (formerly, the Alcohol, Drug Abuse and Mental Health Administration) have provided an informal level of appeal on those grant related disputes subject to the departmental appeal procedures codified at 45 CFR Part 16.[1] These agencies are proposing by this notice to amend 42 CFR Part 50, Subpart D, to remove IHS and ADAMHA (now SAMHSA) from the list of agencies to which these informal appeal procedures apply and thus permit aggrieved grantees direct access to the Departmental Grant Appeals Board and that board's original jurisdiction.

DATES: Written comment must be received on or before April 27, 1998.

ADDRESSES: Written comments on the proposed rule must be sent to Thomas M. Reynolds, Room 13C–20, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: For the Indian Health Service, Ms. M. Kay Carpentier, (301) 443–5204; for the Substance Abuse and Mental Health Services Administration, Thomas M. Reynolds, (301) 443–0179.

SUPPLEMENTARY INFORMATION: When the Department first established its Departmental Grant Appeals Board (now the Departmental Appeals Board), there was no provision for the Department's subordinate agencies to first review the disputed actions of officials prior to appeal at the Departmental level. However, it quickly became apparent that a number of disputes could and would, be resolved quickly by informal means if the grantees' complaints were surfaced to management levels within the HHS subordinate agencies. As a result, the regulations at 45 CFR Part 16 were revised to permit subordinate agencies to interpose an ''informal'' level of appeal prior to submission of an appeal to the Departmental Appeals Board. Various agencies in the Public Health Service (which has since been reorganized) chose to institute an intermediate informal review process as is currently described in 42 CFR Part 50, Subpart D. The intermediate level of appeal provided these agencies with an opportunity to relatively quickly and economically reverse erroneous Federal decisions, or to reassure grantees that a decision adverse to them was indeed an ''agency'' decision. At the time these regulations were instituted, this informal process was of significant benefit to both grantees and the subordinate agencies. Based on the lessons learned from this process and other means, IHS and SAMHSA instituted a policy of reviewing carefully the adverse determinations of their employees prior to permitting them to be issued so as to avoid erroneous determinations which would be subject to reversal upon appeal at the informal level. These agencies believe that they have reached the point where the adverse determinations being issued in recent years generally represent their best judgment.

The Department therefore believes that, for these agencies and their grantees, this informal process is no longer of benefit, and the cost in time and expense to the grantee is no longer warranted. Consequently, the Department is proposing to amend 42 CFR part 50, Subpart D, to remove IHS and ADAMHA (now SAMHSA) from the list of Agencies to which the regulations apply. As a result, under this proposal, grantees wishing to appeal IHS's and SAMHSA's eligible adverse determinations would be entitled to appeal such determinations directly to the Departmental Appeals Board. In addition, 42 CFR Part 50, Subpart D, will be revised to reflect organizational changes in the Department, particularly that pertaining to the Public Health Service.

Economic Impact

This rule does not have cost implications for the economy of $100 million or otherwise meet the criteria for a major rule under Executive Order 12291, and therefore does not require a regulation impact analysis. Further, this regulation will not have a significant impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

Regulatory Evaluation

This Proposal is not a significant regulatory action under Section 3(f) of the Executive Order 12866 and does not require an assessment of the potential costs and benefits under Section 6(a)(3) of that Order and so has been exempted from review by the Office of Management and Budget under that Order.

Paperwork Reduction Act

There are no new paperwork requirements subject to the Office of Management and Budget approval under the Paperwork Reduction Act of 1980.

List of Subjects in 42 CFR Part 50

Administrative practice and procedure, Grant programs—health, Health care.

Approved: February 18, 1998.

Donna E. Shalala,

Secretary.

For the reasons set forth in the preamble, the Department proposes to amend Subpart D of Part 50 of Title 42 of the Code of Federal Regulations as follows:

[1] Section 161 of the ADAMHA Reorganization Act, Pub. L. 102–321 (July 10, 1992), provides that references in any regulations to ADAMHA shall be deemed to refer to SAMHSA and, accordingly, the informal level of appeal is available to SAMHSA's grantees.

PART 50—[AMENDED]

1. The authority citation for part 42 continues to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); 45 CFR 16.3(c).

2. Section 50.401 is revised to read as follows:

§ 50.401 What is the purpose of this subpart?

This subart establishes an informal procedure for the resolution of certain postaward grant and cooperative agreement disputes within the agencies and offices identified in § 50.402.

3. Section 50.402 is revised to read as follows:

§ 50.402 To what programs do these regulations apply?

This subpart applies to all grant and cooperative agreement programs, except block grants, which are administered by the National Institutes of Health; the Health Resources and Services Administration; The Centers for Disease Control and Prevention; the Agency for Toxic Substances and Disease Registry; the Food and Drug Administration; and the Office of the Assistant Secretary for Public Health and Science. For purposes of this subpart, these entities are hereinafter referred to as ''agencies.''

4. The third sentence of § 50.403 is revised to read as follows:

§ 50.403 What is the policy basis for these procedures?

* * * This subpart provides such an informal preliminary procedure for resolution of disputes in order to preclude submission of cases to the Departmental Appeals Board before an agency identified in § 50.402 has had an opportunity to review decisions of its officials and to settle disputes with grantees.

5. In § 50.404, paragraph (a) introductory text and the first sentence of paragraph (b) are revised to read as follows:

§ 50.404 What disputes are covered by these procedures?

(a) These procedures are applicable to the following adverse determinations under discretionary project grants and cooperative agreements (both referred to in this subpart as grants) issued by the agencies identified at § 50.402:

* * * * *

(b) A determination subject to this subpart may not be reviewed by the review committee described in § 50.405 unless an officer or employee of the agency has notified the grantee in writing of the adverse determination. * * *

6. In § 50.405 the second sentence is removed and the first sentence is revised to read as follows:

§ 50.405 What is the structure of the review committees?

The head of the agency, or his or her designee, shall appoint review committees to review adverse determinations made by officials for programs under this jurisdiction. * * *

7. In § 50.406, paragraphs (a), (c), (d) and (g), and the first sentence of (e) are revised to read as follows:

§ 50.406 What are the steps in the process?

(a) A grantee with respect to whom an adverse determination described in § 50.404(a) has been made and who desires a review of that determination must submit a request for such review to the head of the appropriate agency or his or her designee no later than 30 days after the written notification of the determination is received, except that if the grantee shows good cause why an extension of time should be granted, the head of the appropriate agency or his or her designee may grant an extension of time.

* * * * *

(c) When a request for review has been filed under this subpart with respect to an adverse determination, no action may be taken by the awarding agency pursuant to such determination until the request has been disposed of, except that the filing of the request shall not affect any authority which the agency may have to suspend assistance or otherwise to withhold or defer payments under the grant during proceedings under this subpart. This paragraph does not require the awarding agency to provide continuation funding during the appeal process to a grantee whose noncompeting continuation award has been denied.

(d) Upon receipt of a request for review, the head of the agency or his or her designee will make a decision as to whether the dispute is reviewable under this subpart and will promptly notify the grantee and the office responsible for the adverse determination of this decision. If the head of the agency or his or her designee determines that the dispute is reviewable, he or she will forward the matter to the review committee appointed under § 50.405.

(e) The agency involved will provide the review committee appointed under § 50.405 with copies of all relevant background materials (including applications(s), award(s), summary statement(s), and correspondence) and any additional pertinent information available. * * *

* * * * *

(g) The review committee may, at its discretion, invite the grantee and/or the agency staff to discuss the pertinent issues with the committee and to submit such additional information as the committee deems appropriate.

* * * * *

[FR Doc. 98–4725 Filed 2–24–98; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 021798A]

Fisheries of the Northeastern United States; Northeast Multispecies; Atlantic Sea Scallops; Atlantic Salmon

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

ACTION: Notification of intent to prepare supplemental environmental impact statements (SEISs) and request for scoping comments.

SUMMARY: The New England Fishery Management Council (Council) announces its intention to prepare, in cooperation with NMFS, environmental impact statements to assess the potential effects on the human environment of management measures to bring the fishery management plans for Northeast Multispecies, Atlantic Sea Scallops, and Atlantic Salmon (FMPs) into compliance with the Magnuson-Stevens Fishery Conservation and Management Act as amended by the Sustainable Fisheries Act (SFA).

The Council plans to amend these FMPs to possibly include, but not be limited to, the following: Revise overfishing definitions based on achieving maximum sustainable yield (MSY), stock rebuilding targets and programs, designations and recommendations for preserving essential fish habitat (EFH), and measures to monitor and to minimize, to the extent practicable, bycatch and bycatch mortality.

The Council will develop the amendments through a series of publicly announced meetings together with its Multispecies, Sea Scallop, and Habitat Oversight Committees, Advisory Panels, and Plan Development Teams. Separate notices of intent already have

been prepared for FMPs under development to manage Atlantic sea herring, monkfish, and silver hake (whiting).

DATES: Written comments must be received by March 23, 1998.

ADDRESSES: Send scoping comments to Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, (Route 1), Saugus, MA 0l906.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, telephone 781–231–0422, Fax 617–565–8937.

SUPPLEMENTARY INFORMATION: Revisions to overfishing definitions based on achieving MSY, stock rebuilding targets, and rebuilding programs may require substantial reductions in fishing mortality from those currently scheduled under the Atlantic Sea Scallop FMP. The current Atlantic Salmon FMP prohibits fishing in the exclusive economic zone (EEZ) and, therefore, no further reductions in fishing in the EEZ are possible.

Timetable

The Council expects to receive information from its Overfishing Definition Review Panel concerning revised overfishing definitions at its February 25–26, 1998, meeting. The Council plans to propose measures for the purpose of developing draft SEIS's and conducting public hearings for an amendment to the Sea Scallop and the Multispecies FMPs at its April 15–16, 1998, meeting. The Council is addressing SFA requirements, except for EFH, for monkfish in a separate amendment to the Multispecies FMP.

Designation of EFH for multispecies finfish, including monkfish and whiting, Atlantic sea scallops, and Atlantic salmon also will be discussed at these meetings. The Council will hold separate public hearings and may prepare separate amendments to meet EFH requirements.

To meet the deadlines established by the SFA, the Council plans to take final action on amendments for all SFA requirements, except for EFH, by its August 10–11, 1998, meeting.

The Council anticipates final action on the EFH amendment at its September 23–24, 1998, meeting.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: February 20, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–4784 Filed 2–24–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 37
Wednesday, February 25, 1998

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

Food Safety and Inspection Service

[Docket No. 98–007N]

National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will meet from March 3 to March 6, 1998, to discuss Good Agricultural Practices and Good Manufacturing Practices for fresh produce and research strategies to meet the goals of the Food Safety Initiative and the Domestic and Imported Produce Food Safety Initiative. The Committee also will be discussing Foods Exposed to Refrigeration Failure, Hazard Analysis and Critical Control Point (HACCP) concepts for the very small slaughter plant, Codex issues, and developing guidelines for food safety objectives.

DATES: The Fresh Produce Subcommittee will meet from 8:30 a.m. to 5:00 p.m. on March 3, 1998. The full Committee will meet on March 4, 1998, from 8:30 a.m. until 12:00 noon. Subcommittee groups will meet March 4, 1998, from 1:30 to 5:00 p.m. and from 8:30 a.m. to 5:00 p.m. on March 5. The full Committee will meet March 6, 1998, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Georgia International Convention Center, 1902 Sullivan Road, College Park, GA 30337–0508.

FOR FURTHER INFORMATION CONTACT: The Committee encourages persons with information or data on the above matters to present their comments. Persons interested in making presentations, submitting technical papers, or providing comments are requested to mail or FAX (202) 501–7628 their name, title, firm name, address, and telephone number to Ms. Amelia L. Wright, Advisory Committee Specialist, Scientific Research Oversight Staff, Department of Agriculture, Suite 6913, Franklin Court, 1400 Independence Avenue, SW, Washington, DC 20250–3700. Comments and requests also may be provided by E-mail to amelia.wright@usda.gov. Persons requiring a sign language interpreter or other special accommodations should notify the contact person referenced above by February 19, 1998.

SUPPLEMENTARY INFORMATION:

The meeting will be open to the public on a space-available basis. Persons wishing to make an oral presentation should notify the contacts listed above. Presentations will be scheduled on a time-available basis in accordance with the timeliness of the written request. Comments may be made before or after the meeting. Technical papers also will be accepted and made part of the public record. All comments and proceedings will become part of the public record of the meeting.

NACMCF provides advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services about the development of microbiological criteria to assess the safety and wholesomeness of food. The Committee also provides guidance to the Departments of Commerce and Defense.

Done at Washington, DC, on: February 19, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–4941 Filed 2–24–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request an extension for a currently approved information collection in support of the regulations governing the entry of speciality sugar under the tariff-rate quota into the United States.

DATES: Comments on this notice must be received by April 27, 1998 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Mail or deliver comments to Stephen C. Hammond, Director, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1021, Washington, DC 20250–1021, (202) 720–1061.

SUPPLEMENTARY INFORMATION:

Title: Speciality Sugar Import Licensing.

OMB Number: 0551–0025.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of a currently approved information collection.

Abstract: The quota system established by Presidential Proclamation No. 4941 prevented the importation of certain refined sugars used for specialized purposes originating in countries which did not have quota allocations. Therefore, the Department of Agriculture published the regulations at 15 CFR part 2011—Allocation of Tariff-Rate Quota on Imported Sugars, Syrups and Molasses, Subpart B—Speciality Sugar, requiring certificates of quota eligibility for entering specialty sugar. Applicants must supply the information required by 15 CFR 2011.205 to apply for a speciality sugar certificate. In order to grant the certificates, ensure that imported specialty sugar does not disrupt the current domestic sugar support program, and effectively administer the issuance of the certificates, certain specific information on an application must be collected from those who wish to participate in the program established by the regulation.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Importers.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 60 hours.

Copies of this information collection can be obtained from Valerie Countiss, the Agency Information Collection Coordinator, at (202) 720–6713.

Request for Comments

Send comments regarding the accuracy of the burden estimate, ways to minimize the burden including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to: Stephen C. Hammond, Director, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1021, Washington, DC 20250–1021, and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503. Comments on the issues covered by the Paperwork Reduction Act are most useful to OMB if received within 30 days of publication of the Notice and Request for Comments, but must be submitted no later than 60 days from the date of publication to be assured of consideration.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC. February 4, 1998.

Lon Hatamiya,

Administrator, Foreign Agricultural Service.

[FR Doc. 98–4707 Filed 2–24–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath, Northwest Sacramento, and California Coastal Provincial Advisory Committees (PACs)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath, Northwest Sacramento, and California Coastal Provincial Advisory Committees will meet on March 5 and 6, 1998 at the Holiday Inn, 1900 Hilltop Drive, Redding, California. On March 5, the meeting will begin at 9:00 a.m. and adjourn at 5:15 p.m. The meeting on March 6 will resume at 8:00 a.m. and adjourn at 4:00 p.m.

The purpose of the three PAC meeting is to better understand the issues involved in implementing the Northwest Forest Plan. Also attending the meeting are members of the State Community Economic Revitalization Team (SCERT). The PACs and SCERT members will work together in small groups defining and refining implementation issues and will share them with the larger group. Each PAC and the SCERT will meet separately to develop proposed next steps for moving forward on the issues and will present these to the large group as well as share accomplishments/learnings from the past 4 years. There are public comment periods scheduled throughout the 2 days. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, at 1312 Fairlane Road, Yreka, California 96097; telephone 530–842–6131, (FTS) 700–467–1309.

Dated: February 19, 1998.

Barbara Holder,

Designated Federal Official and Forest Supervisor.

[FR Doc. 98–4748 Filed 2–24–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Telecommunications

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 27, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawnielle Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

These reporting and recordkeeping requirements are necessary to allow for the increased export of telecommunications equipment to proscribed destinations. The requirements also place conditions on approved export licenses, such as requiring inspections and the retention of repair records. The information is used for licensing decisions and for enforcement purposes once a license is issued.

II. Method of Collection

Reports or written plans submitted to BXA.

III. Data

OMB Number: 0694–0078.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 75.

Estimated Time Per Response: 1 minute to 2 hours per response.

Estimated Total Annual Burden Hours: 92 hours.

Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 19, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4743 Filed 2–24–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Multi-Purpose Application

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 27, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection is required in compliance with U.S. export regulations. The information furnished by U.S. exporters provides the basis for decisions to grant licenses for export, reexport, and classifications of commodities, goods and technologies that are controlled for reasons of national security and foreign policy. This revision includes the burden associated with 3rd party disclosures, certifications and notification requirements imposed on the public.

II. Method of Collection

Submitted on form BXA–748P.

III. Data

OMB Number: 0694–0088.

Form Number: BXA–748P.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 18,917.

Estimated Time Per Response: 52.5 minutes per response.

Estimated Total Annual Burden Hours: 17,106.

Estimated Total Annual Cost: $342,120.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 19, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4744 Filed 2–24–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Export Controls of Supercomputers (To Be Renamed, Export Controls of High Performance Computers)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 27, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawnielle Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTAL INFORMATION:

I. Abstract

These recordkeeping and reporting requirements are clear statements of normal business records for high performance computers (HPC) that are expected to be maintained by end-users in destinations where there is a potential for diversion to unauthorized end users. The records must be available for inspection by U.S. officials to maintain surveillance of HPC usage and implementation of appropriate safeguards.

II. Method of Collection

Reports and recordkeeping.

III. Data

OMB Number: 0694–0073.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 30.

Estimated Time Per Response: 16 minutes to 2 hours per response.

Estimated Total Annual Burden Hours: 92 hours.

Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 19, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4745 Filed 2–24–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Procedures for Supporting Documentation

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 27, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawnielle Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Exporters will retain in their files for a period of five years (1) certain supporting documents that previously accompanied the request for an export license and then were retained by BXA, and (2) all other records that they had previously been required to be retained for two years. Also outlined are the procedures for returning unused or partially used import certificates, or their equivalent, to the foreign importer.

II. Method of Collection

Record retention and submission of documents.

III. Data

OMB Number: 0694–0064.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 3,558.

Estimated Time Per Response: 1 to 30 minutes per response.

Estimated Total Annual Burden Hours: 313 hours.

Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 19, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–4746 Filed 2–24–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021898A]

Advisory Committee to the United States Section to the International Commission for the Conservation of Atlantic Tunas Bluefin Tuna Rebuilding Workshop

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

ACTION: Notice of public meeting.

SUMMARY: The Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas announces a bluefin tuna rebuilding workshop.

DATES: The workshop is scheduled for Tuesday, March 10, 1998, 8:00 a.m. to 5:30 p.m.

ADDRESSES: The workshop will be held at the Clarion Hotel in Charlotte, North Carolina.

FOR FURTHER INFORMATION CONTACT: Jonathon Krieger,(301)713-2276.

SUPPLEMENTARY INFORMATION: The workshop has the following objectives: (1) To evaluate and review current stock assessment knowledge for bluefin tuna; (2) to discuss items/issues to be considered relative to establishing a rebuilding program for bluefin tuna; (3) to consider a matrix of rebuilding scenarios; (4) to discuss additional rebuilding scenario alternatives, and (5) to make recommendations.

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jonathon Krieger at (301)713–2276 at least five days prior to the meeting date.

Dated: March 18, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–4783 Filed 2–24–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021998B]

Endangered Species; Permits

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

ACTION: Notice of receipt of applications for scientific research permits (1130, 1131, 1132, 1133) and an amendment to an application for a scientific research permit (1102).

SUMMARY: Notice is hereby given that the U.S. Geological Survey, Cook, WA (USGS) (1130), the Port of Portland, Portland, OR (POP) (1131), S. Gordon Rogers, Satilla Management Associates, Inc. (1132), and Andre M. Landry, Texas A&M University (1133), have applied in due form for permits, and that the Washington Department of Fish and Wildlife at Vancouver, WA (WDFW) (1102) has submitted in due form an amendment to an application for a

permit to take listed species for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on this application must be received on or before March 27, 1998.

ADDRESSES: The application and related documents are available for review by appointment in the following offices:

For permits 1102, 1130, and 1131: Protected Resources Division (PRD), F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400); and

For permits 1132 and 1133: Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

All documents may also be reviewed by appointment in the Office of Protected Resources, Endangered Species Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 1102, 1130, and 1131: Robert Koch, Protected Resources Division (503–230–5424).

For permit 1132: Terri Jordan, Endangered Species Division, Office of Protected Resources, (301–713–1401).

For permit 1133: Michelle Rogers, Endangered Species Division, Office of Protected Resources, (301–713–1401).

SUPPLEMENTARY INFORMATION: USGS (1130), POP (1131), S. Gordon Rogers (1132), Andre M. Landry (1133), and WDFW (1102) request permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217-227).

USGS (1130) requests a five-year permit for takes of juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*); juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*); juvenile, endangered, artificially-propagated, upper Columbia River steelhead (*Oncorhynchus mykiss*); and juvenile, threatened, Snake River steelhead (*Oncorhynchus mykiss*) associated with research designed to determine the movement, distribution, and passage behavior of radio-tagged juvenile salmonids at Bonneville, The Dalles, and John Day Dams on the Columbia River. USGS also requests a take of juvenile lower Columbia River steelhead (*Oncorhynchus mykiss*) which is currently proposed as threatened. The results of the research will be used by the U.S. Army Corps of Engineers to assess fish passage efficiency at John Day and The Dalles Dams and to increase bypass efficiency for juvenile salmonids at the dams by effectively designing and positioning prototype surface bypass/collection structures. ESA-listed fish are proposed to be acquired from Smolt Monitoring Program (SMP) personnel at Bonneville, John Day, and McNary Dams; implanted with radio transmitters; transported; held for as long as 24 hours; released; and tracked electronically. SMP personnel are authorized to collect ESA-listed fish under the authority of permit 822. Indirect mortalities of ESA-listed juvenile fish associated with the scientific research are also requested.

POP (1131) requests a two-year permit for takes of juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon; juvenile, threatened, Snake River fall chinook salmon; juvenile, endangered, naturally-produced and artificially-propagated, upper Columbia River steelhead; and juvenile, threatened, Snake River steelhead associated with research designed to determine the presence and distribution of fish in shallow water habitats between the lower end of Hayden Island and the Sandy River delta on the Columbia River. POP also requests a take of juvenile lower Columbia River steelhead which is currently proposed as threatened. Information obtained as a result of research activities will be used to: 1) develop a comprehensive management plan for the lower Columbia River steelhead evolutionarily significant unit in cooperation with the states of OR and WA; 2) prepare environmental impact assessments associated with shoreline development projects, such as a proposed marine terminal facility on the western half of Hayden Island; and 3) design mitigation plans to compensate for the loss of shallow water habitat due to future shoreline development projects. ESA-listed fish are proposed to be captured using electrofishing, seines, or bottom trawls; handled; and released. ESA-listed juvenile fish indirect mortalities associated with research activities are also requested.

S. Gordon Rogers, Satilla Management Associates, Inc. (1132), requests a one year permit to collect tissue samples and morphometric measurements from 30 shortnose sturgeon in Georgia rivers. In addition, the any fish that samples were collected from would also be marked with conventional and PIT tags. Collection method would be tended gill and trammel nets.

Andre M. Landry, Texas A&M University (1133), requests a five-year permit (1133) to take listed sea turtles for the purpose of conducting studies on population status and recovery potential, habitat preference, movement and migration, foraging patterns, and impact of man's activities such as commercial and recreational fishing, dredging and habitat alteration/pollution. The applicant requests authorization to take up to 200 Kemp's ridley (*Lepidochelys kempii*), 20 hawksbill (*Eretmochelys imbricata*), 300 green (*Chelonia mydas*), and 200 loggerhead (*Caretta caretta*) turtles annually from locations within the Gulf of Mexico, primarily through the use of entanglement nets. Captured turtles may be weighed, photographed, and measured; tagged with flipper, PIT, radio and/or satellite tags; and blood, fecal and tissue sampled. Additionally, stomach lavage techniques may be deployed where necessary.

On October 31, 1997, a notice was published (62 FR 58942) that NMFS received an application (1102) for a three-year permit from WDFW that would authorize takes of ESA-listed adult salmon and steelhead, including adult, threatened, Snake River steelhead, for the purpose of scientific research. NMFS has received an amendment to the application requesting: 1) That the permit be valid for a duration of five years; and 2) a take of adult lower Columbia River steelhead, which is currently proposed as threatened. Indirect mortalities of ESA-listed adult steelhead associated with research activities are also requested.

To date, protective regulations for threatened Snake River steelhead under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of applications requesting takes of this species is issued as a precaution in the event that NMFS issues protective regulations that prohibit takes of Snake River steelhead. The initiation of a 30-day public comment period on the applications, including their proposed takes of Snake River steelhead, does not presuppose the contents of the eventual protective regulations. To date, a listing determination for lower Columbia River steelhead under the ESA has not been promulgated by NMFS. This notice of receipt of applications requesting takes of this species is issued as a precaution in the event that NMFS issues a listing determination. The initiation of a 30-day public comment period on the applications, including their proposed takes of lower Columbia River steelhead, does not presuppose a listing determination.

Those individuals requesting a hearing should set out the specific

reasons why a hearing on this particular application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: February 19, 1998.

Nancy I. Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–4782 Filed 2–24–98; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the CME for Designation as a Contract Market in Futures and Options on the Russian Ruble

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) applied for designation as a contract market in futures and options on the Russian ruble. 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 proposals 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 March 27, 1998.

ADDRESSES: Interested persons should submit their views and comments 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 CME Russian ruble futures and options.

FOR FURTHER INFORMATION CONTACT: Please contact Michael Penick of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW., Washington, DC 20581, telephone (202) 418–5279. Facsimile number: (202) 418–5527. Electronic mail: mpenick@cftc.gov.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commissions, Three Lafayette Centre, 21st Street, NW., Washington, DC 20581. Copies of the terms and conditions 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 CME in support of the applications for contract market designation 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 (1997)), 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 terms and conditions, or with respect to other materials submitted by the CME 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 February 18, 1998.

John R. Mielke,

Acting Director.

[FR Doc. 98–4715 Filed 2–24–98; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 63 F.R. 8167.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m., Thursday, February 26, 1998.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission changed the meeting to discuss enforcement matters to March 5, 1998 at 2:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–4982 Filed 2–23–98; 3:20 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Golden Field Office; Notice of Time Variance

AGENCY: Golden Field Office, DOE.

ACTION: Notice of time variance.

SUMMARY: The Department of Energy's Golden Field Office is reducing the standard 14 day review and comment period for Notice Of Scoping and Review of Predecisional Draft Environmental Assessment in connection with the proposed granting of a Right-Of-Way Easement to the Public Service Company of Colorado. In accordance with 10 CFR 1021.343(b) Reduction of Time Periods, DOE is reducing the time period for review and comment from 14 days to 7 days.

DATES: Comments to the notice of Scoping and Predecisional Draft will be due to DOE 7 days after the date of issuance.

ADDRESSES: Comments should be addressed to Deborah A. Turner, U.S. Department of Energy, 1617 Cole Boulevard, Golden CO, 80401, Phone (303) 275–4746, Fax (303) 275–4788.

FOR FURTHER INFORMATION ON GENERAL DOE NEPA REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, Phone (202) 586–4600 or 1–800–472–2756, Fax (202) 586–7031.

SUPPLEMENTARY INFORMATION: The Public Service Company of Colorado has conducted extensive public and state agency outreach and coordination regarding the installation of a 26 mile high pressure natural gas line in the state of Colorado. The outreach and coordination activities have been ongoing since August 1996 and all other Federal, State, and local approvals have been obtained. A 0.25 mile portion of this pipeline is proposed to cross the South Table Mountain (STM) Site located in Golden, Colorado. The Golden Field Office is preparing an Environmental Assessment in relation to the potential granting of the Right-of-Way Easement that will allow the 0.25 mile portion of pipeline to be installed across our STM site. Construction and installation of the pipeline has already

commenced on both boundaries to the STM site under Right-of-Way easements from other parties.

Issued in Golden, Colorado, on February 13, 1998.

Frank M. Stewart,

Manager, Golden Field Office.

[FR Doc. 98–4775 Filed 2–24–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

NAME: Secretary of Energy Advisory Board—Electric System Reliability Task Force.

DATES AND TIMES: Tuesday, March 10, 1998, 8:30 AM–4:00 PM.

ADDRESSES: ANA Hotel, Ballroom I, 2401 M Street, NW, Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION:

Background

The electric power industry is in the midst of a complex transition to competition, which will induce many far-reaching changes in the structure of the industry and the institutions which regulate it. This transition raises many reliability issues, as new entities emerge in the power markets and as generation becomes less integrated with transmission.

Purpose of the Task Force

The purpose of the Electric System Reliability Task Force is to provide advice and recommendations to the Secretary of Energy Advisory Board regarding the critical institutional, technical, and policy issues that need to be addressed in order to maintain the reliability of the Nation's bulk electric system in the context of a more competitive industry.

Tentative Agenda

Tuesday, March 10, 1998

8:30–8:45 AM Opening Remarks & Objectives—Philip Sharp, ESR Task Force Chairman
8:45–10:15 AM Working Session: Discussion of Draft Position Paper on Technical Issues in Transmission System Reliability—Facilitated by Philip Sharp
10:15–10:30 AM Break
10:30–11:45 AM Working Session: Discussion of a Draft Position Paper on the Role and Shape of the Independent System Operator—Facilitated by Philip Sharp
11:45–12:45 PM Lunch
12:45–1:45 PM Working Session: Discussion of a Draft Position Paper on Ancillary Services and Bulk-Power Reliability—Facilitated by Wm. Newman
1:45–2:45 PM Working Session: Discussion of a Draft Position Paper on Incentives for Transmission Enhancement—Facilitated by Susan Tierney
2:45–3:30 PM Working Session: Guest Presentation & Discussion of State and Regional Reliability Issues—Philip Carver, Oregon Office of Energy and Facilitated by Roger Hamilton
3:30–4:00 PM Public Comment Period
4:00 PM Adjourn

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation

The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, D.C., the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Minutes

Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays. Information on the Electric System Reliability Task Force and the Task Force's interim report may be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on February 20, 1998.

Althea T. Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 98–4774 Filed 2–24–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1170–000]

CLECO Energy, L.L.C.; Notice of Issuance of Order

February 19, 1998.

CLECO Energy, L.L.C. (CLECO Energy) filed an application for authorization to sell power at market-based rates, and for certain waivers and authorizations. In particular, CLECO Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by CLECO Energy. On February 17, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's February 17, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by CLECO Energy 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.

(D) Absent a request to be heard within the period set fourth in Ordering Paragraph (C) above, CLECO Energy is hereby authorized to issue securities and assume obligations and 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 CLECO Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) 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 approval of CLECO Energy's issuances 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 March 19, 1998.

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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4732 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–406–010]

CNG Transmission Corporation; Notice of Pro Forma Tariff Sheet Filing

February 19, 1998.

Take notice that on February 13, 1998, CNG Transmission Corporation (CNG), tendered for filing the following pro forma tariff sheets corresponding to its FERC Gas Tariff, First Revised Volume No. 1:

Pro Forma Sheet Nos. 31–35
Pro Forma Sheet No. 37
Pro Forma Sheet No. 37A

CNG states that the purpose of this filing is to comply with Ordering Paragraph D of the ''Order Accepting and Suspending Certain Tariff Sheets Subject To Conditions and Rejecting Other Tariff Sheet,'' issued by the Commission on January 29, 1998.

CNG states that it is submitting these pro forma tariff sheets and supporting work papers to reflect current procedural status of CNG's filings in the captioned proceedings.

CNG states that it has: (1) Removed the Accelerated Cost Recovery Mechanism (''ACRM''); (2) recalculated computer depreciation expenses utilizing the 20% rate requested in CNG's July 1, 1997 filing; and (3) reversed the conditional, voluntary reduction of shrinkage and fuel costs that reflected in the December 31 motion rate filing in Docket No. RP97–406.

CNG states that copies of its filing have been mailed to active parties to the captioned proceeding.

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 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 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4738 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–231–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Request Under Blanket Authorization

February 19, 1998.

Take notice that on February 13, 1998, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed in Docket No. CP98–231–000 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 a linetap in Beltrami County, Minnesota, under Great Lakes' blanket certificate issued in Docket No. CP90–2053–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Great Lakes states that the proposed linetap, consisting of a side tap, a four-inch valve and approximately four feet of four-inch-diameter steel pipe, will provide flexibility for potential deliveries of natural gas to Northwood Panelboard Company (Northwood), which currently utilizes propane to meet its requirements at its Beltrami County, Minnesota plant. Great Lakes states that the proposed new linetap will be constructed within its right-of-way and within the property boundaries of Northwood's plant. Great Lakes also states that the cost of its proposed facilities is estimated to be $14,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4728 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–373–011]

Koch Gateway Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

February 19, 1998.

Take notice that on February 13, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, to be effective December 1, 1997:

Second Substitute Fourth Revised Sheet No. 1807

Koch is submitting this substitute tariff sheet to revise a previously suspended version of Sheet 1807 with a modification that was made and accepted during its suspension period. Koch is also requesting the withdrawal of Substitute Fourth Revised Sheet No. 1807 filed on February 10, 1998.

Koch states that copies of this filing have been served upon each party designated in the official service list as compiled by the Secretary in the above captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4737 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–253–004]

Natural Gas Pipeline Company of America; Notice of Compliance Support for Revised Rates in FERC Gas Tariff

February 19, 1998.

Take notice that on January 23, 1998, Natural Gas Pipeline Company of America (Natural) filed work papers to support revised Rate Schedule DSS rates to comply with the OPR Director Letter Order issued December 30, 1997, (December 30 order) in Docket No. RP96–253–004.

On November 18, 1997, Natural filed in Docket No. RP96–253–004 to implement a change in the currently effective rates applicable to Rate Schedule DSS to reflect Settlement factors in accordance with a July 5, 1996, order issued in Docket No. RP96–253–000 and 001.

The December 30 order accepted natural's revised Rate Schedule DSS rates effective December 1, 1997, subject to Natural filing data to support its revisions proposed on November 18, 1997, in Docket No. RP96–253–004.

Natural states that copies of the filing have been mailed to Natural's customers, interested state regulatory agencies and all parties set out on the official service list at Docket No. RP96–253–000, *et al.*

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 26, 1998. 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4736 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–431–002]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

February 19, 1998.

Take notice that on February 13, 1998, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain pro forma tariff sheets.

Natural states that the purposes of this filing is to comply with the Commission's order issued January 16, 1998 in Docket No. RP97–431–000, which required Natural to submit modified tariff changes detailing new procedures for the posting, auctioning, allocating and awarding of firm capacity.

Natural states that copies of the filing are being mailed to Natural's customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP97–431.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4739 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–127–001]

Northern Natural Gas Company; Notice of Compliance Filing

February 19, 1998.

Take notice that on February 13, 1998, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective March 1, 1998:

16 Revised Sheet No. 52
17 Revised Sheet No. 60

Northern states that the reason for this filing is to resubmit Sheet Nos. 52 and 60 with corrected pagination in compliance with the Commission's February 5 Letter Order in Docket No. RP98–127–000. No change has been made to Sheet Nos. 52 and 60, as filed on January 30, 1998, other than the numbering of the sheets, as follows:

—Sheet No. Fifteenth Revised Sheet No. 52 is herein resubmitted as Sixteenth Revised Sheet No. 52, and
—Sheet No. Sixteenth Revised Sheet No. 60 is herein resubmitted as Seventeenth Revised Sheet No. 60.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E. Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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 protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4742 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–927–000, ER98–928–000, ER98–930–000, and ER98–931–000]

Ocean Vista Power Generation, L.L.C.; Oeste Power Generation, L.L.C.; Mountain Vista Power Generation, L.L.C.; Alta Power Generation, L.L.C.; Notice of Issuance of Order

February 19, 1998.

Ocean Vista Power Generation, L.L.C., Oeste Power Generation, L.L.C., Mountain Vista Power Generation, L.L.C., and Alta Power Generation, L.L.C. (collectively, Applicants) are affiliates of Houston Lighting & Power Company and wholly-owned subsidiaries of Houston Industries Power Generation, Inc., which in turn is a wholly-owned subsidiary of Houston Industries. Each Applicant filed separate applications for authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Applicants. On February 11, 1998, the Commission issued an Order Conditionally Accepting for Filing Proposed Market-Based Rates and Granting Waiver of Notice (Order), in the above-docketed proceeding.

The Commission's February 11, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering paragraphs (E), (F), and (H):

(E) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Applicants should file a motion to intervene or protest with the Federal 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.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, Applicants are hereby authorized to issue securities and assume obligations and 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 Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) 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 approval of Applicants' issuances 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 March 13, 1998.

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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4731 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–15–001]

Overthrust Pipeline Company; Notice of Tariff Filing

February 19, 1998.

Take notice that on February 13, 1998, Overthrust Pipeline Company (Overthrust), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Fourth Revised Sheet No. 77 to be effective February 27, 1998.

Overthrust states that this tariff sheet corrects the pagination of Third Revised Sheet No. 77 as tendered with Overthrust's January 28, 1998, FERC Gas Tariff filing in Docket No. GT98–15–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should 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 protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4733 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP85–60–011]

Overthrust Pipeline Company; Notice of Report of Refunds

February 19, 1998.

Take notice that on February 6, 1998 Overthrust Pipeline Company (Overthrust) tendered for filing a refund report. Overthrust states that the report documents refunds of amounts pertaining to and detailing the Deferred Income Tax (DIT) refund payments for the year 1997.

Overthrust states that it is filing the refund report pursuant to a Commission order dated May 21, 1991, ''Order Approving Settlement with Modifications'' in Docket Nos. RP85–60–000 and –002. Overthrust explains that Article V of the settlement as modified, requires Overthrust to file an annual report 60-days after making the actual DIT refunds.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 first Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 26, 1998. Protest 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4735 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2114, WA]

Public Utility District No. 2 of Grant County, Washington; Notice of Public Utility District No. 2 of Grant County's Request for Alternative Procedures in Preparing a License Application

February 19, 1998.

By letter dated January 22, 1998, Public Utility District No. 2 of Grant County, Washington (Grant) has asked to use an alternative procedure in preparing to relicense their Priest

Rapids Project No. 2114.[1] Specifically, Grant is asking for a waiver of Section 16.6(c)(1) of the Commission's regulations, and for early National Environmental Policy Act (NEPA) scoping.

Section 16.6(c)(1) of the Commission's regulations requires an applicant to file a notice of intent to relicense a project no earlier than five and one-half years before license expiration.[2] Grant intends to negotiate pre-filing settlements during the 3-stage consultation period before filing their relicense application, and in order to do so would like to start formal consultation before the year 2000. Grant is also asking that Commission staff conduct NEPA scoping during the pre-filing stages to facilitate the early identification of issues.

Grant has demonstrated that they have made an effort to contact resource agencies, Indian tribes, nongovernmental organizations (NGOs), and others affected by their proposal, and that a consensus exists that the use of an alternative procedure is appropriate in this case.

The purpose of this notice is to invite comments on Grant's request to use the alternative procedure, as required under the final rule for Regulations for the Licensing of Hydroelectric Projects.[3] Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

Comments

Interested parties have 30 days from the date of this notice to file with the Commission, any comments on Grant's proposal to use the alternative procedures to prepare an application to relicense the Priest Rapids Project.

Filing Requirements

The comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE., Washington, DC 20426.

All comment filings must bear the heading ''Comments on the Alternative Procedure,'' and include the project name and number (Priest Rapids Hydroelectric Project, No. 2114).

For further information, please contact Vince Yearick of the Federal Energy Regulatory Commission at 202–219–3073.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4734 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

[1] The 1,946-megawatt Priest Rapids project is located on the Columbia River in Chelan, Douglas, Kittitas, Grant, Yakima, and Benton Counties, Washington. The project consists of two developments; Priest Rapids Dam and Wanapum Dam.

[2] The license for the Priest Rapids project was issued on November 4, 1955 (14 FPC 1067), effective November 1, 1995, and expires by its terms on October 31, 2005.

[3] 81 FERC ¶ 61,103 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–43–000]

Sithe Wyman LLC; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

February 19, 1998.

On February 11, 1998, Sithe Wyman LLC, 450 Lexington Avenue, 37th Floor, New York, NY 10017 (Sithe Wyman), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Sithe Wyman states that it will own a 5.89% interest in an electric generating facility, entitling Sithe Wyman to receive 36 MW of electricity. The facility is located in Yarmouth, Maine.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or protests 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). The Commission will limit its consideration of comments to those that concern the adequacy of the application. All such motions and protests should be filed on or before March 4, 1998, and must be served on the applicant. 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4730 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–135–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

February 19, 1998.

Take notice that on February 13, 1998, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, First Revised Sheet No. 676, Original Sheet No. 678 and Original Sheet No. 679, with an effective date of March 15, 1998.

Tennessee states that the tariff sheets propose certain modifications of its Pro Forma Electronic Data Interchange (EDI) Agency Authorization Agreement in that the limited agent under the EDI Agency Authorization Agreement will have responsibility for the data sets identified in Exhibit I to the EDI Agency Authorization Agreement, rather than for the data sets identified in Exhibit A to the Trading Partner Agreement between the limited agent and Tennessee, as contemplated by Tennessee's current Pro Forma EDI Agency Authorization Agreement. Tennessee further states that this change permits a shipper to delegate to the limited agent responsibility for some, but not all, of the data sets identified in the trading partner agreement thereby giving the shipper greater flexibility with regard to its EDI transactions with Tennessee.

Any person desiring to be heard or to protest this 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 Section 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or 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 protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4741 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–232–000]

Williams Gas Pipelines Central, Inc.; Notice of Application

February 19, 1998.

Take notice that on February 13, 1998, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed an abbreviated application in Docket No. CP98–232–000 pursuant to section 7(b) of the Natural Gas Act, and Part 157 of the Commission's Regulations for an order granting permission and approval to abandon by reclaim the Haysville compressor units located in Sedgwick County, Kansas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Williams seeks authority to abandon by reclaim the Haysville compressor station consisting of two 2,400 horsepower Cooper GMVH reciprocating units and auxiliary equipment. Williams will retain the station site since other facilities, which also occupy the site, will remain in operation. The cost of the proposed abandonment is approximately $447,885 with an estimated salvage value of $1,942,815.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 12, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211 and the Regulations under the Natural Gas Act (18 CFR 157.10. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this 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 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 Williams to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4729 Filed 2–24–98; 8:45am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–104–001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

February 19, 1998.

Take notice that on February 13, 1998 Williston Basin Interstate Pipeline Company (Williston Basin), filed further explanations in compliance with the Commission's ''Order Accepting Tariff Sheets Subject to Conditions'' issued on January 30, 1998, in support of certain provisions of its proposed pooling service, as more fully explained in the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed 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 protestants parties to the proceeeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4740 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1795–000, et al.]

Louisville Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

February 19, 1998.

Take notice that the following filings have been made with the Commission:

1. Louisville Gas and Electric Company

[Docket No. ER98–1795–000]

Take notice that on February 10, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Minnesota Power & Light Company under LG&E's Open Access Transmission Tariff.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Long Beach Generation LLC

[Docket No. ER98–1796–000]

Take notice that on February 9, 1998, Long Beach Generation LLC, tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, to be effective upon closing of its purchase of the Long Beach Generating Station, which is scheduled to occur on or before March 31, 1998.

Long Beach Generation LLC intends to sell electric power at wholesale. In transactions where Long Beach Generation LLC sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Rate Schedule No. 1, provides for the sale of energy and capacity at agreed prices.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. NGE Generation, Inc.

[Docket No. ER98–1798–000]

Take notice that on February 10, 1998, NGE Generation, Inc. (NGE), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12, as an initial rate schedule, an agreement with New York State Electric & Gas Corporation (NYSEG), for the sale of power at cost based rates to NYSEG to meet NYSEG's

supplemental capacity and energy requirements. The agreement also provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NGE will sell to NYSEG and NYSEG will purchase from NGE either capacity and associated energy or energy only as the parties may mutually agree.

NGE requests that the agreement become effective on February 11, 1998, in accordance with the terms set forth in the Agreement. NGE has requested waiver of the notice requirements for good cause shown.

NGE served copies of the filing upon the New York State Public Service Commission and NYSEG.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Houston Lighting & Power Company

[Docket No. ER98–1799–000]

Take notice that on February 10, 1998, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA), with (1) Questar Energy Trading Co. (Questar), and (2) PECO Energy Company—Power Team for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of February 10, 1998.

Copies of the filing were served on Questar, PECO and the Public Utility Commission of Texas.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. PECO Energy Company

[Docket No. ER98–1800–000]

Take notice that on February 10, 1998, PECO Energy Company (PECO), filed a Service Agreement dated December 10, 1997 with South Jersey Energy Company (SJEC), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds SJEC as a customer under the Tariff.

PECO requests an effective date of January 15, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to SJEC and to the Pennsylvania Public Utility Commission.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of Oklahoma

[Docket No. ER98–1801–000]

Take notice that on February 10, 1998, Public Service Company of Oklahoma (PSO), tendered for filing a Contract for Electric Service, dated January 15, 1996, between PSO and South Coffeyville Public Works Authority (South Coffeyville). The Contract extends requirements service to South Coffeyville through January 20, 2001.

PSO seeks an effective date of January 21, 1996, and accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served upon South Coffeyville and the Oklahoma Corporation Commission.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Louisville Gas and Electric Company

[Docket No. ER98–1802–000]

Take notice that on February 10, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing a Consent of Assignment form between LG&E and Coastal Electric Services Company which has been assigned to Engage Energy US, L.P.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER98–1803–000]

Take notice that on February 11, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Constellation Power Source, Inc., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of December 21, 1997.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Commonwealth Edison Company

[Docket No. ER98–1804–000]

Take notice that on February 10, 1998, Commonwealth Edison Company (ComEd), submitted for filing two Service Agreements establishing Amoco Energy Trading Corporation (AMOCO), and Tennessee Valley Authority (TVA), as non-firm transmission customers under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of February 2, 1998, for the service agreements, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon AMOCO, TVA and the Illinois Commerce Commission.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Maine Public Service Company

[Docket No. ER98–1806–000]

Take notice that on February 10, 1998, Maine Public Service Company (Maine Public), filed an executed Service Agreement with Eastern Maine Electric Cooperative.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Western Resources, Inc.

[Docket No. ER98–1807–000]

Take notice that on February 10, 1998, Western Resources, Inc., tendered for filing four non-firm transmission agreements between Western Resources and American Electric Power Service Corporation, Western Resources and Amoco Energy Trading Corporation, Western Resources and Columbia Power Marketing Corporation, and Western Resources and Oklahoma Municipal Power Authority. Western Resources states that the purpose of the agreements 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 agreements are proposed to become effective January 14, 1998, January 30, 1998, January 23, 1998, and February 3, 1998.

Copies of the filing were served upon American Electric Power Service Corporation, Amoco Energy Trading Corporation, Columbia Power Marketing Corporation, Oklahoma Municipal Power Authority, and the Kansas Corporation Commission.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER98–1808–000]

Take notice that on February 10, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E), and PSI Energy, Inc. (PSI), an Interchange Agreement, dated December 1, 1997, between Cinergy, CG&E, PSI and Continental Energy Services, L.L.C. (CES).

The Interchange Agreement provides for the following service between Cinergy and CES:

1. Exhibit A—Power Sales by CES
2. Exhibit B—Power Sales by Cinergy

Cinergy and CES have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on Continental Energy Services, L.L.C., the Oklahoma Corporation Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Kansas City Power & Light Company

[Docket No. ER98–1809–000]

Take notice that on February 10, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated January 27, 1998, between KCPL and American Electric Power. KCPL proposes an effective date of February 2, 1998, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER98–1810–000]

Take notice that on February 10, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E), and PSI Energy, Inc. (PSI), an Interchange Agreement, dated February 1, 1998, between Cinergy, CG&E, PSI and New Energy Ventures, L.L.C. (NEV).

The Interchange Agreement provides for the following service between Cinergy and NEV:

1. Exhibit A—Power Sales by NEV
2. Exhibit B—Power Sales by Cinergy

Cinergy and NEV have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on New Energy Ventures, L.L.C., the Massachusetts Department of Utilities, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER98–1811–000]

Take notice that on February 10, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E), and PSI Energy, Inc. (PSI), an Interchange Agreement, dated January 1, 1998, between Cinergy, CG&E, PSI and Entergy Power Marketing Corp. (EPMC).

The Interchange Agreement provides for the following service between Cinergy and EPMC:

1. Exhibit A—Power Sales by EPMC
2. Exhibit B—Power Sales by Cinergy

Cinergy and EPMC have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on Entergy Power Marketing Corp., the Texas Public Utility Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: March 5, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. ER98–1812–000]

Take notice that on February 10, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E), and PSI Energy, Inc. (PSI), an Interchange Agreement, dated February 1, 1998, between Cinergy, CG&E, PSI and DTE Energy Trading, Inc., (DTE ET).

The Interchange Agreement provides for the following service between Cinergy and DTE ET:

1. Exhibit A—Power Sales by DTE ET
2. Exhibit B—Power Sales by Cinergy

Cinergy and DTE ET have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on DTE Energy Trading, Inc., the Michigan Public Service Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: March 5, 1998, 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4801 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice

February 19, 1998.

The Federal Energy Regulatory Commission has determined that the following employees are ''Covered Executive Branch Officials'' under the Lobbying Disclosure Act of 1995, Public Law 104–65, 109 Stat. 691.

Chairman James J. Hoecker

Commission Vicky A. Bailey

Commissioner Linda K. Breathitt

Jean Womack, Confidential Assistant

Michael Alexander, Technical Advisor

Commissioner Curtis L. Hebert, Jr.

Mechalle Myers, Confidential Assistant

Commissioner William L. Massey

Donna Glasgow, Confidential Assistant

Robert HIrasuna, Attorney-Advisor, Office of the General Counsel

Margaret Passerini, Special Assistant, Office of External Affairs

This list will be revised as necessary to reflect any changes in personnel or government-wide interpretive rulings.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–4727 Filed 2–24–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5970–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NSPS Subpart E: New Source Performance Standards (NSPS) for Municipal Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Reporting and Recordkeeping Requirements for the New Source Performance Standards (NSPS) for Municipal Incinerators, OMB Control Number 2060–0040, expiration date March 31, 1998. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 27, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 1058.06.

SUPPLEMENTARY INFORMATION:

Title: NSPS Subpart E: New Source Performance Standards (NSPS) for Incinerators (OMB Control No. 2060–0040; EPA ICR No. 1058.06) expiring 3/31/98. This is a request for extension of a currently approved collection.

Abstract: The Agency is required under section 111 of the Clean Air Act, as amended, to establish standards of performance for new stationary sources of air pollutants that reflect: * * * Application of the best technological system of continuous emissions reduction which (taking into consideration the cost of achieving such emissions reduction, or any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

Section 114(a) states that: * * * The Administrator may require any owner or operator subject to any requirement of this Act to (A) establish and maintain such records, (B) make such reports, (C) install, use and maintain such monitoring equipment or methods (in accordance with such methods at such locations, at such intervals, and in such manner as the Administrator may prescribe), and (D) provide such other information, as he may reasonably require.

In the Administrator's judgement, particulate matter emissions from municipal incinerators causes or contributes to air pollution that may reasonably be anticipated to endanger public health or welfare. Consequently, the NSPS for municipal incinerators were developed for this source category (municipal incinerators charging more than 45 megagrams per day).

The control of emissions of particulate matter from municipal incinerators requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. Certain records and reports are necessary to enable the Administrator to: (1) Identify existing, new, and reconstructed sources subject to the standards; (2) determine a source's initial capability to comply with the emission standard; and (3) ensure that the standards are being achieved. These records and reports are required under subpart E and the General Provisions of 40 CFR part 60.

Owners or operators of affected facilities must provide notification of: (1) The date of construction or reconstruction; (2) the anticipated date of startup; (3) the actual date of startup; (4) any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; (5) the date of the initial performance test; and (6) results of the initial performance test, including information necessary to determine the conditions of the performance test, and performance test measurements and results. A report on the results of the initial performance test is also required. Owners or operators of affected facilities must record: (1) The initial performance test; (2) the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative; (3) the daily charging rates and hours of operation; (4) periods when the monitoring system is inoperative; and (5) malfunctions of the air pollution control equipment. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

State or local agencies can be delegated authority by EPA to enforce the provisions of this part and be granted authority to receive and/or request these reports. If there is no such delegated authority, the reports are sent directly to the EPA Regional Office. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated and the standard is being met. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless a currently valid OMB control number is displayed. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** Notice, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 20, 1997 (62 FR 44271). No comments were received prior to closure of the comment period. Comments regarding the capital/start-up and operating and maintenance costs associated with the recordkeeping and reporting requirements were received after closure of the comment period.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 89 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Operators of Municipal Incinerators.

Estimated Number of Respondents: 96.

Frequency of Response: Daily, Monthly, and Semi-annually.

Estimated Total Annual Hour Burden: 8544 hours.

Estimated Total Annualized Cost Burden: $240,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses.

Please refer to EPA ICR No. 1058.6 and OMB Control No. 2060–0040 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: February 19, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–4815 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5970–6]

Government-Owned Inventions: Available for Licensing

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for licensing in the United States in accordance with 35 U.S.C. 207 and 37 CFR part 404. Pursuant to 37 CFR 404.7, beginning three months after the date of this notice, the Government may grant exclusive or partially exclusive licenses on any of the inventions listed below.

Copies of the listed patents, the patent application, and 37 CFR part 404 can be obtained from Alan Ehrlich, Acting Patent Counsel, at the address indicated below. Requests for copies of patents or patent applications must include the patent number or patent application serial number listed in this notice. Requesters of patent applications will be asked to sign a Confidentiality Agreement before the application is mailed.

If a party is interested in obtaining a license, they must apply to EPA, including providing the information set forth in 37 CFR 404.8, and including the license applicant's plan for development or marketing the invention.

Prior to granting an exclusive or partially exclusive license on any of the inventions listed herein, EPA, pursuant to 37 CFR 404.7, will publish in the **Federal Register** an additional notice identifying the specific invention and the prospective licensee.

FOR FURTHER INFORMATION CONTACT: Alan Ehrlich, Acting Patent Counsel, Office of General Counsel (2377), Environmental Protection Agency, Washington, D.C. 20460, telephone (202) 260–7510.

Patents

U.S. Patent No. 5,476,788: Solid Phase Bioremediation Methods Using Lignin-Degrading Fungi; issued December 19, 1995; and U.S. Patent Application No. 08/881,312: Solid Phase Bioremediation Methods Using Lignin-Degrading Fungi; filed June 24, 1997. These two documents comprise one invention for which a patent application was first filed June 10, 1993.

U.S. Patent No. 5,549,087: Combined Cycle Engine; issued August 27, 1996.

U.S. Patent No. 5,577,522: Transportable Electronically Controlled System for On-Site Decontamination of Solid and Hazardous Waste; issued November 26, 1996.

U.S. Patent No. 5,601,791: Electrostatic Precipitator for Collection of Multiple Pollutants; issued February 11, 1997.

U.S. Patent No. 5,604,348: Measurement of Acid Sulfate Levels in Aerosols; issued February 18, 1997.

U.S. Patent No. 5,619,937: Sorbent Melts for Capture of Metals from Combustion Gases; issued April 15, 1997.

U.S. Patent No. 5,652,485: Fuzzy Logic Integrated Electrical Control to Improve Variable Speed Wind Turbine Efficiency and Performance; issued July 29, 1997.

U.S. Patent No. 5,711,020: Method for Remediating Environmental Contaminants; issued January 20, 1998; and U.S. Patent Application No. 08/897,203: Method for Remediating Environmental Contaminants; filed July 21, 1997. These two documents comprise one invention for which a patent application was first filed April 9, 1993.

Patent Applications

U.S. Patent Application No. 08/419,948: Elimination of Products of Incomplete Combustion; filed April 11, 1995.

U.S. Patent Application No. 08/440,965: Hydrogel Alginate Compositions; filed May 15, 1995.

U.S. Patent Application No. 08/466,437: Method and Apparatus for Altering Ionic Interactions with Chemicals and Chemical Processes Using Magnetic Fields; filed June 6, 1995.

U.S. Patent Application No. 08/535,405: A Method for Improving Process Control by Reducing Lag Time of Sensors Using Artificial Neural Networks; filed September 28, 1995.

U.S. Patent Application No. 08/739,842: Remediation of Environmental Contaminants Using a Metal and a Sulfur-Containing Compound; filed October 30, 1996.

U.S. Patent Application No. 08/827,310: Adsorbent-Filled Membranes for Pervaporation; filed March 26, 1997.

U.S. Patent Application No. 08.847,507: Thermophilic Methanotrophs for High Temperature Oxidations; filed April 25, 1997.

U.S. Patent Application No. 08/862,308: Recovery of Volatile Organic Compounds in Water by Pervaporation; filed May 23, 1997.

U.S. Patent Application No. 08/933,832: Dual-Service Evaporator System for Refrigerators; filed September 19, 1997.

U.S. Patent Application No. 08/933,946: Rotating Disk Evaporative Cooler; filed September 19, 1997.

Dated: February 17, 1998.

Ray E. Spears,

Associate General Counsel.

[FR Doc. 98–4819 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30448; FRL–5773–7]

Ecogen, Inc.; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application submitted by Ecogen Inc., to register a pesticide product containing a new active ingredient not included any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by March 27, 1998.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30448] and the file symbols to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., 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 notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Alan Reynolds, Regulatory Action Leader, Biopesticides and Pollution Prevention Division, (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 5th floor, CS1, 2800 Crystal Drive, Arlington, VA. 22202, (703) 605–0515; e-mail: reynolds.alan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received an application from Ecogen Inc., 2005 Cabot Blvd. West, P.O. Box 3023 Langhorne, PA 19047–3023 to register the pesticide product BTI Technical Powder Bioinsecticide (EPA File Symbol 55638–UR), containing the active ingredient *Bacillus thuringiensis* subspecies *israelensis* strain EG2215 at 20 percent, an ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. The product is for manufacture of bioinsecticide end-use products to control of mosquitoes. Notice of receipt of the application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30448] (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. Comment 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–30448]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: February 13, 1998.

Janet L. Andersen,

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

[FR Doc. 98–4805 Filed 2-24-98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30447; FRL–5773–6]

FMC Corporation; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by March 27, 1998.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30447] and the file symbols to: Public Information and Records Intregrity 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: Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., 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 notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM-23), 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: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703 305–6224, e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 279–GRIE. Applicant: FMC Corporation, Agricultural Chemical Group, 1735 Market St., Philadelphia, PA 19103. Product Name: Carfentrazone-ethyl (F8426) 50DF. Herbicide. Active ingredient: Carfentrazone: ethyl α,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate at 50 percent. Proposed classification/Use: None. For agricultural or commercial use only to

control broadleaf weeds on cereal grain groups and soybeans.

2. File Symbol: 279–GRIR. Applicant: FMC Corporation. Product Name: Carfentrazone-ethyl (F8426) Technical. Herbicide. Active ingredient: Carfentrazone: ethyl α,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate at 90 percent. Proposed classification/Use: None. For formulation use only.

3. File Symbol: 279–GROU. Applicant: FMC Corporation. Product Name: Carfentrazone-ethyl (F8426) 40DF. Herbicide. Active ingredient: Carfentrazone: ethyl α,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate at 40 percent. Proposed classification/Use: None. For agricultural or commercial use only to control broadleaf weeds on cereal grain groups and soybeans.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30447] (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. Comment 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–30447]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: February 12, 1998.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–4814 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–790; FRL–5768–4]

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–790, must be received on or before March 27, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Following 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. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number/e-mail address	Address
George LaRocca (PM 21).	Rm. 204, CM #2, 703–305–6100, e-mail: larocca.george@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
James A. Tompkins (PM 25).	Rm. 239, CM #2, 703–305–5697, e-mail: tompkins.james@epamail.epa.gov.	Do.
Hoyt Jamerson (PM 05)	Rm. 268, CM #2, 703–308–9368, e-mail: jamerson.hoyt@epamail.epa.gov.	Do.

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 raw 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 grantinig of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice, as well as the public version, has been established for this notice of filing under docket control number PF–790 (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 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (insert docket number) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

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

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 11, 1998.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Below summaries of the pesticide petitions are printed. The summaries of the petitions were prepared by the petitioners. 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. DowElanco

PP 1F3935

EPA has received a pesticide petition (PP 1F3935) from DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268–1054 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 residues of triclopyr, (3,5,6-trichloro-2-pyridinyl)oxyacetic acid and its metabolites 3,5,6-trichloro-2-pyridinol (TCP) and 2-methoxy-3,5,6-trichloropyridine (TMP) in or on the raw agricultural commodity fish at 3.0 parts per million (ppm), and shellfish at 5.0 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 supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Analytical method.* Adequate methodology is available for the enforcement of tolerances for triclopyr residues of concern. Gas chromatography methods are available for the determination of triclopyr residues of concern. Residues of triclopyr, 3,5,6-trichloro-2-pyridinol, and 2-methoxy-3,5,6-trichloropyridine can be separately determined. The limits of quantitation are 0.01 - 0.05 ppm in fish and shellfish, depending on the compound being analyzed. The water method has a limit of quantitation of 0.1 ppb.

2. *Magnitude of residues.* In field studies, triclopyr and its metabolites in water have half-lives of 0.5 – 15 days. Triclopyr residues in lake water treated at the maximum label rate were below 0.5 ppm within 3 – 14 days. In pond water where whole ponds were treated at the maximum label rate, residues were below 0.5 ppm by 28 days after treatment. After 42 days in both lakes and ponds, residues were non-detectable (<0.010 ppm) to 0.013 ppm.

Residues of triclopyr and its metabolites 3,5,6-trichloro-2-pyridinol and 2-methoxy-3,5,6-trichloropyridine reach a maximum concentration in fish at 3-14 days after treatment of water, and total residues of triclopyr and its metabolites were detectable in the edible flesh at a maximum level of 3.0 ppm in fish and 5.0 ppm in shellfish. Residues in fish and shellfish decline as residues in water dissipate.

B. Toxicological Profile

1. *Acute toxicity.* The developmental no-effect level (NOEL) of 30 milligram/kilogram/day (mg/kg/day) from a rabbit developmental study was recommended for the acute dietary risk assessment. At the lowest effect level (LEL) of 100 mg/kg/day, there were embryotoxic and fetotoxic effects associated with significant maternal toxicity, including death. Acute exposure assessment will evaluate risk to pregnant females age 13 and older.

2. *Short- and Intermediate-Term Toxicity.* Based on the available data, short- and intermediate-term dermal and inhalation risk assessments are not required. A systemic NOEL of 1,000 mg/kg/day, the highest dose tested (HDT), was determined in a 21–day dermal toxicity study in rabbits. The LC_{50} from the acute inhalation study in rats was determined to be > 2.6 mg/L (Toxicity Category III).

3. *Chronic toxicity.* The Reference Dose (RfD) for triclopyr is 0.05 mg/kg/day. This RfD is based on a 2-generation reproductive toxicity study in rats with a NOEL of 5.0 mg/kg/day using an uncertainty factor of 100. At the next higher dose level of 25 mg/kg/day, an increased incidence of slight degeneration of the proximal tubules of the kidneys was observed in some P1 and P2 parents of both sexes. Chronic exposure assessment will evaluate risk using this RfD.

4. *Carcinogenicity.* Environmental Protection Agency's Cancer Peer Review Committee (CPRC) concluded that triclopyr should be classified as a ''Group D chemical'' - not classifiable as to human carcinogenicity. A cancer risk assessment is not required.

5. *Animal metabolism.* Disposition and metabolism of ^{14}C-triclopyr in rats demonstrated that triclopyr was well absorbed after oral administration. Excretion was relatively rapid with a majority of radioactivity eliminated in the urine by 24 hours. At the high dose of 60 mg/kg, urinary elimination of ^{14}C-triclopyr was decreased due to apparent saturation of renal elimination mechanisms. Fecal elimination of ^{14}C-triclopyr was a minor route of excretion, as was elimination via exhaled air. Unmetabolized parent chemical represented >90% of urinary radioactivity, with the remainder accounted for by the metabolite 3,5,6-trichloro-2-pyridinol (3,5,6-TCP), and possible glucuranide and/or sulfate conjugates of 3,5,6-TCP. Plasma elimination following intravenous administration of ^{14}C-triclopyr was consistent with a one-compartment model with an elimination half-life of 3.6 hour and zero-order kinetics from 0–12 hours at the 60 mg/kg dose.

6. *Bioequivalency.* Toxicology studies conducted with triclopyr have been performed using both the free acid or the triethylamine salt from of triclopyr. Bioequivalency of the two chemical forms of triclopyr has been addressed through the conduct of special studies with the triethylamine from of triclopyr. These studies, which included data on comparative disposition, plasma half-life, tissue distribution, hydrolytic cleavage under physiological and environmental conditions for triclopyr triethylamine salt were found to adequately address the issue of Bioequivalency. In addition, subchronic toxicity studies supported the pharmacokinetics data in demonstrating bioequivalence. Therefore, studies conducted with any one from of triclopyr can be used to support the toxicology database as a whole.

7. *Endocrine Effects.* An evaluation of the potential effects on the endocrine systems of mammals has not been

determined; However, no evidence of such effects were reported in the chronic or reproductive toxicology studies described above. There was no observed pathology of the endocrine organs in these studies. There is no evidence at this time that triclopyr causes endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure*. The RfD for triclopyr is based upon the 2-generation reproduction toxicity study in rats with a NOEL of 5.0 mg/kg/day, the lowest dose tested. An uncertainty factor of 10 for interspecies differences in response and an uncertainty factor of 10 for intraspecies differences in response was applied. Thus, the RfD for triclopyr was established at 0.05 mg/kg/day by the RfD Peer Review Committee on September 4, 1996.

A chronic dietary exposure analysis was performed using tolerance level residues and 100 percent crop treated information to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population and 22 subgroups. Existing tolerances, including the proposed tolerances for fish and shellfish, result in a TMRC that represents 1.25% of the RfD for the U.S. general population. The highest subgroup, Non-Nursing Infants (<1 year old) occupies 2.65% of the RfD. The chronic analysis for triclopyr is a worse case estimate of dietary exposure with all residues at tolerance level and 100 percent of the commodities assumed to be treated with triclopyr. Based on the risk estimates calculated in this analysis, the chronic dietary risk from the uses currently registered is not of concern.

Since the toxicological endpoint to which exposure is being compared in the acute dietary risk analysis is a developmental NOEL (30 mg/kg/day), females (13+ years) are the sub population of particular interest. The Margin of Exposure (MOE) is a measure of how close the high end exposure comes to the NOEL (the highest dose at which no effects were observed in the laboratory test), and is calculated as the ratio of the NOEL to the exposure (NOEL/exposure = MOE.) Generally, acute dietary margins of exposure greater than 100 tend to cause no dietary concern. The high end MOE value of 1,639 is above the acceptable level and demonstrates no acute dietary concern.

An acute dietary exposure analysis was performed using tolerance level residues and 100 percent crop treated to estimate the high end exposure for the general population and females (13+, pregnant, non-nursing). The high end exposure was assumed to be the upper 0.5% of consumers, that is, the 99.5 percentile. The resulting exposure estimates and margins of exposure are as follows:

Population Subgroup	Exposure (mg/kg BW/day)	MOE
U.S. Population	0.01359	2208
Females	0.01831	1639

These high end MOE values are above the acceptable level and demonstrate no acute dietary concerns.

2. *Drinking water*. The use of triclopyr as described on the label allows only slight additional exposure of triclopyr to humans. The proposed labeling requires that the product not be applied within one-quarter mile of a potable water intake and that treated water not be used for domestic purposes until the residue level is demonstrated to be at or below 0.5 ppm as determined by laboratory analysis or immunoassay. The basis for these restrictions is a series of aquatic dissipation studies conducted in lakes and ponds. In these studies, triclopyr was applied to lakes and ponds at the maximum concentration of 2.5 ppm triclopyr in water. Triclopyr residues in the lakes at one-quarter mile from the treatment areas were well below 0.1 ppm throughout the study, with a maximum reported value of 0.058 ppm. Within the treatment area, triclopyr residues of less than 0.5 ppm were reported at 3 - 14 days after treatment in the Lake Minnetonka and Lake Seminole studies. In seven test ponds treated with triclopyr at a water concentration of 2.5 ppm, total residues of triclopyr were less than 0.5 ppm by 28 days after application, with the highest residue value being 0.193 ppm. At 42 days after treatment, total residues in both treated lakes and ponds ranged from non-detectable to 0.013 ppm.

If the proposed labeling is followed precisely, that is, potable water is not collected within one-quarter mile of a treated area, there will be little contribution from water to the ''risk cup'' for triclopyr. If drinking water is collected from the treatment area when water analysis indicates triclopyr residues are 0.5 ppm or less, the risk is still acceptable on an acute basis. On a chronic basis, the value of 0.013 ppm, found to be the highest triclopyr residue at 42 days after treatment in all studies, uses only 0.9% of the RfD for females (13+, pregnant, not nursing) and 2.6% of the RfD for children (1–6 years).

For a worst case estimate of potential drinking water exposure, the water residue at the proposed allowable water level at 0.5 ppm was utilized. When this residue level is considered, the following analysis indicates no level of concern for acute exposure:

For a 60 kg pregnant female consuming 2 liters a day (Acute)

(0.5 mg/L × 2 L/day) / 60 kg = 0.0167 mg/kg/day

MOE = NOEL / Exposure = (30 mg/kg/day) / (0.0167 mg/kg/day) = 1796

For a 60 kg pregnant female consuming 2 liters a day (Chronic)

(0.013 mg/kg/day × 2 L/day) / 60 kg = 0.00043 mg/kg/day

% RfD = (0.00043 mg/kg/day × 100) / (0.05 mg/kg/day) = 0.9 %

For a 10 kg child consuming 1 liter a day (Acute)

(0.5 mg/L × 1 L/day) / 10 kg = 0.05 mg/kg/day

MOE = (30 mg/kg/day) / (0.05 mg/kg/day) = 600

For a 10 kg child consuming 1 liter a day (Chronic)

(0.013 mg/L × 1 L/day) / 10 kg = 0.0013 mg/kg/day

% RfD = (0.0013 mg/kg/day × 100) / (0.05 mg/kg/day) = 2.6 %

3. *Non-dietary exposure*. There are potential exposures to homeowners during usual use-patterns associated with triclopyr. These involve application of triclopyr-containing products by means of aerosol cans, pump spray bottles, squeeze bottles, ''weed sticks,'' hose-end sprayers, power sprayers, paint brush, rotary and drop spreaders. It is unlikely that power sprayers will be used by homeowners; this is an application method requiring special applicator equipment more apt to be used by agricultural or commercial applicator.

Homeowner exposure will not be significant for the following reasons: the

percent ai in products for homeowner use is less than that for agricultural or industrial use; the areas treated are usually limited in size; all products are intended for outdoor use which is likely to reduce the concentration in the environment by allowing dissipation in the outdoor air; the application methods recommended or commonly used by homeowners are not expected to provide significant exposure. Additionally, no toxicological endpoints of concern have been identified by EPA for dermal exposure to triclopyr, therefore, no exposure assessment is required for this exposure; an inhalation exposure assessment is also not required and no chronic use pattern is expected for homeowner use of triclopyr products.

There is a potential for post-application exposure to swimmers following applications to aquatic sites that may be used for recreational purposes. There are no triclopyr-specific exposure data to assess swimmer exposure. However, an assessment was conducted using information provided in EPA's Dermal Exposure Assessment: Principles and Applications. The dermal permeability constant (Kp) was calculated to be 6.5×10^{-8} mg/cm^2/hr. The assessment of swimmer exposure was based on a 6–year old boy having a body weight of 21.9 kg and a surface area of 0.88 m^2. The swimming period was assumed to be 3 hours on the day of treatment in water containing 2.5 ppm triclopyr.

Total dermal exposure (mg) = 3 hr/day $\times$ 0.88 m^2 $\times$ 10^4 cm^2/m^2 $\times$ 6.5×10^{-8} mg/cm^2/hr = 1.716×10^{-3} mg/day

Oral absorption could also account for a portion of the exposure. It was assumed that 1% of the water in residence in the mouth while breathing will be swallowed.

Oral exposure = 3 hr/day $\times$ 0.05 L/hr $\times$ 2.5 mg/L = 0.375 mg/day

Combining the dermal exposure and oral exposure for a 21.9 kg child, the swimming exposure for one day was estimated to be 0.377 mg/day ÷ 21.9 kg = 0.017 mg/kg/day. Compared to the acute NOEL of 30 mg/kg/day, an MOE of 1,765 was obtained. No dermal or inhalation endpoint has been established for triclopyr, so this represents a very conservative estimate of the risk due to swimming in triclopyr-treated waters.

D. Cumulative Effects

The potential for cumulative effects of triclopyr and other substances that have a common mechanism of toxicity was considered. The mammalian toxicity of triclopyr is well defined. However, the biochemical mechanism of toxicity of this compound is not known. No reliable information exists to indicate that toxic effects produced by triclopyr would be cumulative with those of other similar compounds. Therefore, consideration of a common mechanism of toxicity with other compounds is not appropriate. Thus, only the potential risks of triclopyr are considered in the aggregate exposure assessment.

E. Safety Determination

1. *U.S. population*. Because of the toxicological characteristics of triclopyr (no dermal endpoint of concern), post-application exposure assessment was not necessary. Residential exposure is considered to be negligible. Swimming in treated water was shown to be a minimal risk. Therefore, residential and swimming exposure were not considered in the aggregate risk calculation.

For the population subgroup of concern, pregnant females age 13 and older, an MOE of 857 was estimated for the acute aggregate dietary risk (food + water) from exposures to triclopyr residues.

MOE = (30 mg/kg/day) / (0.0183 + 0.0167) mg/kg/day = 857

Using the TMRC exposure assumptions described above, the percentage of the RfD that will be utilized by aggregate exposures (food + water) to residues of triclopyr ranges from 2.1% to 5.3% for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants <1 year old. The water exposure value used the highest water residue concentration at 42 days after treatment of lakes and ponds (the longest sampling time interval common to all studies), 0.013 ppm, in the calculations below:

Total U.S. Population (Dietary + Drinking Water)

(0.00062 + 0.00043) mg/kg/day $\times$ 100 / (0.05 mg/kg/day) = 2.1% RfD

Non-nursing Infants (Dietary + Drinking Water)

(0.00133 + 0.0013) mg/kg/day $\times$ 100 / (0.05 mg/kg/day) = 5.3% RfD

Determination of Safety for U.S. Population

Based on the current state of knowledge for this chemical, the RfD approach accurately reflects the exposure of the U.S. population, infants and children to triclopyr.

2. *Infants and children*. Studies cited earlier in this document indicate that triclopyr is not a selective developmental toxicant, and an additional uncertainty factor for infants and children is unnecessary. This decision is based on the following data.

Since the developmental and reproductive NOELs were either the same or greater than the maternal or parental, it is unlikely that there is additional risk concern for immature or developing organisms which is not reflected by the risk assessment utilizing the established reference dose. The effects noted for the RfD NOEL are parental effects, not developmental.

F. International Tolerances

There are no established or proposed Codex MRLs for triclopyr residues. Therefore, there are no issues of compatibility with respect to U.S. tolerances and Codex MRLs. (PM 25)

2. DuPont Agricultural Products

PP 4F3003, 4F3120, 0F3852

EPA has received a pesticide petition (PP 4F3003, 4F3120, 0F3852) from DuPont Agricultural Products, PO Box 80038, Wilmington, DE 19880–0038. 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 esfenvalerate (Asana XL Insecticide), ((*S*)-cyano-(3-phenoxyphenyl) methyl (*S*)-4-chloro-alpha-(1-methylethyl) benzeneacetate) in or on the raw agricultural commodities sorghum, sugarbeets and head lettuce (see section A3 for specific tolerance levels). The proposed analytical method involves homogenization, filtration, partition and cleanup with analysis by high performance liquid chromatography using ultra violet (UV) detection. 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 and Animal metabolism*. The metabolism and chemical nature of residues of fenvalerate in plants and animals are adequately understood. The fate of fenvalerate has been extensively studied using radioactive tracers in plant and animal metabolism/nature of the residue studies previously submitted to the Agency. These studies have demonstrated that the parent compound is the only residue of toxicological significance. EPA has concluded that the qualitative nature of

the residue is the same for both fenvalerate and esfenvalerate.

2. *Analytical method*. There is a practical analytical method utilizing electron-capture gas chromatography with nitrogen phosphorous detection available for enforcement with a limit of detection that allows monitoring food with residues at or above tolerance levels. The limit of detection for updated method is the same as that of the current PAM II, which is 0.01 ppm.

3. *Magnitude of residues*. Fenvalerate is a racemic mixture of four isomers (*S,S*; *R,S*; *S,R*; and *R,R*). Technical Asana® (esfenvalerate) is enriched in the insecticidally active *S,S*-isomer (84%). Tolerance expressions are proposed for esfenvalerate based on the sum of all isomers. Tolerance of 5 parts per million (ppm) for head lettuce, 5.0 ppm for sorghum grain, 10.0 ppm for sorghum forage, 10.0 ppm for sorghum fodder, 0.03 ppm for whole eggs, 0.03 ppm for poultry meat, 0.3 ppm for poultry fat, 0.3 ppm for poultry meat by-products (except liver), and 0.03 ppm for poultry liver, 5 ppm for sugarbeet tops, 0.5 ppm for sugarbeet roots and 2.5 ppm sugarbeet pulp are proposed. Magnitude of residue studies support the proposed tolerance.

B. Toxicological Profile

1. *Acute toxicity*. A battery of acute toxicity studies places technical esfenvalerate in Toxicity Category II for acute oral toxicity (rat LD_{50} 87.2 mg/kg), Category III for acute dermal (rabbit LD_{50} >2,000 mg/kg) and primary eye irritation (mild irritation in rabbits), and Category IV for primary skin irritation (minimal skin irritation in rabbits that reversed within 72 hours after treatment). Acute inhalation on technical grade a.i. waived due to negligible vapor pressure. A dermal sensitization test on esfenvalerate in guinea pigs showed no sensitization.

2. *Genotoxicty*. Esfenvalerate was not mutagenic in reverse mutation assays in *S. typhimurium* and *E. Coli* and did not induce mutations Chinese hamster V79 cells or chromosome aberrations in Chinese hamster ovary cells. Esfenvalerate did not induce micronuclei in bone marrow of mice given up to 150 mg/kg intraperitoneally. Esfenvalerate did not induce unscheduled DNA synthesis in HeLa cells. Other genetic toxicology studies submitted on racemic fenvalerate indicate that the mixture containing equal parts of the four stereoisomers is not mutagenic in bacteria. The racemic mixture was also negative in a mouse host mediated assay and in a mouse dominant lethal assay.

3. *Reproductive and developmental toxicity*. Esfenvalerate was administered to pregnant female rats by gavage in a pilot developmental study at doses of 0, 1, 2, 3, 4, 5, and 20 mg/kg/day and a main study at 0, 2.5, 5, 10, and 20 mg/kg/day. Maternal clinical signs (abnormal gait and mobility) were observed at 2.5 mg/kg/day and above. A maternal NOEL of 2 mg/kg/day was established on the pilot study. The developmental NOEL was >20 mg/kg/day.

Esfenvalerate was administered by gavage to pregnant female rabbits in a pilot developmental study at doses of 0, 2, 3, 4, 4.5, 5, and 20 mg/kg/day and a main study at does of 0, 3, 10, and 20 mg/kg/day. Maternal clinical signs (excessive grooming) were observed at 3 mg/kg/day and above. A maternal NOEL of 2 mg/kg/day was established on the pilot study. The developmental NOEL was > 20 mg/kg/day.

A two-generation feeding study with esfenvalerate was conducted in the rat at dietary levels of 0, 75, 100, and 300 ppm. Skin lesions and minimal (non biologically significant) parental body weight effects occurred at 75 ppm. The NOEL for reproductive toxicity was 75 ppm (4.2–7.5 mg/kg/day) based on decreased pup weights at 100 ppm.

4. *Subchronic toxicity*. Two 90-day feeding studies with esfenvalerate were conducted in rats - one at 50, 150, 300, and 500 ppm esfenvalerate, and a second at 0, 75, 100, 125, and 300 ppm to provide additional dose levels. The NOEL was 125 ppm (6.3 mg/kg/day) based on clinical signs (jerky leg movements) observed at 150 ppm (7.5 mg/kg/day) and above. A 90-day feeding study in mice was conducted at 0, 50, 150, and 500 ppm esfenvalerate with a NOEL of 150 ppm (30.5 mg/kg) based on clinical signs of toxicity at 500 ppm (106 mg/kg). Three-month subchronic study in dogs was satisfied by one-year oral study in dogs, in which the NOEL was 200 ppm (5 mg/kg/day). A 21-day dermal study in rabbits with fenvalerate conducted at 100, 300, and 1,000 mg/kg/day with an NOEL of 1,000 mg/kg/day.

5. *Chronic toxicity*. In a one-year study, dogs were fed 0, 25, 50, or 200 ppm esfenvalerate with no treatment related effects at any dietary level. The NOEL was 200 ppm (5 mg/kg/day). An effect level for dietary administration of esfenvalerate for dogs of 300 ppm had been established earlier in a three week pilot study used to select dose levels for the chronic dog study.

One chronic study with esfenvalerate and three chronic studies with fenvalerate have been conducted in mice.

In an 18-month study, mice were fed 0, 35, 150, or 350 ppm esfenvalerate. Mice fed 350 ppm were sacrificed within the first two months of the study after excessive self-trauma related to skin stimulation and data collected were not used in the evaluation of the oncogenic potential of esfenvalerate. The NOEL was 35 ppm (4.29 and 5.75 mg/kg/day for males and females, respectively) based on lower body weight and body weight gain at 150 ppm. Esfenvalerate did not produce carcinogenicity. In a 2-year feeding study, mice were administered 0, 10, 50, 250 or 1,250 ppm fenvalerate in the diet. The NOEL was 10 ppm (1.5 mg/kg/day) based on granulomatous changes (related to fenvalerate only, not esfenvalerate) at 50 ppm (7.5 mg/kg/day). Fenvalerate did not produce carcinogenicity. In an 18-month feeding study, mice were fed 0, 100, 300, 1,000, or 3,000 ppm fenvalerate in the diet. The NOEL is 100 ppm (15.0 mg/kg/day) based on fenvalerate-related microgranulomatous changes at 300 ppm (45 mg/kg/day). No compound related oncogenicity occurred. Mice were fed 0, 10, 30, 100, or 300 ppm fenvalerate for 20 months. The NOEL was 30 ppm (3.5 mg/kg/day) based on red blood cell effects and granulomatous changes at 100 ppm (15 mg/kg/day). Fenvalerate was not carcinogenic at any concentration.

In a two-year study, rats were fed 1, 5, 25, or 250 ppm fenvalerate. A 1,000 ppm group was added in a supplemental study to establish an effect level. The NOEL was 250 ppm (12.5 mg/kg/day). At 1,000 ppm (50 mg/kg/day), hind limb weakness, lower body weight, and higher organ-to-body weight ratios were observed. Fenvalerate was not carcinogenic at any concentration. (A conclusion that fenvalerate is associated with the production of spindle cell sarcomas at 1,000 ppm was retracted by EPA).

EPA has classified esfenvalerate in Group E - evidence of noncarcinogenicity for humans.

6. *Animal metabolism*. After oral dosing with fenvalerate, the majority of the administered radioactivity was eliminated in the initial 24 hours. The metabolic pathway involved cleavage of the ester linkage followed by hydroxylation, oxidation, and conjugation of the acid and alcohol moieties.

7. *Metabolite toxicology*. The parent molecule is the only moiety of toxicological significance appropriate for regulation in plant and animal commodities.

8. *Other potential toxicology considerations - endocrine effects.*

Estrogenic effects have not been observed in any studies conducted on fenvalerate or esfenvalerate. In subchronic or chronic studies there were no lesions in reproductive systems of males or females. In the recent reproduction study with esfenvalerate, full histopathological examination of the pituitary and the reproductive systems of males and females was conducted. There were no compound-related gross or histopathological effects. There were also no compound-related changes in any measures of reproductive performance including mating, fertility, or gestation indices or gestation length in either generation. There have been no effects on offspring in developmental toxicity studies. EPA is required to develop an endocrine disrupter screening program by August 3, 1999. EPA will decide whether further testing of esfenvalerate is required at that time.

C. Aggregate Exposure

1. *Dietary exposure*. Tolerances have been established for the residues of fenvalerate/esfenvalerate, in or on a variety of agricultural commodities. In addition, pending tolerance petitions exist for use of esfenvalerate on sugarbeets, sorghum, head lettuce, celery, pistachios, and a number of other minor use commodities. For purposes of assessing dietary exposure, chronic and acute dietary assessments have been conducted using all existing and pending tolerances for esfenvalerate. EPA recently reviewed the existing toxicology data base for esfenvalerate and selected the following toxicological endpoints. For acute toxicity, EPA established a NOEL of 2.0 mg/kg/day from rat and rabbit developmental studies based on maternal clinical signs at higher concentrations. An MOE of 100 was required. For chronic toxicity EPA established the RfD for esfenvalerate at 0.02 mg/kg/day. This RfD was also based on a NOEL of 2.0 mg/kg/day in the rat developmental study with an uncertainty factor of 100. Esfenvalerate is classified as a Group E. There is no evidence of carcinogenicity in either rats or mice.

2. *Food*. A chronic dietary exposure assessment was conducted using Novigen's DEEm (Dietary Exposure Estimate Model). Anticipated residues and adjustment for percent crop treated were used in the chronic dietary risk assessment. The percentages of the Reference Dose (RfD) utilized by the most sensitive sub-population, children 1–6 yrs., was 4.6% based on a daily dietary exposure of 0.000911 mg/kg/day. Chronic exposure for the overall Us population was 1.9% of the RfD based on a dietary exposure of 0.000376 mg/kg/day. This assessment has been approved by EPA and included pending tolerances and all food tolerances for incidental residues from use in food handling establishments. EPA 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. Esfenvalerate is classified as a Group E carcinogen - no evidence of carcinogenicity in rats or mice. Therefore, a carcinogenicity risk analysis is not required.

Potential acute exposures from food commodities were estimated using a Tier 3 (Monte Carlo) Analysis and appropriate processing factors for processed food and distribution analysis. This analysis used field trial data to estimate exposure and federal and market survey information to derive the percent of crop treated. EPA considered these data reliable and used the upper end estimate of percent crop treated in order to not underestimate any significant subpopulation. Regional consumption information was taken into account. The Margins of Exposure (MOEs) for the most sensitive sub-population (children 1–6 yr.) were 202 and 103 at the 99th, and 99.9th percentile of exposure, respectively, based on daily exposures of 0.009908 and 0.019445 mg/kg/day. The MOEs for the general population are 355 and 171 at the 99th and 99.9th percentile of exposure, respectively, based on daily exposure estimates of 0.005635 and 0.011717 mg/kg/day. The EPA has stated there is no cause for concern if total acute exposure calculated for the 99.9th percentile yields an MOE of 100 or larger. This acute dietary exposure estimate is considered conservative and EPA considered the MOEs adequate in a recent final rule (62 FR 63019).

3. *Drinking water*. Esfenvalerate is immobile in soil and will not leach into groundwater. Due to the insolubility and lipophilic nature of esfenvalerate, any residues in surface water will rapidly and tightly bind to soil particles and remain with sediment, therefore not contributing to potential dietary exposure from drinking water. A screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at depths of 1 and 2 meters are essentially zero (much less than 0.001 parts per billion).

Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using Standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 parts per billion. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would be treated before consumption. Chronic drinking water exposure was estimated to be 0.000001 mg/kg/day for both the U.S. general population and for non-nursing infants. Less than 0.1% of the RfD was occupied by both population groups.

Using these values, the contribution of water to the acute dietary risk estimate was estimated for the U.S. population to be 0.000019 mg/kg/day at the 99th percentile and 0.000039 mg/kg/day at the 99.9th percentile resulting in MOEs of 105,874 and 51,757, respectively. For the most sensitive subpopulation, non-nursing infants less than 1 year old, the exposure is 0.000050 mg/kg/day and 0.000074 mg/kg/day at the 99th and 99.9th percentile, respectively, resulting in MOEs of 39,652, and 27,042, respectively. Therefore there is reasonable certainty of no harm from drinking water.

4. *Non-dietary exposure*. Esfenvalerate is registered for non-crop uses including spray treatments in and around commercial and residential areas, treatments for control of ectoparasites on pets, home care products including foggers, pressurized sprays, crack and crevice treatments, lawn and garden sprays, and pet and pet bedding sprays. For the non-agricultural products, the very low amounts of active ingredient they contain, combined with the low vapor pressure (1.5×10^{-9} mm Mercury at 25° C.) and low dermal penetration, would result in minimal inhalation and dermal exposure.

To assess risk from (nonfood) short and intermediate term exposure, EPA has recently selected a toxicological endpoint of 2.0 mg/kg/day, the NOEL from the rat and rabbit developmental studies. For dermal penetration/absorption, EPA selected 25% dermal absorption based on the weight-of-evidence available for structurally related pyrethroids. For inhalation exposure, EPA used the oral NOEL of 2.0 mg/kg/day and assumed 100% absorption by inhalation. Individual non-dietary risk exposure analyses were conducted using a flea infestation scenario that included pet spray, carpet

and room treatment, and lawn care, respectively. The total potential short- and intermediate-tern aggregate non-dietary exposure including lawn, carpet, and pet uses are: 0.000023 mg/kg/day for adults, 0.00129 mg/kg/day for children 1–6 years and 0.00138 mg/kg/day for infants less than one year old. EPa concluded (62 FR 63019) that the potential non-dietary exposure for esfenvalerate are associated with substantial margins of safety.

5. *Aggregate exposure - dietary and non-dietary exposure.* EPA has concluded that aggregate chronic exposure to esfenvalerate from food and drinking water will utilize 1.9% of the RfD for the U.S. population based on a dietary exposure of 0.000377 mg/kg/day. The major identifiable subgroup with the highest aggregate exposure are 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.

The acute aggregate risk assessment takes into account exposure from food and drinking water. The potential acute exposure from food and drinking water to the overall U.S. population provides an acute dietary exposure of 0.011756 mg/kg/day with an MOE of 170. This acute dietary exposure estimate is considered conservative, using anticipated residue values and percent crop-treated data in conjunction with Monte Carlo analysis.

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. The potential short- and intermediate-term aggregate risk for the U.S. population is an exposure of 0.0082 mg/kg/day with an MOE of 244.

It is important to acknowledge that these MOEs are likely to significantly underestimate the actual MOEs due to a variety of conservative assumptions and biases inherent in the exposure assessment methods used for their derivation. Therefore, it can be concluded that the potential non-dietary and dietary aggregate exposures for esfenvalerate are associated with a substantial degree of safety. EPA has previously determined (62 FR 63019) that there was reasonable certainty that no harm will result from aggregate exposure to esfenvalerate residues. Head lettuce was included in that risk assessment.

D. Cumulative Effects

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''. In a recent Final Rule on esfenvalerate (62 FR 63019) EPA concluded, ''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). Although esfenvalerate is similar to other members of the synthetic pyrethroid class of insecticides, EPA does not have, at this time, available data to determine whether esfenvalerate has a common method 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, esfenvalerate 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 esfenvalerate has a common mechanism of toxicity with other substances.

E. Safety Determination

Both the chronic and acute toxicological endpoints are derived from maternal NOEL's of 2.0 mg/kg/day in developmental studies in rats and rabbits. There were no fetal effects. In addition, no other studies conducted with fenvalerate or esfenvalerate indicate that immature animals are more sensitive than adults. Therefore, the safety factor used for protection of adults is fully appropriate for the protection of infants and children; no additional safety factor is necessary as described below.

1. *U.S. population.* A chronic dietary exposure assessment using anticipated residues, monitoring information, and percent crop treated indicated the percentage of the Reference Dose (RfD) utilized by the General Population to be 1.9%. There is generally 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.

For acute exposure, a Margin of Exposure (MOE) of greater than 100 is considered an adequate MOE. A Tier 3 acute dietary exposure assessment found the General Population to have MOE's of 355 and 171 at the 99th and 99.9th percentile of exposure, respectively. These values were generated using actual field trial residues and market share data for percentage of crop treated. These results depict an accurate exposure pattern at an exaggerated daily dietary exposure rate.

Short- and intermediate-term aggregate exposure risk from chronic dietary food and water plus indoor and outdoor residential exposure for the U.S. population is an exposure of 0.0082 mg/kg/day with an MOE of 244. Therefore, there is a reasonable certainty that no harm will result from chronic dietary, acute dietary, non-dietary, or aggregate exposure to esfenvalerate residues.

2. *Infants and children.* FFDCA section 408 provides that EPA shall

apply an additional tenfold margin of safety for infants and children unless EPA determines that a different margin of safety will be safe for infants and children. EPA has stated that reliable data support using the standard MOE and uncertainty factor (100 for combined inter- and intra-species variability) and not the additional tenfold MOE/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 MOE/safety factor. In a recent Final Rule (62 FR 63019), EPA concluded that reliable data support use of the standard 100-fold uncertainty factor for esfenvalerate, and that an additional uncertainty factor is not needed to protect the safety of infants and children. This decision was based on: no evidence of developmental toxicity at a doses up to 20 mg/kg/day (ten times the maternal NOEL) in prenatal developmental toxicity studies in both rats and rabbits; offspring toxicity only at dietary levels which were also found to be toxic to parental animals in the two generation reproduction study; and no evidence of additional sensitivity to young rats or rabbits following pre- or postnatal exposure to esfenvalerate.

A chronic dietary exposure assessment found the percentages of the RfD utilized by the most sensitive sub-population to be 4.6% for children 1–6 yr based on a dietary exposure of 0.000912 mg/kg/day. The % RfD for nursing and non-nursing infants was 1.1% and 2.7%, respectively. The Agency has no cause for concern if RfD are below 100%.

The most sensitive sub-population, children 1–6 year, had acute dietary MOEs of 202 and 103 at the 99th and 99.9th percentile of exposure, respectively. Nursing infants had MOEs of 195 and 146 at the 99th, and 99.9th percentile of exposure, respectively. Non-nursing infants had MOEs of 304 and 158 at the 99th and 99.9th percentile of exposure, respectively. The Agency has no cause for concern if total acute exposure calculated for the 99.9th percentile yields a MOE of 100 or larger.

EPA has recently concluded that the potential short- or intermediate-term aggregate exposure of esfenvalerate from chronic dietary food and water plus indoor and outdoor residential exposure to children (1–6 years old) is 0.0113 mg/kg/day with an MOE of 177. For infants (less than 1 year old) the exposure is 0.0098 mg/kg/day with an MOE of 204. There is reasonable certainty that no harm will result to infants and children from aggregate exposure to esfenvalerate residues (62 FR 63019).

F. International Tolerances

Codex maximum residue levels (MRL's) have been established for residues of fenvalerate on a number of crops that also have U.S. tolerances. There is a Codex MRL of 2 ppm fenvalerate on head lettuce. Thus any imported head lettuce is expected to have lower residue values than the proposed section 408 tolerance of 5 ppm esfenvalerate on head lettuce. There are also some minimal differences between the section 408 tolerances and certain Codex MRl values for other commodities. These differences could be caused by differences in methods to establish tolerances, calculate animal feed, dietary exposure, and as a result of different agricultural practices. Therefore, some harmonization of these maximum residue levels will be required. (PM 13)

3. Interregional Research Project No. 4 (IR-4)

PP 5E4598

EPA has received a pesticide petition (PP) from the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.472 by extending the effective date for the time-limited tolerance established for indirect or inadvertant combined residues of the insecticide imidacloprid in or on the raw agricultural commodity cucurbit vegetable crop group at 0.2 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 supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the imidacloprid residue in plants and livestock is adequately understood. The residues of concern are combined residues of imidacloprid and it metabolites containing the 6–chloropyridinyl moiety, all calculated as imidacloprid.

2. *Analytical method*. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridinyl 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 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.

B. Toxicological Profile

1. *Acute toxicity*. The acute oral LD_{50} values for imidacloprid technical ranged from 424 – 475 milligram (mg)/kilogram (kg) body weight (bwt) in the rat. The acute dermal LD_{50} was greater than 5,000 mg/kg in rats. The 4–hour rat inhalation LC_{50} was > 69 mg/meter3 (m3) air (aerosol). Imidacloprid was not irritating to rabbit skin or eyes. Imidacloprid did not cause skin sensitization in guinea pigs.

2. *Genotoxicty*. 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*. 90-day feeding studies were conducted in rats and dogs. The NOEL's 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 male and 7.6 mg/kg/bwt female) 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 had a NOEL of 1,000 ppm (208 mg/kg/day).

6. *Plant and animal metabolism*. The nature of the imidacloprid residue in plants and livestock is adequately understood. The residues of concern are combined residues of imidacloprid and

it metabolites containing the 6-chloropyridinyl moiety, all calculated as imidacloprid.

7. *Endocrine disruption*. The toxicology database for imidacloprid is current and complete. Studies in this database include evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following short- or long-term exposure. Bayer has concluded that these studies revealed no primary endocrine effects due to imidacloprid.

C. Aggregate Exposure

Imidacloprid is a broad-spectrum insecticide with systemic and contact toxicity characteristics with both food and non-food uses. Imidacloprid is currently registered for use on various food crops, tobacco, turf, ornamentals, buildings for termite control, and cats and dogs for flea control. These potential exposures are addressed below:

1. *Dietary exposure*. For purposes of assessing the potential acute and chronic dietary exposure, Bayer has estimated 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. The consumption data, based on the National Food Consumption Survey data base, estimates the amount of each commodity and products derived from the commodities that are eaten by the U.S. population and various population subgroups.

2. *Food* —i. *Acute*. For acute dietary exposure the model 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. The EPA has determined that a NOEL of 24 mg/kg/day from a developmental toxicity study in rabbits should be used to assess acute toxicity.

The MOE for imidacloprid derived from previously established tolerances and pending tolerances, including IR-4's cucurbit petition, would be 366 for the U.S. population (48 states), 323 for non-nursing infants, 101 for children (ages 1–6 years), 420 for children (ages 7–12 years), 622 for males 13+ years, and 554 for females 13+ years at the 99.9 percentile. These MOEs do not exceed the EPA's level of concern for acute dietary exposure.

ii. *Chronic*. For purposes of assessing the potential chronic dietary exposure, the model uses the reference dose (RfD) which the EPA has determined to be 0.057 mg/kg/day. This is based on the 2–year rat feeding/carcinogenic study with a NOEL of 5.7mg/kg/bwt and 100–fold uncertainty factor. In conducting this exposure assessment, very conservative assumptions (100% of all commodities contain imidacloprid residues and those residues are at the level of the tolerance) result in a large overestimate of human exposure.

3. *Drinking water*. The EPA has determined that imidacloprid is persistent and could potentially leach into groundwater. However, there is no established Maximum Contamination Level (MCL) or health advisory levels established for imidacloprid in drinking water. EPA's ''Pesticides in Groundwater Database'' has no entry for imidacloprid. In addition, Bayer is not aware of imidacloprid being detected in any wells, ponds, lakes, streams, etc. from its use in the U.S. In studies conducted in 1995, imidacloprid was not detected in 17 wells on potato farms in Quebec, Canada. Therefore, Bayer concludes that contributions to the dietary burden from residues of imidacloprid in water would be inconsequential.

4. *Non-dietary exposure* —i. *Residential Tur*. Bayer 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 $\mu g/cm^2$ and for 5–year-old children from 5.1 – 33.5 $\mu g/cm^2$. This compares with the average imidacloprid transferable residue level of 0.080 $\mu g/cm^2$ present immediately after the sprays have dried. These data indicate that children can safely contact imidacloprid-treated turf as soon after application as the spray has dried.

ii. *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's (OREB) and Bayer. 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 8.0×10^7 and 2.4×10^8, respectively - and exposure can thus be considered negligible.

iii. *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 2 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/m3, it is apparent that exposure to imidacloprid from smoking (direct and/or indirect exposure) would not be significant.

iv. *Pet Treatment*. Human exposure from the use of imidacloprid to treat dogs and cats for fleas has been addressed by EPA's Occupational and 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, Bayer concludes that 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 14.3% of the RfD for the U.S. population from food, water and non-occupational sources. 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. In addition, the MOEs for all population groups does not exceed the EPA's level of concern for acute dietary exposure. Thus, Bayer concludes 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 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 under aggregate exposure, Bayer has determined from a chronic dietary analysis that the percent of the RfD utilized by aggregate exposure to residues of imidacloprid ranges from 9.3% for nursing infants up to 32.2% for children (1–6 years). EPA generally has no concern for exposure below 100 percent of the RfD. In addition, the MOEs for all infant and children population groups do not exceed EPA's level of concern for acute dietary exposure. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Bayer concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of imidacloprid, including all anticipated dietary exposure and all other non-occupational exposures.

F. International Tolerances

No Codex Maximum Residue Levels (MRLs) have been established for residues of imidacloprid on any crops at this time. (PM 05)

[FR Doc. 98–4803 Filed 2-24-98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–795; FRL–5775–3]

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–795, must be received on or before March 27, 1998.

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. 119, 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. 119 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: Paul Schroeder, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460. Office location and telephone number: Rm. 255, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–6602, e-mail: schroeder.paul@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–795] (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 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–795] 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: February 18, 1998.

James Jones,

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.

Uniroyal Chemical Company

PP 6G4771

EPA has received a pesticide petition (PP 6G4771) from Uniroyal Chemical Co., Inc., Bethany, Connecticut 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 residues of the combined residues of the insect growth regulator, diflubenzuron and metabolites convertible to p-chloroaniline, expressed as diflubenzuron in or on rice at 0.02 parts per million (ppm) and rice straw at 0.8 ppm. The proposed analytical method for detecting and measuring residues of diflubenzuron and 4-chloroaniline is gas chromatography with electron capture detection. p-Chloroaniline is determined using an internal standard method and detected by mass spectrometry.

Pursuant to the section 408(d)(2)(A)(I) of the FFDCA, as amended, Uniroyal Chemical Company has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Uniroyal Chemical and EPA has not fully evaluated the merits of the petition. EPA edited the summary to clarify that the conclusions and arguments were the petitioners and not necessarily EPA's and to remove certain extraneous material.

A. Toxicology Profile

1. *Data summary.* Diflubenzuron is not acutely toxic and is not an irritant. In a 3-week dermal toxicity study in rats the no observed effect level (NOEL) for systemic toxicity was 20 milligrams/kilograms (mg/kg/day). In developmental toxicity studies in rats and rabbits, diflubenzuron was without maternal or developmental effects at doses up to 1,000 mg/kg/day. Systemic effects were seen on parental animals in a rat reproduction study at doses of 1,000 and 100,000 ppm; however, there were no reproductive effects and the NOEL for reproductive toxicity was greater than 5,000 mg/kg/day. In a chronic dog feeding study, target organ effects were seen in the blood and liver. Methemoglobinemia was evident at dose levels of 10 mg/kg/day and greater. The NOEL for chronic toxicity in dogs was 2 mg/kg/day. In a chronic rat feeding study, target organ effects were seen in the blood, liver, spleen and bone marrow. Methemoglobinemia was evident at doses of 160 ppm and greater. The NOEL for chronic toxicity in rats was 2 mg/kg/day. Diflubenzuron was negative in a complete battery of mutagenicity assays. In a mouse oncogenicity study, diflubenzuron was negative at doses up to 1,429 mg/kg/day. Additionally, diflubenzuron was negative for carcinogenicity in a rat chronic feeding study at doses up to 500 mg/kg/day. None of the studies conducted on diflubenzuron have provided evidence of endocrine organ involvement.

2. *Acute toxicity.* Studies for diflubenzuron technical indicate the acute oral toxicity in rats and mice is >4,640 mg/kg, and the acute dermal toxicity in rats is >10,000 mg/kg. The acute inhalation LC_{50} in rats is >35 mg/l (6 hours). Diflubenzuron technical is not an eye or skin irritant to rabbits, and is not a dermal sensitizer in guinea pigs.

To assess subacute dermal toxicity, diflubenzuron was applied to the backs of male and female CD rats for 3 weeks at dose levels of 20, 500 and 1,000 mg/kg/day. Hematology evaluation showed reductions in red blood cell (RBC), hemoglobin (Hgb) and hematocrit values at 500 and 1,000 mg/kg/day. An increased incidence of polychromasia, hypochromasia and anisocytosis was seen at 500 and 1,000 mg/kg/day. An increase in methemoglobin and sulfhemoglobin values was seen at 1,000 mg/kg/day. The NOEL for systemic toxicity was 20 mg/kg/day.

3. *Developmental/reproductive effects.* In a rat developmental toxicity study, diflubenzuron was administered by oral gavage to pregnant female rats at dosage levels of 0, 1, 2 and 4 mg/kg/day. No treatment related effects were seen. A subsequent study was conducted in pregnant Sprague Dawley rats at a dose of 0 and 1,000 mg/kg/day. No maternal toxicity was observed. The incidence of fetuses with skeletal abnormalities was slightly increased in the treated group, but was within historical background range. The NOEL for maternal and developmental toxicity in rats was greater than 1,000 mg/kg/day.

Diflubenzuron was also administered by oral gavage to pregnant New Zealand White rabbits at dosage levels of 0, 1, 2 and 4 mg/kg/day. No treatment related effects were seen. A subsequent study was conducted in pregnant rabbits at a dose of 0 and 1,000 mg/kg/day. No maternal or developmental toxicity was seen. The NOEL for maternal and developmental toxicity in rabbits was greater than 1,000 mg/kg/day.

In a rat reproduction study, diflubenzuron was fed to two generations of male and female rats at dietary concentrations of 0, 10, 20, 40, and 160 ppm. No effects were seen on parental body weight gain and there were no reproductive effects. A subsequent study was conducted on 1-generation (one litter) of rats at dietary concentrations of 0, 1,000 and 100,000 ppm. Systemic effects were seen in adults at these doses but there was no effect on reproductive parameters. The NOEL for reproductive toxicity was greater than 100,000 ppm (5 g/kg/day).

4. *Chronic effects.* Diflubenzuron was given by capsule to male and female Beagle dogs for one year at dose levels of 0, 2, 10, 50 and 250 mg/kg/day. Body weight gain was slightly reduced in females at 250 mg/kg/day. Absolute liver and spleen weights were increased in males given 50 and 250 mg/kg/day. A reduction in hemoglobin and mean corpuscular hemoglobin concentration, with an elevation in reticulocyte count, was seen at 50 and 250 mg/kg/day. Methemoglobin and sulfhemoglobin values were increased at doses of 10 mg/kg/day and greater. Histopathological findings were limited to pigmented macrophages and Kupffer cells in the liver at doses of 50 and 250 mg/kg/day. The NOEL for chronic toxicity in dogs was 2 mg/kg/day.

Diflubenzuron was fed to male and female Sprague Dawley rats for 2 years at dose levels of 0, 156, 625, 2,500 and 10,000 ppm. Methemoglobin values were elevated in female rats at all dose levels and in male rats at the two highest dose levels. Sulfhemoglobin was elevated in females, only, at dose levels of 2,500 and 10,000 ppm. Mean corpuscular volume (MCV) and reticulocyte counts were increased in high dose females. Spleen and liver weights were elevated at the two highest doses. Histopathological examination demonstrated an increase in hemosiderosis of the liver and spleen, bone marrow and erythroid hyperplasia and areas of cellular alteration in the liver. In another study diflubenzuron was administered to male and female CD rats for 2 years at dose levels of 0, 10, 20, 40 and 160 ppm. Elevated methemoglobin levels were seen in high dose males and females. No additional effects, including carcinogenic findings, were observed. The NOEL for chronic toxicity in rats was 40 ppm (2 mg/kg/day).

5. *Carcinogenicity*. A 91-week oncogenicity study in CFLP mice was conducted at doses of 0, 16, 80, 400, 2,000 and 10,000 ppm. There was no increase in tumor incidence as a result of diflubenzuron administration. Target organ effects included: increased methemoglobin and sulfhemoglobin values, Heinz bodies, increased liver and spleen weight, hepatocyte enlargement and vacuolation, extramedullary hemopoiesis in the liver and spleen, siderocytosis in the spleen and pigmented Kupffer cells. A NOEL for these effects was 16 ppm (2 mg/kg/day).

Diflubenzuron was fed to male and female Sprague Dawley rats for 2 years at dose levels of 0, 156, 625, 2,500 and 10,000 ppm. Methemoglobin values were elevated in female rats at all dose levels and in male rats at the two highest dose levels. Blood sulfhemoglobin was elevated in females, only, at dose levels of 2,500 and 10,000 ppm. MCV and reticulocyte counts were increased in high dose females. Spleen and liver weights were elevated at the two highest doses. Histopathological examination demonstrated an increase in hemosiderosis of the liver and spleen, bone marrow and erythroid hyperplasia and areas of cellular alteration in the liver. There was no increase in tumor formation. In another study diflubenzuron was administered to male and female CD rats for 2 years at dose levels of 0, 10, 20, 40 and 160 ppm. Elevated methemoglobin levels were seen in high dose males and females. No additional effects, including carcinogenic findings, were observed.

NCI/NTP conducted chronic feeding and gavage studies with p-chloroaniline (PCA), a minor metabolite of diflubenzuron, in Fischer 344 rats and B6C3F1 mice.

PCA was administered in the diet to Fischer 344 rats at dietary concentrations of 250 and 500 ppm for 78 weeks, followed by a 24-week observation period. A slight body weight depression was seen in high dose females rats, compared to controls. Survival was reduced in high dose males compared to controls. In male rats there was a slight increase in uncommon fibromas or fibrosarcomas of the spleen, which was not statistically significant. Non-neoplastic proliferative and chronic inflammatory lesions were found in spleens of treated rats. It was concluded that, under the conditions of the assay, sufficient evidence was not found to establish the carcinogenicity of PCA for Fischer 344 rats.

PCA was administered 5 days/week by oral gavage, as a hydrochloride salt in water, to male and female F344/N rats at doses of 0, 2, 6 or 18 mg/kg/day. Mean body weights of dosed rats were generally within 5% of those of controls throughout the study. High dose animals generally showed mild hemolytic anemia and dose-related methemolglobinemia. Non-neoplastic lesions seen were bone marrow hyperplasia, hepatic hemosiderosis and splenic fibrosis, suggesting treatment related effects on the hematopoietic system. Adrenal medullary hyperplasia was observed in high dose female rats. The incidence of uncommon sarcomas of the spleen was significantly increased in high dose male rats. A marginal increase in pheochromocytomas of the adrenal gland was seen in high dose male and female rats. It was concluded that, under the conditions of this 2 year gavage study, there was clear evidence of carcinogenic activity of PCA hydrochloride for male F344/N rats and equivocal evidence of carcinogenic activity of PCA hydrochloride for female F344/N rats.

PCA was administered in the diet to B6C3F6 mice at dietary concentrations of 2,500 and 5,000 ppm for 78 weeks followed by a 13-week observation period. A body weight depression was seen in treated mice of both sexes, compared to controls. An increased incidence of hemangiomas and hemangiosarcomas in spleen, kidney, liver and other sites was seen in treated mice of both sexes, however this increase was not statistically significant compared to controls. Non-neoplastic proliferative and chronic inflammatory lesions were found in spleens of treated mice. The evidence was considered insufficient to conclusively relate the hemangiomatous tumors in mice to compound administration. It was concluded that, under the conditions of the assay, sufficient evidence was not found to establish the carcinogenicity of PCA for B6C3F1 mice.

PCA hydrochloride was administered 5 days/week by oral gavage to male and female B6C3F1 mice at doses of 0, 3, 10, or 30 mg/kg/day. Mean body weights of high dose male and female mice were generally within 5% of those of controls throughout the study. The incidence of hepatocellular adenomas or carcinomas (combined) was increased in a non-dose-dependent manner in treated male mice. Metastasis of carcinoma to the lung was seen in the high dose group. An increased incidence of hemangiosarcomas of the liver or spleen was seen in high dose male mice. It was concluded that, under the conditions of this 2 year gavage study, there was some evidence of carcinogenic activity of PCA hydrochloride for male B6C3F1 mice and no evidence of carcinogenic activity of PCA hydrochloride for female B6C3F1 mice.

6. *Mutagenicity*. Diflubenzuron did not show any mutagenic activity in point mutation assays employing *S. typhimurium*, *S. cerevisiae*, or L5178Y Mouse Lymphoma cells. Diflubenzuron did not induce chromosomal aberrations in Chinese Hamster Ovary cells and it did not induce unscheduled DNA synthesis in human WI-38 cells. Diflubenzuron was also negative in Mouse Micronucleus and Mouse Dominant Lethal assays and it did not induce cell transformation in Balb/3T3 cells.

7. *Endocrine effects*. The standard battery of required studies has been completed and evaluated to determine potential estrogenic or endocrine effects of diflubenzuron. 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. These studies are generally considered to be sufficient to detect any endocrine effects. No such effects were noted in any of the studies with diflubenzuron.

8. *Rat metabolism*. Diflubenzuron (DFB) in rats at a single dose of 100 mg/kg and 5 mg/kg single and multiple oral doses depicted limited absorption from the gastrointestinal tract. No major difference was observed between the single and multiple doses. In single dose treatments, after 7 days, 20 and 3% of the applied dose 5 and 100 mg/kg, respectively, were excreted in urine while 79 and 98% of the applied dose 5 and 100 mg/kg, respectively, were eliminated in the feces. Very little bioaccumulation in the tissues was observed. Several metabolites were observed in the urine which are, among others, 2,6-diflurobenzoic acid (DFBA), 2,6-difluorophippuric acid, 2,6-difluorobenzamide (DFBAM), and 2-hydroxydiflubenzuron (2-HDFB). An unresolved peak that was p-chloroaniline (PCA) and/or p-chlorophenylurea (CPU) was found. This latter peak accounted for about 2% of the administered dose (5 mg/kg). In the feces, only unchanged parent compound was detected.

B. Aggregate Exposure

1. *Dietary exposure*—i. *Diflubenzuron*. The dietary exposure from diflubenzuron (DFB) was estimated based on the average residue values from the various currently labeled raw agricultural commodities (RACs) and the proposed rice use. Percent of crop treated was also factored into the estimate. Current animal commodity tolerances, which

adequately cover the rice use, were used for meat, milk, and egg products. The dietary exposure analysis was estimated based on 1977 USDA food consumption data.

For the general U.S. population (48 states, all seasons), the dietary exposure of diflubenzuron was estimated as 0.000706 mg/kg/day. For nursing and non-nursing infants, the exposure was estimated as and 0.000799 and 0.003461 mg/kg/day, respectively. For children, the exposure was 0.001888 and 0.001178 mg/kg/day for 1-6 year olds and 7-12 year olds, respectively.

ii. *p-Chloroaniline and related product.* The dietary exposure estimate for PCA and related products is a conservative estimate, in that it includes rice straw as an animal feed. Rice straw, however, will be restricted as a animal feed, in the proposed Experimental Use Program. The dietary exposure from p-chloroaniline (PCA) and a related product, 4-chlorophenylurea (CPU), which have been detected in some food products was also determined. EPA has used a 2% *in vivo* conversion factor of DFB to PCA for foods derived from plant products. For mushrooms, PCA and CPU average residue data was combined with a 2% *in vivo* conversion of DFB to PCA. Calculations for levels of PCA/CPU in animal products were based on metabolism studies, extrapolation to anticipated animal dietary burdens and the 2% conversion of DFB to PCA. The percent treated of each crop was also factored into the exposure estimate.

For the general U.S. population, the dietary exposure of PCA/CPU was estimated as 0.000001 mg/kg/day. For nursing and non-nursing infants, the exposure was estimated as 0.000002 and 0.000006 mg/kg/day, respectively. For children, the exposure was 0.000004 and 0.000002 mg/kg/day for 1-6 year olds and 7-12 year olds, respectively.

2. *Drinking water exposure.* Diflubenzuron degrades in soil relatively quickly with an aerobic half-life ranging from 3-7 days. Major degradates include difluorobenzoic acid (DFBA) and CPU. DFBA is further metabolized through decarboxylation and ring cleavage by soil microbes whereas CPU is slowly degraded to soil-bound entities. Under anaerobic aquatic conditions, diflubenzuron has a half-life of 34 days with the main degradates being DFBA and CPU. In surface water, diflubenzuron is degraded by microbes with a half-life of 5-10 days. The soil mobility of diflubenzuron is considered quite limited based on a number of experimental studies as well as by computer modeling. CPU has also been shown to be relatively immobile in soil. Although DFBA shows mobility in soil, it is rapidly degraded. Therefore, based on results of laboratory and field studies, it is not likely that diflubenzuron or its degradates will impact ground water quality to any significant extent. Thus the aggregate risk to diflubenzuron does not include drinking water.

3. *Non-occupational exposure.* Diflubenzuron is a restricted use pesticide based on its toxicity to aquatic invertebrates. This restricted use classification makes it unavailable for use by homeowners. Occupational uses of diflubenzuron may expose people in residential locations, parks, or forests treated with diflubenzuron. Based on very low residues detected in forestry dissipation studies, low dermal absorption rate (0.05%), and extremely low dermal and inhalation toxicity, these uses are expected to result in insignificant risk, and will, therefore, not be included in the aggregate risk assessment. Reference: ''Reregistration Eligibility Document: Diflubenzuron,'' EPA, August 1997.

C. Cumulative Risk

Uniroyal Chemical Co. has considered the potential for cumulative effects of diflubenzuron and other substances with a common mechanism of toxicity. The mammalian toxicity of diflubenzuron is well defined. We are not aware of any other pesticide product registered in the United States that could be metabolized to p-chloroaniline. For this reason, consideration of potential cumulative effects of residues from pesticidal substances with a common mechanism of action as diflubenzuron is not appropriate. Thus only the potential exposures to diflubenzuron were considered in the total exposure assessment.

D. Safety Determination

1. *U.S. population.* Based on the available toxicology and exposure data base for diflubenzuron, Uniroyal has determined that the total possible non-occupational aggregate exposure from diflubenzuron would occur from the dietary exposure route. Dietary exposure to the general U.S. population from diflubenzuron was estimated at 0.000706 mg/kg/day. Based on the 0.02 mg/kg/day RfD (reference dose) derived from the dog chronic NOEL of 2 mg/kg/day and a 100-fold safety factor, this dietary exposure is 3.5% of the RfD.

For PCA and CPU, Uniroyal has also determined that the total possible non-occupational aggregate exposure would occur from the dietary exposure route. Dietary exposure to the general U.S. population from PCA/CPU was estimated as 0.000001 mg/kg/day. The risk from diflubenzuron-derived PCA/CPU can be estimated using a linear extrapolation of the dose-response from the rat chronic study conducted by the National Toxicology Program in which rats were dosed via gavage with p-chloroaniline hydrochloride 5 days/week for 103 weeks (NTP TR 351). EPA has determined the q1* as 0.059 by combining the incidences of splenic sarcomas from both male and female rats.

Although EPA has assumed that CPU is also carcinogenic purportedly based on its structural similarity to PCA, Uniroyal has indicated to the Agency in previous correspondence that this assumption is not warranted. It may be more appropriate to compare the carcinogenicity potential of CPU to acetanilide, which is also a structural analog of CPU, and for which no evidence of carcinogenicity has been demonstrated possibly because the *N*-hydroxy metabolite is not formed in significant amounts. Formation of the *N*-hydroxy metabolite of CPU is also remote. Uniroyal has also argued that it is unlikely that significant degradation of CPU to form PCA would occur, since based on the known animal metabolism of phenylureas, only a small amount of aniline derivatives are produced. The major metabolic pathway for the phenylureas is ring hydroxylation and n-dealkylation, a process that would maintain the integrity of the parent urea molecule. Therefore, it would not be appropriate to combine CPU residues with PCA. However, for this safety assessment we have conservatively estimated the risk from dietary exposure to both PCA and CPU combined.

Using the q1* of 0.059 from the combined male and female incidence of splenic tumors in rats, the risk to the general U.S. population from dietary exposure to diflubenzuron-derived PCA/CPU is 8.7×10^{-8}.

2. *Infants and children.* The same assumptions as for the general U.S. population were used for the dietary exposure risk determination in infants and children. The dietary exposure of diflubenzuron was calculated as 0.000799 mg/kg/day and 0.003461 mg/kg/day respectively for nursing and non-nursing infants. These values are 4% and 17.3% respectively of the RfD for diflubenzuron. The dietary exposure from diflubenzuron in children 1-6 and 7-12 years old was determined as 0.001888 mg/kg/day and 0.001178 mg/kg/day, respectively. These values are 9.4% and 5.9% of the RfD, respectively.

As previously discussed, the NOELs for maternal and developmental toxicity in rats and rabbits were greater than

1,000 mg/kg/day, and the NOEL for reproductive toxicity was greater than 5,000 mg/kg/day. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Uniroyal concludes that there is reasonable certainty that no harm will result in infants and children from aggregate exposure to residues of diflubenzuron and its conversion products containing the p-chloroaniline moiety.

E. Residues in the Raw Agricultural Commodity and Processed Food/Feed

1. *Nature of residues in plants and livestock.* The nature of the residue in plants and livestock is adequately understood. In plants, the metabolism of diflubenzuron was investigated in soybeans, oranges and rice. The main component of residues in rice was CPU; levels of PCA were negligible to non-detectible. The main component of the residues in soybeans and oranges was the parent diflubenzuron (DFB). A considerable portion of the residues were bound. DFB showed very limited absorption and translocation in plants with most of the residues remaining on the surface.

In livestock, goats treated for three days at about 1X (10 ppm feeding level) the dietary burden of $^{C}14$ DFB gave DFB equivalent of $^{C}14$ = 7-9 ppb in milk, 217-262 ppb in liver, 16-19 ppb in kidney, about 1 ppb in muscle, and about 4 ppb in fat. Milk residues were mainly CPU and DFBAM. PCA was not detectable. Liver residues were DFB, 2-hydroxy DFB, CPU, and DFBAM. Again, PCA was not detected at this dose however, it was detected in studies conducted at about 22X dose. Chickens were dosed with $^{C}14$ DFB at 5 ppm level for 1-28 days. Residues in tissues as DFB equivalent were highest in liver and kidney. The main residues in tissues and eggs were DFB and DFBA. Trace amount of PCA and its acetanilide were detected, but not confirmed, in liver kidney and egg white.

2. *Magnitude of residues and proposed tolerances.* An adequate number of separate residue trials have been conducted with diflubenzuron on rice. Analyses of these trials show that the maximum total residue for diflubenzuron and its conversion products PCA and CPU will be at or below 0.01 ppm.

A tolerance has been requested for the combined residues of diflubenzuron and metabolites convertible to p-chloroaniline expressed as diflubenzuron on rice at 0.01 ppm. The proposed tolerance is adequate to cover residues likely to be present from the use of diflubenzuron on rice. Therefore, no special processing to reduce the residues will be necessary.

The meat by-products tolerances are adequate to cover residues resulting from the rice use. Uniroyal Chemical has submitted calculations from a goat metabolism study which supports the 0.05 ppm tolerance in meat by-products. Therefore, no increase in the meat by-products tolerances should be necessary.

F. Practical Analytical Method

Practical analytical methods for detecting levels of DFB, CPU and PCA, in or on food with a limit of detection that allows monitoring of the residue at or above the level set in the tolerance was used to determine residues in rice and its respective processed fractions.

Residues of the individual analytes are detectable and quantifiable using three separate analytical methods. Residues of DFB are extracted from rice with dichloromethane. Extracts are purified with deactivated florisil. An aliquot of the extract is hydrolyzed with phosphoric acid and the DFB is partitioned into hexane. The resulting extract is derivatized in heptafluorobutyric anhydride (HFBA). Quantification of DFB is accompanied by gas chromatography using an electron capture detector.

The analytical method for quantitation of the 4-chlorophenylurea requires ethyl acetate extraction of the residue from the matrix. Column chromatography is utilized for clean-up of the extract immediately prior to derivitization with HFBA. Derivatized extracts are analyzed by gas chromatography equipped with an electron capture detector.

The analysis for the determination of PCA residues in rice matrices utilizes an internal standard method. Samples of matrix to be analyzed are fortified with the internal standard. Residues of 12C-PCA and the internal standard are subjected to acid and base hydrolysis. The final extract is passed through florisil column for clean-up and derivatized with HFBA in hexane. An aliquot of the derivatized extract is analyzed by gas chromatography using a mass spectrometry detector in the selective ion monitoring mode. Recovery of PCA is determined by the combined peak areas for the two mass spectral ions obtained from the derivatized 12C-PCA relative to the response factor derived from the combined areas of the corresponding two mass spectral ions from the internal standard.

G. List of All Pending Tolerances and Exemptions

A tolerance for diflubenzuron on range grass at 4.0 ppm is pending. There are no exemptions from tolerance for diflubenzuron.

H. List International Tolerances (Code MRLs)

There are no Codex Alimentarius Commission maximum residue levels for residues of diflubenzuron on rice. The Codex MRL on citrus is 1.0 mg/kg vs. 0.05 ppm for U.S. tolerance. The Codex MRL for mushrooms is 0.1 mg/kg vs. 0.2 ppm for U.S. tolerance. The Codex MRL for soybeans is 0.1 mg/kg/ vs. 0.05 ppm for the U.S. The Codex MRL is 1 mg/kg for apples, Brussels sprouts, cabbage, pears, plums and tomatoes for which there are no U.S. tolerances. The Codex MRL for meat, milk and eggs is 0.05 mg/kg/ which is the same as the established U.S. tolerances.

[FR Doc. 98–4812 Filed 2-24-98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–789; FRL–5767–5]

Notice of Filing of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by the docket control number PF–789, must be received on or before March 27, 1998.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, 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. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Support Branch, 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: Rm. 237, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical 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 this petition contains 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–789] (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 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF–789) 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: February 11, 1998

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summary verbatim without editing it 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.

Valent U.S.A Corporation

PP 9F3798

EPA has received a pesticide petition (PP 9F3798) from Valent U.S.A Corporation, 1333 North California Blvd., Suite 600, Walnut Creek, California 94596-8025 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 extending a time-limited tolerance for residues of lactofen, 1-(carboethoxy)ethyl 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate and its associated metabolites containing the diphenyl ether linkage in or on the raw agricultural commodity cottonseed at 0.05 parts per million (ppm). The tolerance would expire on December 31, 1999. The time limitation on the tolerance would allow Valent to complete, and EPA to evaluate, additional prospective groundwater study data. 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*. Lactofen, formulated as COBRA Herbicide, is used to control broadleaf weeds in soybeans by pre- and/or post-emergent application and in cotton by post-directed application. Pre-harvest intervals are extended, 45 to 70 days. Plant metabolism protocols (cotton, peanut, soybean and tomato) have been designed to mimic the field applications with respect to application methods and timing. In the studies, plant material has been treated at rates exceeding normal field application to facilitate identification of metabolites. Postdirected application to cotton was simulated in the field using radiocarbon labeled lactofen and demonstrated that no radioactivity (> 0.001 ppm lactofen equivalent) was detected in the bolls.

The lactofen molecule is rapidly degraded in the environment and in plants. Therefore, the consistent result of all detailed plant metabolism studies using radiolabeled lactofen has been:

i. Low concentrations of radiocarbon are distributed throughout the plant,

ii. Much of the radiocarbon is irreversibly bound and unextractible,

iii. Very low concentrations of radiocarbon is found in the RAC (seeds), and

iv. Very little of the terminal residue is identifiable as finite metabolites as a result of the extensive degradation and binding.

To demonstrate plant metabolic pathways and to validate that the residue analytical methodology can extract, identify and quantitate lactofen and its metabolites as aged residues, plant samples from radiocarbon metabolism studies were analyzed soon after application, well before normal harvest. It is from these early samples that the definition of the regulated residue in RAC has been obtained. The residue of concern is defined by the Agency as parent and four degradates containing the intact diphenyl ether moiety. Parent lactofen (PPG-844) is degraded hydrolytically to corresponding carboxylic acid-lactate ester (PPG-947), and further to the benzoic acid (PPG-847). In a separate pathway, the esters remain intact and the aromatic nitro group is reduced to the corresponding aniline (PPG-1576) and the aniline is formylated (PPG-2597). Further, there is good evidence that these lactofen metabolites are further degraded by cleavage of the

diphenyl ether. The sodium salt of the benzoic acid (PPG-847) is the commercial herbicide acifluorfen. All five of the compounds in the regulated residue as defined have never been found in a single RAC sample either from plant metabolism or from crop field studies. For example, at maximum treatment rates in crop field trials, only one soybean seed sample was found to have a residue of parent lactofen greater than the limit of detection, but less than the limit of quantitation and only a single cotton gin trash sample was found to contain a finite residue of lactofen. Even at exaggerated rates in metabolism or crop residue studies, residues are rarely above the limit of detection for any analyte. In fact, more than one analyte has never been found above the limit of detection in a single RAC sample from crop field trials.

2. *Analytical method*. Adequate analytical methodology is available for detecting and measuring levels of lactofen and regulated metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the level set in the time-limited tolerance on cotton. The method involves extraction with triethylamine/aqueous ethanol, partitioning, methylation of the carboxylic acids, column clean-up, and separation and quantitation by gas chromatography with electron capture detection. The method, RM-28D, has been validated by an independent laboratory on both cottonseed and peanuts and was found to be acceptable with comments for enforcement in cottonseed by the EPA Analytical Chemistry Laboratory. In general, the analytical method has a limit of detection of 0.005 ppm and limit of quantitation of 0.01 ppm in crops.

3. *Magnitude of residues*. Lactofen is the active ingredient in COBRA Herbicide (EPA Reg. No. 59639-34). There are existing tolerances for lactofen on soybeans, and snap beans. A time limited tolerance supported use on cotton, and a tolerance is pending for peanuts. Lactofen is a broad-spectrum broadleaf herbicide with the following use pattern on cotton:

Post-emergence directed spray applications with a single application maximum of 0.2 lb. a.i./acre, a seasonal maximum total application of 0.4 lb. a.i./acre, and a PHI of 70 days.

Because of relatively long pre-harvest interval, post-directed applications, and extensive degradation, finite lactofen residues have not been found in cottonseed or processed cottonseed commodities. Reports covering field residue trials from twenty-one sites in all cotton growing states, several at exaggerated rates, along with processing studies have failed to show detectable residues of lactofen or its regulated degradates in any sample. Consequently, a tolerance on cottonseed is proposed at 0.05 ppm, based on the sum of the 0.01 ppm limits of quantitation for lactofen and its four regulated metabolites containing the diphenyl ether linkage. Field residue data for cotton gin trash has recently been submitted. All other lactofen tolerances to date have been established similarly at 0.05 ppm.

B. Toxicological Profile

1. *Acute toxicity*. Lactofen (PPG-844) Technical has been placed in EPA Toxicity Category III for dermal toxicity and Category IV for the other four acute toxicity tests. It has also been found to be a weak skin sensitizer. This chemical therefore represents a minimal acute toxicity risk.

2. *Genotoxicty*. Lactofen Technical has been tested and produced negative results in genotoxicity tests including unscheduled DNA synthesis in rat hepatocytes, DNA covalent binding in mouse liver, chromosomal aberration in CHO cells. Lactofen technical was also negative in an Ames assay. In repeat Ames assays, lactofen was shown to be positive without metabolic activation at 5,000 μg/plate and above. Overall lactofen is not a genetic hazard.

3. *Reproductive and developmental toxicity*. Reproduction and teratology studies indicate that adverse effects, including embryotoxicity, occur only at doses that are also maternally toxic. Since lactofen causes effects only at levels which also produce systemic toxicity the compound is not a reproductive hazard.

4. *Reproduction— Rats*. Groups of male and female rats were fed 0, 50, 500 or 2,000 ppm of Lactofen Technical continuously in their diets for 2–generations. Adult systemic toxicity (mortality, reduced body weight, increased liver and spleen weight, decreased kidney weight and histological changes in the liver and testes) was observed at levels of 500 ppm and greater. Reproductive toxicity (lower pup survival rates, reduced pup weight and pup organ weight effects) was also observed at levels of 500 ppm and greater. The No-Observed Effect-Level (NOEL) for both systemic and reproductive toxicity was 50 ppm (2.5 milligram/kilogram/day (mg/kg/day).

5. *Developmental toxicity— Rats*. Pregnant rats were administered oral doses of 0, 15, 50 and 150 mg/kg/day Lactofen Technical on days 6–19 of gestation. Maternal toxicity (death, abortion and reduced body weight gain) was observed at 150 mg/kg/day. Developmental toxicity (reduced fetal weight, slightly reduced ossification, bent ribs and bent limb bones) was also observed at 150 mg/kg/day. The NOEL for this study was 50 mg/kg/day.

6. *Developmental toxicity— Rabbits*. 2 developmental toxicity studies were conducted in rabbits with Lactofen Technical. In the first study, pregnant rabbits were administered oral doses of 0, 5, 15 or 50 mg/kg/day Lactofen Technical on days 6–18 of gestation. Maternal toxicity (clinical signs and reduced weight gain) and developmental effects (increased embryonic death, decreased litter size and increased post-implantation loss) were reported at 15 and 50 milligram/kilogram (mg/kg). The Agency concluded that the data were insufficient to establish a clear NOEL. In the second rabbit developmental toxicity study, pregnant rabbits were exposed to 0, 1, 4 or 20 mg/kg/day oral doses on days 6–18 of gestation. Maternal toxicity (reduced food consumption) was observed at 20 mg/kg/day, while no developmental effects were observed at any dose. Therefore, the maternal NOEL was 4 mg/kg/day and the developmental NOEL was greater than 20 mg/kg/day.

C. Subchronic Toxicity

1. *Subchronic feeding— Rat— 4-week*. Male and female rats were fed diets containing Lactofen Technical at concentrations of 0, 200, 1,000, 5,000, and 10,000 ppm for four weeks. A slight increase in spleen weight was the basis for a Lowest-Observed Effect-Level (LOEL) of 200 ppm (lowest dose tested). At doses of 1,000 ppm or higher the following findings were reported: clinical signs of toxicity; decreased RBC, hemoglobin, hematocrit, and increased WBC; increased relative liver and spleen weights; and necrosis and pigmentation of hepatocytes. At 10,000 ppm severe toxic signs were observed by day 7 and all animals were dead or killed in extremis by day 11. Hypocellularity of the spleen, thymus and bone marrow was also observed in animals exposed to 10,000 ppm.

2. *Subchronic feeding— Rat— 3-month*. Lactofen Technical was fed to male and female rats at dietary concentrations of 0. 40, 200, and 1,000 ppm for 13–weeks. Histopathological changes in the liver and significant changes in clinical chemistry associated with the liver were observed in rats exposed to 1,000 ppm Lactofen Technical dosage. Decreased RBC, hemoglobin and hematocrit values were also observed at 1,000 ppm. The NOEL in this study was 200 ppm.

3. *Subchronic feeding— Dog— 4–week*. In a range finding study Lactofen Technical was fed in the diet of dogs at 0. 1,000, 3,000, and 10,000 ppm for 4–weeks. Toxic effects noted in dogs fed 10,000 ppm included decreased rbc count and hemocrit, and increased BUN and SGPT. Food palatability problems led to greatly decreased feed consumption at higher dosages. The NOEL appeared to be 1,000 ppm.

4. *Subchronic feeding— Mice— 3–month*. Groups of Male and female mice were fed diets containing Lactofen Technical at concentrations of 0, 40, 200, 1,000, 5,000, and 10,000 for 13–weeks. At week 5, the dosage of the 40 ppm groups was increased to 2,000 ppm. Treatment related mortality occurred at dosages above 1,000 ppm. The LOEL was 200 ppm based on: increased WBC; decreased hematocrit, hemoglobin and RBC; increased alkaline phosphatase, SGOT, SGPT, cholesterol and total serum protein levels; increased weights or enlargement of the spleen, liver, adrenals, heart and kidney; histopathological changes of the liver, kidney, thymus, spleen, ovaries and testes. In general, effects were slight in the 200 ppm groups, and moderate to severe in the 1,000 ppm groups.

5. *Peroxisome proliferation— Mice— 7–weeks*. Butler et al (1988) studied the effects of lactofen on peroxisome proliferation in mice exposed for 7–weeks to dietary concentrations of 2, 10, 50 and 250 ppm. Liver-weight to body-weight ratio, liver catalase, liver acyl-CoA oxidase, liver cell cytoplasmic eosinophilia, nuclear and cellular size, and peroxisomal staining were increased by the tumorigenic dose of lactofen, i.e. 250 ppm. Lower doses of lactofen had little to no effect on these parameters. Thus, this study indicates that lactofen induces peroxisome proliferation and further, that 50 ppm (7 mg/kg/day), a dose which is not tumorigenic, would be considered a threshold dose in mice for peroxisome proliferation produced by lactofen. Peroxisome Proliferation -- Chimpanzees 14-weeks: A subchronic study conducted in chimpanzees (Couch and Erickson, 1986), indicated no effect on clinical chemistry or histological endpoints that would suggest liver toxicity or peroxisome proliferation at doses up to 75 mg/kg/day administered for 93 days. Therefore, Valent believes that 75 mg/kg/day is a clear NOEL for peroxisome proliferation observed in a species closely related to man.

D. Chronic Toxicity

A complete chronic data base supported by appropriate subchronic studies for lactofen is available to the Agency. Lactofen Technical causes adverse health effects when administered to animals for extended periods of time. These effects include proliferative changes in the liver, spleen, and kidney; hematological changes; and blood biochemistry changes. Based on the Lowest Effect Level (LEL) of 1.5 mg/kg/day in the 18–month mouse feeding study and an uncertainty factor of 1,000, a reference dose (RfD) of 0.002 mg/kg/day has been established for lactofen. An uncertainty factor of 1,000 was used since a clear NOEL was not established.

1. *Chronic/carcinogenicity feeding study— Mouse— 24-month*. In a dietary 18-month oncogenicity study in mice at dosages of 10, 50 and 250 ppm Lactofen Technical, an increase in liver adenomas and carcinomas, cataracts and liver pigmentation was observed at 250 ppm. The lowest dose, 10 ppm, was the LOEL based on increased liver weight and hepatocytomegaly.

2. *Chronic/carcinogenicity feeding study— Rat— 24-month*. In a 2-year chronic feeding/oncogenicity study of Lactofen Technical in rats at dosages of 0, 500, 1,000 and 2,000 ppm in the diet, an increase in liver neoplastic nodules and foci of cellular alteration was observed in both sexes at 2,000 ppm. The NOEL for systemic toxicity is 500 ppm based on kidney and liver pigmentation.

3 *Oral toxicity study— Dog— 12-month*. In a 1–year study in dogs exposed to 40, 200, and 1,000 (wk.1-17) or 3,000 ppm (wk 18-52) Lactofen Technical in their diet, the NOEL was determined to be 200 ppm based on renal dysfunction and decreased RBC, hemoglobin hematocrit and cholesterol observed at 1,000/3,000 ppm.

4. *Carcinogenicity*. The Toxicology Branch Peer Review Committee has determined that lactofen meets the criterion for a B2 (possible human) carcinogen since it caused an increase in liver tumors (adenomas and/or carcinomas) in two species. Based on the mouse oncogenicity study, a human upper-bound potency estimate (Q_1*) was calculated as 0.17 (mg/kg/day).

The calculated human Q_1* is based on the standard interspecies scaling factor of $BW^{0.67}$. Recent EPA guidance indicates that $BW^{0.75}$ is a more appropriate factor for general use. This change alone would result in a reduction of the calculated human potency factor and a reduction in the calculated carcinogenic risk by about 20%.

More importantly, evidence summarized above suggest that carcinogenic effects observed in rodent liver related to long term lactofen consumption are attributable to peroxisomal proliferation as opposed to a direct genotoxic effect. This mechanism of action would more appropriately be regulated as a threshold effect (similar to RfD comparisons) as opposed to a non-threshold effect with a quantitative potency factor derived from low dose extrapolations. This change in the hazard assessment process for lactofen would have a profound effect on the exposure and risk assessments for this chemical.

5. *Animal metabolism*. Single high, single low, and repeated low dose radiocarbon labeled lactofen metabolism studies have been performed in male and female rats. Radiocarbon is almost completely eliminated (>95%) in excreta within 3–days of oral dosing. Generally about 60% of orally administered radioactivity (^{14}C-lactofen) is found in the feces with lactofen itself being the major component. About 40% of radioactivity is recovered in urine and PPG-847 (hydrolyzed side chain) is the major metabolite. Other metabolites include PPG-947, PPG-1576, and PPG-2053. Except for the formyl derivative (PPG-2597), a minor plant metabolite, there were no plant metabolites detected that were not also produced in mammals.

Additional pharmacokinetic studies using both radiocarbon labeled and unlabeled lactofen were performed in rats, mice, rhesus monkeys, and chimpanzees. Little parent was seen in the plasma of any species tested. At steady state, the primary metabolite in the circulation of rodents was PPG-847. In the primates, PP-2053 was the primary circulating metabolite. Mice appeared to be least efficient in clearing PPG-844 and other lactofen metabolites from the circulation, while rats, and especially primates appeared to be more efficient.

6. *Metabolite toxicology*. A major hydrolytic metabolite of lactofen is PPG-847, the benzoic acid. The sodium salt of this benzoic acid, sodium 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate, is the registered herbicide acifluorfen. This product has a complete data base supporting registration with a RfD of 0.013 mg/kg/day and a Cancer Potency Factor of 0.107 $(mg/kg/day)^{-1}$. Exposure to acifluorfen from all sources must be evaluated to perform a cumulative risk analysis.

7. *Endocrine disruption*. No special studies to investigate the potential for estrogenic or other endocrine effects of lactofen have been performed. However, as summarized above, a large and

detailed toxicology data base exists for the compound including studies acceptable to the Agency in all required categories. These studies include evaluations of reproduction and reproductive toxicity and detailed pathology and histology of endocrine organs following repeated or long term exposure. These studies are considered capable of revealing endocrine effects and no such effects were observed.

E. Aggregate Exposure

1. *Dietary exposure*. A chronic dietary toxicity endpoint of concern, RfD, has been identified by the Agency based on the Lowest Effect Level (LEL) of 1.5 mg/kg/day in the 18-month mouse feeding study and an uncertainty factor of 1,000. The RfD is 0.002 mg/kg/day for lactofen. An uncertainty factor of 1,000 was used since a clear NOEL was not established. The Toxicology Branch Peer Review Committee has determined that lactofen meets the criterion for a B2 (possible human) carcinogen since it caused an increase in liver tumors (adenomas and/or carcinomas) in two species. Based on the mouse oncogenicity study, a human upper-bound potency estimate (Q_1*) was calculated as 0.17 $(mg/kg/day)^{-1}$. An acute or short term dietary endpoint of concern has not been established by the Agency. Valent has chosen to use the maternal NOEL for systemic toxicity of 4 mg/kg/day from the rabbit developmental toxicity study for acute and short term dietary risk analyses. Lactofen has no uses not associated with commercial agriculture. Therefore the only potential exposure possible to the U.S. Population is through the diet in food and drinking water. Risk analyses via other exposure routs, inhalation, dermal, are not necessary. Thus, only chronic and acute dietary exposure and risk analyses are necessary.

2. *Food*. Lactofen is registered for use in the production of commercial agricultural crops including soybeans, cotton, snap beans, and conifer seedlings. Dietary exposures are expected to represent the major route of exposure to the public.

3. *Chronic*. A chronic dietary assessment for lactofen has been conducted using Anticipated Residue Contributions (ARC) for existing and proposed uses of lactofen. This exposure/risk analysis has been submitted to the Agency along with a detailed description of the methodology and assumptions used. Since crop field trial data indicate that quantifiable residues of lactofen are rarely found in raw agricultural and processed commodities, ARCs were estimated based on the analytical method limit of detection (LOD) for each commodity. When available, analytical results for control samples were used to determine the method LOD for lactofen and its related metabolites. When all control samples contained no detectable residues, the limit of detection was determined to be 0.005 ppm. Mean anticipated residues were determined based on the sum of residues found above the LOD, or when no detectable residues were present for lactofen or any metabolite, one-half the greatest LOD for any analyte was used as the anticipated residue level. The chronic exposure analysis also considered the percent of crop treated with lactofen as follows: 5% of soybeans, 2.5% of cotton, 4.5% of snap beans, and 5% of peanuts. The soybean and cotton values are based on 1995 marketing research data (Maritz) and the snap bean and peanut values are estimates of future market penetration. Note that a lactofen peanut tolerance is still pending at the Agency and no lactofen is used on this crop even though peanuts are included in the dietary exposure assessment Dietary exposure was calculated for the U.S. population and 26 population subgroups. Chronic dietary exposure was less than 0.1% of the RfD for all subpopulations.

4. *Acute*. A first tier acute exposure and risk analysis was performed for lactofen assuming tolerance level residues in soybeans, snapbeans, cotton, and peanuts (0.05 ppm) and 0.02 ppm in all meat and milk commodities. Using the acute dietary endpoint of 4.0 mg/kg/day, the NOEL from the rabbit developmental toxicity study, the calculated exposures and margins of exposure (MOE) for the higher exposed proportions of the subgroups are listed below. It should be noted that the population sizes are small at the lower probability exposures (e.g. 99th and 99.9th percentiles) oftentimes leading to unrealistically high calculated exposures. In all cases, margins of exposure exceed 1,000.

Calculated Acute Dietary Exposures to Lactofen Residues in Food

Population Subgroup	99th Percentile		99.9th Percentile	
	Exposure (mg/kg bw/day)	MOE	Exposure (mg/kg bw/day)	MOE
U.S. Population	0.001199	3,337	0.002211	1,809
Females 13-50	0.000464	8,619	0.000712	5,616
Children 1-6	0.001911	2,094	0.002781	1,438
Children 7-12	0.001019	3,927	0.001472	2,717
All Infants	0.002887	1,385	0.003870	1,034
Non-Nursing Infants(<1)	0.002956	1,353	0.003901	1,025

5. *Drinking water*. Drinking water represents a potential route of acute or chronic dietary exposure for lactofen and should be considered in an aggregate exposure assessment. Since lactofen is applied outdoors to growing agricultural crops, the potential exists for lactofen or its metabolites to leach into ground water or reach surface water that are used for drinking. There is no established Maximum Concentration Level for residues of lactofen in drinking water under the Safe Drinking Water Act.

6. *Ground water*. Based on available lactofen studies used in EPA's assessment of environmental risk, EPA required a small scale prospective ground water study for lactofen. Valent conducted a study using the maximum application rate applied to a site which was extremely vulnerable to leaching to a shallow aquifer. The water table was at a depth of 6 to 9 feet, the top two feet of soil were classified as loamy sand (78 - 82% sand), and the deeper soil was classified as sand (88 - 94% sand). The final report demonstrated that lactofen degrades rapidly without downward movement in soil and did not contaminate even shallow ground water beneath light, sandy soils. There were no detections of lactofen (< 1 ppb) in lysimeter or monitoring well water samples. Lactofen degrades to acifluorfen, which was also monitored in the study. Since acifluorfen results from lactofen degradation, but is not the only degradation product, concentrations are expected to be lower for acifluorfen than for lactofen. Acifluorfen was found to degrade

somewhat more slowly than lactofen, and it did not leach to ground water during the study. There were no detections of acifluorfen (> 1 ppb) in lysimeter or monitoring well samples.

Assuming that all ground water contains lactofen at one-half the limit of quantitation from this study, 0.005 ppm, is non-determinate, and overly conservative. SCI-GROW modeling, using the same environmental fate parameters utilized below gave a Ground Water Screening Concentration of 0.002 ppb.

7. *Surface water*. Potential surface water concentrations for lactofen were estimated using GENEEC and the following conservative use, physical property, and environmental fate parameters: use rate, 0.2 lb a.i./a; applications, 2 aerial broadcast; application interval, 14 days; K_{OC}, 6,600; water solubility 0.945 ppm; aerobic soil half-life, 2.2–days; hydrolysis (pH 7) half-life 11–days; and photolysis in water half-life, 2.75–days. The maximum concentration predicted in the hypothetical small stagnant farm pond water was 1.05 ppb and 0.17 ppb for the 4 and 56 day average GEEC, respectively.

Potential lactofen concentrations in actual drinking water would be much lower than one-half of the quantitation limit in the ground water study or the concentration modeled in ground water from the SCI-GROW Ground Water Screening Concentration or the concentration modeled by GENEEC in the hypothetical small stagnant farm pond. For this risk analyses, the finite concentrations modeled by GENEEC are selected. Based on this analyses, the lactofen exposure contribution from drinking water to realistic dietary risk analyses is negligible.

Exposure to Lactofen from Drinking waterfor Adults and Children from GENEEC Modeling

Exposure	Exposure (mg/kg bw/day)	
	Adult (70 kg, 2 liter/day)	Child (10 kg, 1 liter/day)
Acute (4-day average)	0.000030	0.000105
Chronic (56-day average)	0.0000049	0.000017

1. *Summary— Aggregate chronic dietary exposure*. Aggregate chronic dietary exposure to lactofen is the sum of the contributions from food and water as shown in the table below. It can be seen that the total potential chronic exposure to lactofen to two representative population subgroups is dominated by the conservative estimation of residues in water, but even so, there is no cause for concern.

Aggregate Chronic Exposure to Lactofenfor Two Representative U.S. Populations

Exposure Medium	Exposure (mg/kg bw/day)	
	U.S. Population (all seasons)	Non-Nursing Infant (less than 1 year)
Food	0.0000001	0.0000001
Drinking Water	0.0000049	0.000017
Sum of Chronic Exposures	0.000005	0.000017
Occupancy of RfD(percent)	0.25	0.85

2. *Summary— Aggregate acute exposure*. It is possible to sum calculated acute exposures from dietary sources as shown in the table below. However, summation is exceedingly conservative because the approach assumes that two low probability events occur simultaneously. For example, it is highly unlikely that an individual in a single day consumes the 99.9th percentile dietary exposure (one-in-a-thousand), and also consumes all the daily drinking water from a pond surrounded by treated cotton fields. Even so, the acute exposures shown below that sum exposures from food and drinking water gives MOE values at or above 1,000. These calculated acute and short term exposures are very conservative, and are small enough to be of little significance.

Aggregate Acute Exposure to Lactofenfor Two Representative U.S. Populations(summation of low probability maximum values)

Exposure Medium	Exposure (mg/kg bw/day)	
	U.S. Population (all seasons)	Non-Nursing Infant (less than 1 year)
Food	0.002211	0.003901
Drinking Water	0.000030	0.000105
Sum of Acute Exposures	0.002241	0.004006
Margin of Exposure	1785	999

3. *Non-dietary exposure*. Lactofen is currently approved only for the commercial production of agricultural crops including cotton, soybeans, snap beans, and pine seedlings. The potential for non-occupational exposure to the general public, other than through the diet or drinking water, is therefore insignificant.

F. Cumulative Effects

Section 408(b)(2)(D)(v) requires that the Agency must consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' ''Available information'' in this context includes not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk

assessments. Valent will submit information for EPA to consider concerning potential cumulative effects of lactofen consistent with the schedule established by EPA at (62 FR 42020; August 4, 1997) (FRL 5734-6) and other EPA publications pursuant to the Food Quality Protection Act.

There are several other pesticide compounds which are structurally related to lactofen and may have similar effects on animals. Specifically, lactofen, acifluorfen, fomesafen, oxyfluorfen, and diclofop methyl are all diphenyl ethers and all have caused liver tumors in rodents. These chemicals are approved for food uses in the U.S. and could be considered in a cumulative exposure assessment. It is premature to simply add the risk from all these chemicals. Exposure considerations as well as toxicity endpoint, pharmacokinetic, and pharmacodynamic considerations may indicate that it is inappropriate to add the risks. Dietary exposures to these other diphenyl ethers are expected to represent the major route of exposure to the public.

A major hydrolytic metabolite of lactofen representing perhaps 50% of the applied dose in animal and environmental fate studies, is PPG-847, the benzoic acid. The sodium salt of this benzoic acid, sodium 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate, is the registered herbicide acifluorfen. This product has a complete data base supporting registration with a RfD of 0.013 mg/kg/day and a Cancer Potency Factor of 0.107 $(mg/kg/day)^{-1}$. Because lactofen and acifluorfen have a ''common metabolite'', exposure to both acifluorfen and lactofen from all sources must be evaluated to perform a cumulative risk analysis.

It should be noted that acifluorfen, and the other related diphenyl ethers, would benefit from the use of the larger interspecies scaling factor as well as lactofen. Further, the rodent liver tumor effects of these other diphenyl ethers may be due to peroxisome proliferation which would more appropriately be regulated as a threshold effect. The carcinogenic risk assessments performed to date are, therefore, highly conservative.

G. Safety Determination

The Food Quality Protection Act introduces a new standard of safety, a reasonable certainty of no harm. To make this determination exposure and consequent risk to both acifluorfen and lactofen from all sources must be evaluated.

In evaluating chronic dietary exposures, the food and water consumed for a lifetime is assumed to contain a baseline amount of residues. Chronic risks are evaluated by comparing a conservatively calculated baseline exposure to the RfD. A long term exposure in mg/kg bw/day is compared to a NOEL from an appropriate long term animal exposure study adjusted by a safety factor. It is quite reasonable to suppose that daily baseline exposures to two or more compounds could occur simultaneously. That is, a consumer could have chronic dietary exposure to lactofen residues and acifluorfen residues at the same time, and because acifluorfen is a metabolite of lactofen, a cumulative risk analysis is appropriate. The situation is very different for acute dietary exposures. In an acute dietary risk analysis, exposures to residues are related to the probability of occurrence of a daily diet containing the residues. At its most simplified, the probability of consuming a diet simultaneously containing both lactofen and acifluorfen at the 99.9 th percentile diet is one in one-million. A simple, additive cumulative risk analysis cannot take the probability of simultaneous exposure into account and is not appropriate.

1. *U.S. population* —i. *Chronic*— Food. Using the dietary exposure assessment procedures described above (and performed by Valent) for lactofen, and a recent assessment for acifluorfen published in the 61 FR 16740; (April 17, 1996) (FRL 5356-6) chronic dietary exposures resulting from existing and proposed uses of lactofen and acifluorfen were compared to their respective reference doses. The following contributions to the RfD were found for the U.S. Population and all of the subpopulations for which dietary consumption data are available:

ii. *Lactofen*. Exposure 0.0000001 (mg/kg bw/day) less than 0.01% for all subpopulations.

iii. *Acifluorfen*. Exposure 0.0000052 (mg/kg bw/day, 61 FR 16740) less than 0.04 % for all subpopulations.

iv. *Chronic*— Drinking water— Lactofen. Using the conservative assumption that all drinking water contains lactofen at levels calculated by GENEEC for a small farm pond surrounded by lactofen treated fields, a very conservative estimate of risk can be made. Using standard assumptions about body weight and water consumption, the adult chronic exposure from this drinking water would be 4.9×10^{-6} mg/kg bw/day, 0.25% of the RfD.

2. *Acifluorfen*. Acifluorfen that may be in drinking water can be derived directly from acifluorfen applied to crops, or may be acifluorfen derived from degradation of lactofen. The physical properties and soil stability of acifluorfen indicate that the compound may dissolve in surface water, or leach to groundwater that may be used for drinking water.

The U.S. Geological Survey is engaged in a National Water Quality Assessment (NAWQA). This program samples both ground and surface water and analyzes the samples for 75 pesticides and metabolites including acifluorfen, but not lactofen. The data through August 1997 are available from USGS, on the internet at http://water.wr.usgs.govpnsp/gwsw1.html. The NAWQA sampling program was designed to provide an overview of pesticide occurrence in water that could be used for drinking water. Specific types of agriculture or specific products, including acifluorfen, were not targeted. While the program is not exhaustive, it probably provides a reasonably unbiased estimate of the occurrence of agricultural chemical contaminants in potential drinking water. A table summarizing the data for acifluorfen is presented below.

USGS NAWQA data on Acifluorfen

Water Type	Number of Samples		Maximum Concentration (ppb)
	Total	>0.05 ppb	
Agricultural Streams	1148	10	2.2
Urban Streams	418	ND	-
Large Streams	282	6	0.44
Total Surface Water	1848	16	
Agricultural Shallow Ground Water	1069	ND	--
Urban Shallow Ground Water	314	1	0.070
Major Ground Water Aquifer	965	1	0.190

USGS NAWQA data on Acifluorfen

Water Type	Number of Samples		Maximum Concentration (ppb)
	Total	>0.05 ppb	
Total Groundwater	2348	2	

It is noteworthy that there were only 18 detections of acifluorfen in the nearly 4,200 samples analyzed for acifluorfen. More detections and highest concentrations were found in surface water than in groundwater. In light of all these monitoring data, it is unreasonable to choose the single highest concentration value from a small agricultural stream as representative of all drinking water. Accordingly, using the conservative assumption that all drinking water contains acifluorfen at 0.00044 ppm, the highest value in the USGS NAWQA data on acifluorfen from large streams, a very conservative estimate of risk can be made. Using standard assumptions about body weight and water consumption, the chronic exposure from this drinking water would be 1.26 x 10^{-5} mg/kg bw/day for adults, 0.1% of the RfD of 0.013 mg/kg bw/day.

Chronic exposure to drinking water:

i. *Lactofen*. Less than 0.25% for the U.S. Population.

ii. *Acifluorfen*. Less than 0.1% for the U.S. Population.

1. *Summary- cumulative aggregate chronic dietary risk*— i. U.S. population. The aggregate chronic dietary risks from both food and drinking water exposure expressed as a percentage of their respective RfD values is presented below for both lactofen and acifluorfen. It is noteworthy that the calculated exposures and consequent risks are very small, yet dominated by the very conservative estimates of residues in water.

ii. *Lactofen*. Exposure 0.000005 (mg/kg bw/day) less than 0.25% for all subpopulations.

iii. *Acifluorfen*. Exposure 0.0000178 (mg/kg bw/day) less than 0.14 % for all subpopulations.

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. The current and proposed uses of these two chemicals, even when considered collectively, represent a minimal chronic toxicological risk to the general public and it can be concluded that there is reasonable certainty of no harm from chronic exposures..

2. *Acute*. Assessment of aggregate acute exposure to food and drinking water residues of lactofen to the U.S. Population has demonstrated that exposures are small. MOE values using very conservative exposure assumptions and a conservative toxicity endpoint are all greater than 1,000 and it can be concluded that there is reasonable certainty of no harm to the U.S. Population from acute dietary exposures to lactofen residues.

3. *Carcinogenicity*. Carcinogenic risks for both lactofen and acifluorfen can be calculated from the aggregate chronic dietary exposures presented above. Because both products are only used in agriculture, the exposure to the general population is exclusively dietary from potential residues in food and drinking water.

4. *Food*. For lactofen, carcinogenic risks from exposure to residues in food were calculated by Valent using a potency factor (Q_1*) of 0.17 (mg/kg/day)$^{-1}$. The resulting carcinogenic risk from existing and proposed uses of lactofen was calculated at 1.54×10^{-8} or less for several lifetime population groups. This is approximately 65 times lower than the acceptable level of one-in-a-million additional lifetime cancers. It should be noted that the proposed use on peanuts, which is not being considered in the current action, accounts for more than a third of the exposure contributing to the calculated carcinogenic risk. Therefore, these estimates of carcinogenic risk from lactofen residues in food are conservative and are well within acceptable levels.

For acifluorfen, carcinogenic risks from exposure to residues in food were published by EPA (61 FR 16740; April 17, 1996) (FRL-5356-6) using a Q_1* value of 0.107 (mg/kg/day)$^{-1}$. The resulting carcinogenic risk from existing and proposed uses of acifluorfen is calculated at 5.6×10^{-7} or less. This is lower than the generally acceptable level of one-in-a-million additional lifetime cancers.

5. *Drinking water*. In the discussions above, very conservative estimates of lactofen and acifluorfen residues in potential drinking water have been presented. The estimates are conservative in that common concentrations of the compounds in real drinking water are zero, or orders of magnitude below the estimates. Using the conservative exposure estimates and the corresponding cancer potency factors, the cancer risk from drinking water is 8.5×10^{-7} and 6.7×10^{-6} or less for lactofen and acifluorfen, respectively.

6. *Summary- cumulative aggregate chronic cancer risk*— i. *U.S. population*. The aggregate chronic dietary risks of cancer from exposure to food and drinking water residues is presented below for both lactofen and acifluorfen.

ii. *Lactofen*. Chronic Exposure less than 0.000005 mg/kg bw/day Q* 0.17 (mg/kg bw/day)$^{-1}$ Cancer Risk: 8.5×10^{-7}.

iii. *Acifluorfen chronic exposure*. Less than 0.0000178 mg/kg bw/day Q* 0.107 (mg/kg bw/day)$^{-1}$ Cancer Risk 1.9×10^{-6}.

It is noteworthy that the calculated exposures and consequent risks are dominated by the very conservative estimates of potential residues in water. The Agency has expressed concern about the potential for excess oncogenic risk of acifluorfen in drinking water. To evaluate drinking water exposures, groundwater monitoring studies have been required for both acifluorfen and lactofen. Additional time is required to allow registrants to complete the studies, to present real data in potential drinking water, and for EPA to evaluate the information and adequately address the drinking water exposure issue. The calculated cancer risks are for lifetime exposure to levels of all potential acifluorfen in drinking water little of which could possibly be attributable to lactofen use on cotton. There is a reasonable certainty of no harm during the time necessary to obtain and evaluate real exposure data.

7. *Non-dietary exposure*. Lactofen and acifluorfen are currently approved only for the commercial production of agricultural crops. The potential for non-occupational exposure to the general public, other than through the diet or drinking water, is therefore insignificant.

8. *Infants and children — Safety factor for infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of lactofen, FFDCA section 408 provides that EPA shall apply an additional margin of safety, up to 10-fold, for added protection for infants and children in the case of threshold

effects unless EPA determines that a different margin of safety will be safe for infants and children. The toxicological data base for evaluating pre- and post-natal toxicity for lactofen is complete with respect to current data requirements. There are no special pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the reproductive toxicity study in rats. Systemic toxicity effects, and not reproductive or developmental toxicity determined the no effect levels for these studies of 50, 4, and 2.5 mg/kg bw/day, respectively. Valent concludes that reliable data support use of the standard 100-fold uncertainty factor with respect to protection of infants and children, and that an additional uncertainty factor is not needed to be further protective.

Furthermore, the chronic RfD for lactofen is based on the Lowest Effect Level (LEL) of 1.5 mg/kg/day in the 18-month mouse feeding study with an uncertainty factor of 1,000. An additional margin of safety, 10-fold, was used since a clear NOEL was not established in the mouse study. Thus, although an extra safety factor is not needed to further protect infants and children, an extra 10-fold uncertainty factor has been included because of the lack of a clear NOEL in the mouse study.

9. *Chronic— Food*. Using the dietary exposure assessment procedures described above (and performed by Valent) for lactofen, and a recent assessment for acifluorfen published in the **Federal Register** (61 FR 16740; April 17, 1996) total chronic dietary exposures resulting from existing and proposed uses of lactofen and acifluorfen were compared to their respective reference doses. The following contributions to the RfD were found for all of subpopulations including infants and children for which dietary consumption data are available:

i. *Lactofen*. Exposure 0.0000001 (mg/kg bw/day) less than 0.01% of RfD.

ii. *Acifluorfen*. Exposure 0.0000052 (mg/kg bw/day), (61 FR 16740; April 17, 1996) less than 0.04% of RfD.

10. *Chronic- drinking water- lactofen*. Using the conservative assumption that all drinking water contains lactofen at levels calculated by GENEEC for a small farm pond surrounded by lactofen treated fields, a very conservative estimate of risk can be made. Using standard assumptions about body weight and water consumption, the child chronic exposure from this drinking water would be 1.7×10^{-5} mg/kg bw/day, 0.85 percent of the RfD.

11. *Acifluorfen*. Using the very conservative assumption that all drinking water contains acifluorfen at 0.00044 ppm, from the USGS NAWQA data on acifluorfen, a very conservative estimate of risk can be made. Using standard assumptions about body weight and water consumption, the child chronic exposure from this drinking water would be 4.4×10^{-5} mg/kg bw/day, 0.34 percent of the RfD.

Summary - Cumulative aggregate chronic dietary risk— Infants and children. The aggregate chronic dietary risks from both food and drinking water exposure expressed as a percentage of their respective RfD values is presented below for children for both lactofen and acifluorfen. It is noteworthy that the calculated exposures and consequent risks are very small, yet dominated by the very conservative estimates of residues in water.

(a) *Lactofen*. Less than 0.86 % for all infant and children subpopulations.

(b) *Acifluorfen*. Less than 0.38 % for all infant and children subpopulations.

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. The current and proposed uses of these two chemicals, even when considered collectively, represent a minimal chronic toxicological risk to infants and children and it can be concluded that there is reasonable certainty of no harm from chronic exposures.

1. *Acute*. Assessment of aggregate acute exposure to food and drinking water residues of lactofen to non-nursing infants has demonstrated that exposures are small. MOE values using very conservative exposure assumptions and a conservative toxicity endpoint approximate 1,000. It can be concluded that there is reasonable certainty of no harm to infants and children from acute dietary exposures to lactofen residues.

G. International Tolerances

There are no Codex Maximum Residue Limits (MRL) established for lactofen on any commodity.

[FR Doc. 98–4811 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00232; FRL–5770–1]

Lithographic Printing Industry Pollution Prevention and Risk Reduction Materials

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: The EPA's Design for the Environment (DfE) Program is announcing the availability of two documents providing pollution prevention and human health and environmental risk reduction information for the lithographic printing industry. The two documents being made available are:

The Cleaner Technologies Substitutes Assessment (CTSA): Lithographic Blanket Washes (document number EPA 744–R–97–006) is a comparison of 37 different blanket wash formulations in terms of performance, cost, risk, resource conservation and other aspects. The CTSA contains the technical data and analyses of the DfE Lithography Project. A draft of this report was released in September 1996 and comments have been addressed in this final version.

Solutions for Lithographic Printers: An Evaluation of Substitute Blanket Washes (document number EPA 744–F–96–003) is a simple, user friendly summary of the information developed through the DfE Lithography Project. This booklet will help printers to choose the best blanket wash for their facilities. The 35 page document describes how to identify, select and use substitute blanket washes and other ways to reduce pollution in a lithographic printing facility.

ADDRESSES: Both documents are available free of charge for a limited time from the Pollution Prevention Information Clearinghouse (PPIC), Environmental Protection Agency (7409), 401 M St., SW., Washington, DC 20460 telephone 202–260–1023, fax 202–260–4659 and e-mail at ppic@epamail.epa.gov. Also, both documents will be viewable and downloadable from the DfE Program web site at HTTP://www.epa.gov/dfe after March 14, 1998.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, Economics, Exposure, and Technology Division, Office of Pollution Prevention and Toxics, (7406), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, telephone 202–260–1714, fax 202–260–

0981, e-mail seeh.karen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

The Design for the Environment (DfE) Lithography Project is a voluntary, cooperative partnership between the EPA and the printing industry to develop a comparative assessment of blanket washes used by lithographers. The partnership has completed the comparative analysis of 37 blanket wash formulations entitled ''Cleaner Technologies Substitutes Assessment (CTSA): Lithographic Blanket Washes.'' The CTSA contains information that helps lithographers in making decisions that incorporate environmental concerns along with cost and performance information when purchasing these chemicals. The full report is intended for technical audiences, formulators and suppliers, and environmental health personnel.

To convey better the results of the assessment to small business printers, the DfE Lithography Project created a summary document entitled ''Solutions for Lithographic Printers: An Evaluation of Substitute Blanket Washes.'' This booklet is designed to help printers evaluate their current blanket wash and compare it to substitute washes. How safe are they to use? How do they perform? How much do they cost to use? What are their environmental risks? This booklet tells how to answer these questions in a direct, easy to understand style for small business printers and press operators.

Dated: February 17, 1998.

William H. Sanders, III,

Director, Office of Pollution Prevention and Toxics

[FR Doc. 98–4813 Filed 2-24-98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5970–5]

Superfund Program; Revisions to Model CERCLA RD/RA Consent Decree

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Agency is today publishing revisions to selected provisions of the Model CERCLA RD/RA Consent Decree. The revisions, which will supersede counterpart provisions in the previously effective version of the Model published in 1995, have been jointly adopted by EPA and the Department of Justice. The primary effect of the revisions is to amend or supplement language in the Model dealing principally with the subjects of access to Superfund site property and ''institutional controls'' designed to restrict land/water use on such properties. By publishing these revisions to Model language EPA seeks to broadly inform affected members of the public of changes in the government's policy with respect to settlements for the performance of remedial design/remedial action (RD/RA).

FOR FURTHER INFORMATION CONTACT: Steve Botts, Mail Code 2272–A, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202)564–4217.

Steven A. Herman,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

Memorandum

Subject: Revisions to the Access and Institutional Control Provisions of the Model CERCLA RD/RA Consent Decree

From: Steven A. Herman, Assistant Administrator; Lois J. Schiffer, Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice.

To: EPA Regional Administrators, Regions I–X.

We herewith transmit to you final language revising selected provisions of the Model CERCLA RD/RA Consent Decree published in the July 28, 1995 **Federal Register** (60 Fed. Reg. 38,817). The attached language is designed to completely supplant that now appearing in (1) the definition of ''Future Response Costs'' contained in Section IV of the 1995 Model, (2) Paragraph 9 of the 1995 Model (entitled ''Notice of Obligations to Successors-in-Title'') and (3) Section IX of the 1995 Model (entitled ''Access [and Institutional Controls]''). The new Model language has been developed over the last two years by an Institutional Controls Workgroup comprised of representatives from the Department of Justice and EPA Headquarters and Regional offices. A draft of the new Model language has been subjected to review and comment by all interested offices.

One important impetus behind the development of this revised Model language has been EPA's continued heavy reliance on Superfund remedies which are designed to contain discovered contamination on-site. At sites where the remedial strategy is to consolidate wastes on-site or contain them in place, it is particularly important to develop effective means of preventing the public from coming into contact with contaminated wastes or disturbing important features of the remedial technology. The revisions to the access and institutional control provisions of the Model have accordingly been drafted to provide the government with a broader range of options and more efficacious mechanisms for ensuring not only that government representatives and responsible private parties performing remedial work will have continuing access to sites as necessary to implement, operate, and maintain remedies, but also that needed restrictions on land and water use at Superfund site properties can be enforced against all persons, including subsequent purchasers of contaminated site property.

Legal research suggests that in most jurisdictions the most powerful tool available to government for guaranteeing site access and restricting site activities on a long-term basis is acquisition of a property interest (generally an easement or restrictive covenant) running with the land. Thus, the revised Model language contains procedures pursuant to which owners of contaminated site property can effectively convey to the United States (or other responsible entities) a right of access and a right to enforce needed land/water use restrictions that run with the land. It should be emphasized here that State law generally governs the conveyance of real property interests. It is therefore important that Regional offices be alert to the possible need to modify or supplement Model language regarding any such conveyance as necessary to comport with the requirements of applicable State law.

We also wish to remind the Regions that whenever EPA acquires an interest in real property in order to effectuate remedial action at a Superfund site (as, for example, in the case where EPA is granted an easement including access rights or the right to enforce land/water use restrictions on certain property), EPA must comply with the requirements of CERCLA Section 104(j) and the federal land acquisition regulations. Section 104(j) requires that the State in which the property is located agree in advance to accept transfer of any property interest held by EPA upon completion of the remedial action. The federal land acquisition regulations impose additional requirements designed to ensure the United States obtains a valid property interest. The Regions should consult with EPA's Office of General Counsel

regarding the requirements of CERCLA Section 104(j) and the land acquisition regulations whenever they are considering acquiring an interest in property.

The attached revisions to Model language will become effective upon the date of this memorandum. To the extent the revised Model language applies to the circumstances of any particular settlement, the responsible government negotiation team should incorporate it into both future consent decrees and those under negotiation on the date of this memorandum.

If you have any questions regarding these revisions to the Model CERCLA RD/RA Consent Decree, please contact Donald Frankel, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, (617) 450–0442, or Steve Botts, Regional Support Division, Office of Site Remediation Enforcement, Environmental Protection Agency, (202) 564–4217.

Proposed Revisions to Access & Institutional Controls Language for RD/RA CDs

''Future Response Costs'' shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 85 of Section XXI. Future Response Costs shall also include all Interim Response Costs, and all Interest on the Past Response Costs that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from [insert the date identified in the Past Response Costs definition] to the date of entry of this Consent Decree.

[**Note:** For Consent Decrees in which there is an Owner Settling Defendant, add Paragraph 9, below. Paragraph 9(a) may be deleted if an easement will be recorded pursuant to Paragraph 26(c).]

9. *Notice to Successors-in-Title.*

a. With respect to any property owned or controlled by the Owner Settling Defendant(s) that is located within the Site, within 15 days after the entry of this Consent Decree, the Owner Settling Defendant(s) shall submit to EPA for review and approval a notice to be filed with the Recorder's Office [or Registry of Deeds or other appropriate office], _____ County, State of _____, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on _____, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. Such notice(s) shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Owner Settling Defendant(s) shall record the notice(s) within 10 days of EPA's approval of the notice(s). The Owner Settling Defendant(s) shall provide EPA with a certified copy of the recorded notice(s) within 10 days of recording such notice(s).

b. At least 30 days prior to the conveyance of any interest in property located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Owner Settling Defendant(s) conveying the interest shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as ''access easements'') pursuant to Section IX (Access and Institutional Controls), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as ''restrictive easements'') pursuant to Section IX (Access and Institutional Controls). At least 30 days prior to such conveyance, the Owner Settling Defendant(s) conveying the interest shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

c. In the event of any such conveyance, the Owner Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Owner Settling Defendant(s). In no event shall the conveyance release or otherwise affect the liability of the Owner Settling Defendant(s) to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

IX. Access and Institutional Controls

[**Note:** Subparagraphs 26(a) and 27(a) should routinely be included in consent decrees. Subparagraphs 26(b) and 27(b) should be included where EPA determines that land/water use restrictions are needed on property owned by settling or non-settling landowners to ensure the integrity or protectiveness of the remedial action. Subparagraphs 26(c) and 27(c) should be included where EPA determines that a property interest running with the land (granting either a right of access or a right to enforce land/water use restrictions) should be acquired by EPA or another grantee from settling or non-settling landowners.]

26. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States[, the State,] and its [their] representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

i. Monitoring the Work;

ii. Verifying any data or information submitted to the United States [or the State];

iii. Conducting investigations relating to contamination at or near the Site;

iv. Obtaining samples;

v. Assessing the need for, planning, or implementing additional response actions at or near the Site;

vi. Implementing the Work pursuant to the conditions set forth in Paragraph 85 of this Consent Decree;

vii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information);

viii. Assessing Settling Defendants' compliance with this Consent Decree; and

ix. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the integrity or

protectiveness of the remedial measures to be implemented pursuant to this Consent Decree. Such restrictions include, but are not limited to, [LIST SPECIFIC RESTRICTIONS]; and

c. execute and record in the Recorder's Office [or Registry of Deeds or other appropriate land records office] of _____ County, State of _____, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 26(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to [(i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the other Settling defendants and their representatives, and/or (iv) other appropriate grantees].[1] Such Settling Defendants shall, within 45 days of entry of this Consent Decree,[2] submit to EPA for review and approval with respect to such property:

i. A draft easement, in substantially the form attached hereto as Appendix , that is enforceable under the laws of the State of _____, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States* (1970) (the ''Standards'').

Within 15 days of EPA's approval and acceptance of the easement, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the Recorder's Office [or Registry of Deeds or other appropriate office] of ____ County. Within 30 days of recording the easement, such Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

27. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, Settling Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Settling Defendants, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree;

b. an agreement, enforceable by the Settling Defendants and the United States, to abide by the obligations and restrictions established by Paragraph 26(b) of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

c. the execution and recordation in the Recorder's Office [or Registry of Deeds or other appropriate land records office] of _____ County, State of _____, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 26(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to [(i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the other Settling defendants and their representatives, and/or (iv) other appropriate grantees].[3] Within 45 days of entry of this Consent Decree,[4] Settling Defendants shall submit to EPA for review and approval with respect to such property:

i. A draft easement, in substantially the form attached hereto as Appendix , that is enforceable under the laws of the State of ____, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States* (1970) (the ''Standards'').

Within 15 days of EPA's approval and acceptance of the easement, Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, the easement shall be recorded with the Recorder's Office [or Registry of Deeds or other appropriate office] of _____ County. Within 30 days of the recording of the easement, Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

28. For purposes of Paragraph 27 of this Consent Decree, ''best efforts'' includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, and/or restrictive easements.

Note: It may be appropriate to delete the preceding sentence if the property where access or land/water use restrictions are needed is owned by a non-settling party who EPA determines is a PRP. (See guidance entitled ''Model RD/RA Consent Decree: Acceptable Modifications to Model Language (Directive No. 2),'' March 25, 1992)]

If any access or land/water use restriction agreements required by Paragraphs 27(a) or 27(b) of this Consent Decree are not obtained within 45 days

[1] If, at the time that a consent decree is being negotiated, EPA is not able to determine which persons should be the grantees of the easement, Paragraph 26(c) should be redrafted to insert the phrase ''one or more of the following persons, as determined by EPA,'' prior to the bracketed list of potential grantees.

[2] If, at the time that a consent decree is being negotiated, EPA is unable to determine whether it wants to obtain an easement that runs with the land, but believes that it might want to obtain such an interest in the future, Paragraph 26(c) should be redrafted to insert the phrase ''if EPA so requests,'' at the beginning of the subparagraph, and the Settling Defendants should be required to submit the draft easement a certain number of days from the date of EPA's request.

[3] If, at the time that a consent decree is being negotiated, EPA is not able to determine which persons should be the grantees of the easement, Paragraph 27(c) should be redrafted to insert the phrase ''one or more of the following persons, as determined by EPA,'' prior to the bracketed list of potential grantees.

[4] If, at the time that a consent decree is being negotiated, EPA is unable to determine whether it wants to obtain an easement that runs with the land, but believes that it might want to obtain such an interest in the future, Paragraph 27(c) should be redrafted to begin with the phrase ''if EPA so requests,'' and the Settling Defendants should be required to submit the draft easement within a certain number of days from the date of EPA's request.

of the date of entry of this Consent Decree, or any access easements or restrictive easements required by Paragraph 27(c) of this Consent Decree are not submitted to EPA in draft form within 45 days of the date of entry of this Consent Decree,[5] Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 27 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access and/or land/water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

29. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's [and the State's] efforts to secure such governmental controls.

30. Notwithstanding any provision of this Consent Decree, the United States [and the State] retain[s] all of its access authorities and rights, as well as all of its [their] rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

[FR Doc. 98–4820 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–P

[5] If the obligation to obtain an easement pursuant to Paragraph 27(c) runs from the date of EPA's request for such an easement, as opposed to from the date of entry of the consent decree, this language should be revised accordingly.

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–59363; FRL–5773–3]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–97–10. The test marketing conditions are described below.

DATES: This notice becomes effective February 13, 1998. Written comments will be received until March 12, 1998.

ADDRESSES: Written comments, identified by the docket control number [OPPT–59363] and the specific TME number should be sent to: TSCA Nonconfidential Information Center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NEB–607 (7407), 401 M Street, SW., Washington, DC 20460. (202) 554–1404, TDD (202) 554–0551.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by [OPPT–59363]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Geraldine Hilton, New Chemicals Notice Management Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–435, 401 M St. SW., Washington, DC 20460; (202) 260–3992. email address: Hilton.geraldine@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–97–10. EPA has determined that test marketing of these new chemical substances described below, under the conditions set out in the TME applications, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–97–10. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–97–10

Date of Receipt: July 29, 1997.

Notice of Receipt: October 1, 1998 (62 FR 51527).

Applicant: Reichhold Chemicals, Inc.

Chemical: (G) Polyurethane Adhesive.

Use: (G) Hot melt adhesive for paper, wood, vinyl, etc.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential, commencing on first day of commercial manufacture.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: February 13, 1998.

Flora Chow,

Chief, New Chemicals Notice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 98–4806 Filed 2-24-98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–59364; FRL–5773–4]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–97–11. The test marketing conditions are described below.

DATES: This notice becomes effective February 13, 1998. Written comments will be received until March 12, 1998.

ADDRESSES: Written comments identified by the docket number [OPPT–59364] and the specific TME number should be sent to: TSCA Nonconfidential Information Center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NEB–607 (7407), 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov.

Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by [OPPT–59364]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Geraldine Hilton, New Chemicals Notice Management Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–435, 401 M St. SW., Washington, DC 20460, (202) 260–3992. e-mail: hilton.geraldine@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–97–11. EPA has determined that test marketing of this new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the applications and in this notice must be met.

Notice of receipt of this application was not published in advance of approval. Therefore, an opportunity to submit comments is being offered at this time. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that this test marketing activity will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–97–11. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–97–11

Date of Receipt: September 12, 1997. The extended comment period will close March 12, 1998.

Applicant: Reichhold Chemicals, Inc.

Chemical: (G) Polyurethane Adhesive.

Use: (G) Hot melt adhesive for paper, wood, vinyl, etc.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential, commencing on first day of commercial manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: February 13, 1998.

Flora Chow,

Chief, New Chemicals Notice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 98–4807 Filed 2-24-98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5970–7]

Proposed Administrative Penalty Assessment

The Environmental Protection Agency (EPA) is providing notice of a proposed Administrative Penalty Assessment against McCune Development Company and Negus-Sons, Inc., and a proposed Administrative Penalty Assessment against Lamp, Rynearson & Associates, Inc. for alleged violations of the Clean Water Act (CWA). The EPA is also providing notice of opportunity to comment on the proposed assessments.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Clean Water Act. EPA provides notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(A).

The EPA is proposing a penalty against Respondents McCune Development Company, Lamp, Rynearson & Associates, Inc. and Negus-Sons, Inc. based on activities conducted by Respondents at the Willow Park Development Project located near Gretna, Nebraska. These penalties are related to the discharge and disposal of approximately 1600 cubic yards of dredged and fill material into a wetland area, which is a water of the United States, without a permit issued pursuant to section 404 of the CWA, 33 U.S.C. 1344. This discharge violated section 301 of the CWA, 33 U.S.C. 1311.

The procedures by which the public may submit written comments on a

proposed order, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The deadline for submitting public comment on an order is thirty (30) days after issuance of a public document.

On December 15, 1997, EPA commenced proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following complaint:

In the Matter of McCune Development Company, Lamp, Rynearson & Associates, Inc. and Negus-Sons, Inc., Docket No. VII–98–W–0007.

According to the terms of one Consent Agreement, Respondents McCune Development Company and Negus-Sons, Inc. shall each pay a civil penalty of five thousand dollars. According to the terms of a second Consent Agreement, Respondent Lamp, Rynearson & Associates, Inc. shall pay a penalty of five thousand dollars; however, this penalty shall be deferred, pending the performance by Respondent Lamp, Rynearson & Associates, Inc. of the Restoration of wetlands, as required by Order for Compliance, EPA Docket No. VII–98–0008. In the event the costs of Restoration are less than five thousand dollars, Respondent Lamp, Rynearson & Associates shall pay the difference between such costs and five thousand dollars.

For Further Information: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Consent Orders/Consent Agreements or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by McCune Development Company, Lamp, Rynearson & Associates, Inc. and Negus-Sons, Inc., is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this document.

Dated: February 3, 1998.

Dennis Grams,

Regional Administrator.

[FR Doc. 98–4787 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 232–011544–003.

Title: The Lykes/APL Space Charter Agreement.

Parties:

Lykes Lines Limited, LLC (''Lykes'')
American President Lines, Ltd.
APL Co. Pte Ltd. (''APL Co.'')

Synopsis: The proposed amendment adds APL Co. as a party to the Agreement. It also clarifies the amount of space to be chartered and clarifies the circumstances under which Lykes may charter space to parties outside the Agreement. The amendment also extends the term of the Agreement indefinitely, establishes a date before which a party may not give notice of withdrawal, and makes other, administrative changes to the Agreement. The parties have requested a shortened review period.

Agreement No.: 232–011611.

Title: MOL/APL Slot Transfer Agreement.

Parties:

American President Lines, Ltd. (''APL'')
APL Co. PTE Ltd (''APL'')
Mitsui O.S.K. Lines, Ltd. (''MOL'')

Synopsis: The proposed Agreement authorizes (1) the sale of space by APL to MOL from space APL charters from Lykes Lines Limited, LLC, pursuant to FMC Agreement No. 232–011544; (2) the sale or exchange of space between the parties on vessels chartered or operated by them; and (3) agreement on the terms and conditions relating to sailing schedules, service frequency, ports served, and other matters in the trade between United States Atlantic and Gulf Coast ports, and U.S. points via those ports, and ports and points in the United Kingdom, Continental Europe and on the Mediterranean Sea.

Agreement No.: 224–200686–002.

Title: Lake Charles—Lake Charles Stevedores Terminal Agreement.

Parties:

Lake Charles Harbor & Terminal District
Lake Charles Stevedores, Inc.

Synopsis: The proposed amendment replaces the previous understanding between the parties and concerns the terms and conditions under which the contractor handles cargo at the port. The proposed amendment also concerns the transfer of automated cargo handling equipment to the port and the operation of that equipment at the port. The term of the agreement runs until January 31, 1999 but may be further extended by the parties for one year periods.

Dated: February 19, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–4721 Filed 2–24–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 23, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. South Beach Limited Partnership, Little Rock, Arkansas; to acquire additional voting shares of P & W Bancshares, Inc., Little Rock, Arkansas,

and thereby indirectly acquire Central Bank & Trust, Little Rock, Arkansas.

Board of Governors of the Federal Reserve System, February 20, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4799 Filed 2–24–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 23, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Citizens Bancshares, Inc., Salineville, Ohio; to acquire 100 percent of the voting shares of Century Financial Corporation, Rochester, Pennsylvania, and thereby indirectly acquire Century National Bank and Trust Company, Rochester, Pennsylvania.

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of First Bank, Katy, Texas.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bethany Bancshares, Inc., Bethany, Missouri; to acquire up to 100 percent of the voting shares of Gallatin/New Hampton Bancshares, Inc., Albany, Missouri, and thereby indirectly acquire Bank of Gallatin/First State Bank, Gallatin, Missouri.

Board of Governors of the Federal Reserve System, February 20, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4797 Filed 2–24–98; 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 March 23, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Republic Bancshares, Inc., St. Petersburg, Florida; to engage *de novo* through its subsidiary, Republic Bank, F.S.B., St. Petersburg, Florida, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4) of the Board's Regulation Y. The proposed activities will be performed throughout the State of Florida.

Board of Governors of the Federal Reserve System, February 20, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4798 Filed 2–24–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 11:00 a.m., Monday, March 2, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposal regarding a software contract within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 20, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–4887 Filed 2–20–98; 4:48 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 962–3211]

Eye Research Associates, Inc., et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 27, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Judy Shepherd, FTC, Dallas Regional Office, 1999 Bryan St., Suite 2150, Dallas, TX 75201. (214) 979–9383. Matt Daynard, FTC/H–200, Washington, D.C. 20580. (202) 326–3291.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 19, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed Consent Order (''proposed order'') from Eye Research Associates, Inc. d/b/a Eye Care Associates, ICKRS, d/b/a/ International Controlled Kerato Reformation Society, and Sami G. El Hage, O.D., the sole owner and President of the corporations.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns print advertisements and videotapes provided directly to consumers, and to optometrists for distribution under their own name to consumers, for proposed respondents' ''CKR'') (''Controlled Kerato Reformation'') orthokeratology service (''CKR ortho-k''). CKR ortho-k is an eye care service involving the use of a series of contact lenses purportedly to reshape the cornea gradually for the treatment of myopia, or nearsightedness (difficulty seeing at a distance), hyperopia, or farsightedness (difficulty seeing up close), and astigmatism (blurred vision).

The Commission's complaint charges that the proposed respondents engaged in deceptive advertising in violation of Sections 5 and 12 of the FTC Act by making false and unsubstantiated claims that: (1) CKR ortho-k corrects nearsightedness and astigmatism thereby permanently eliminating the need for all corrective eyewear, including eyeglasses and contact lenses for nearsightedness and astigmatism; and (2) all or most people can achieve normal vision without eyeglasses or contact lenses on a permanent basis if they wear CKR ortho-k devices occasionally or at night.

The complaint further alleges that proposed respondents made false claims that: (1) Four named University studies prove that CKR ortho-k is safe and effective in correcting, controlling, or improving nearsightedness, farsightedness and astigmatism; and (2) consumer testimonials for respondents' CKR ortho-k services reflect the typical or ordinary experience of members of the public who receive those services, which experience is that CKR ortho-k patients typcially achieve 20/20 vision and no longer need corrective eyewear.

The complaint further alleges that proposed respondents made unsubstantiated claims that: (1) A significant number of people can achieve normal vision without eyeglasses or contact lenses on a permanent basis if they wear CKR ortho-k devices occasionally or at night; (2) all or most people will experience stabilized vision after only a few weeks or months of CKR otho-k treatments; (3) CKR ortho-k prevents and reverses deteriorating nearsightedness in children; (4) CKR ortho-k is as safe as contact lens wear; (5) CKR ortho-k is as effective as refractive surgical methods in correcting, controlling, or improving nearsightedness, farsightedness, and astigmatism; (6) CKR ortho-k has helped thousands of people achieve normal vision; and (7) CKR ortho-k provides commerical pilots and other career professionals with stable 20/20 vision thereby enabling them to meet occupational requirements for unaided vision.

The proposed order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Paragraph I of the proposed order prohibits proposed respondents from claiming that CKR ortho-k, or any substantially similar service (defined as any ophthalmic service or procedure using contact lenses or similar devices to modify the shape of the cornea and reduce or eliminate nearsightedness, farsightedness, and astigmatism): (1) Corrects nearsightedness and astigmatism thereby permanently eliminating the need for all corrective eyewear, including eyeglasses and contact lenses for those conditions; and (2) all or most people can achieve normal vision without eyeglasses or contact lenses on a permanent basis if they wear devices used with CKR ortho-k or any substantially similar service occasionally or at night. Paragraph I further prohibits proposed respondents from representing that four named University studies prove that CKR ortho-k or any substantially similar service is safe and effective in correcting, controlling, or improving nearsightedness, farsightedness, and astigmatism.

Paragraph II of the proposed order prohibits proposed respondents from making any representation for CKR ortho-k, or any substantially similar service, about: (1) The number of people who can achieve normal vision without eyeglasses or contact lenses on a permanent basis if they wear devices used with such service occasionally or at night; (2) the number of people will experience stabilized vision after only a few weeks or months of treatments under such service; (3) the ability of such service to prevent or reverse deteriorating nearsightedness in children; (4) the comparative safety of such service and contact lens wear; (5) the comparative effectiveness of such service and refractive surgical methods in eliminating nearsightedness,

farsightedness, or any form a astigmatism; (6) the number of people whom such service has helped achieve normal vision; and (7) the ability of such service to provide pilots and other career professionals with stable visual acuity sufficient to meet occupational vision requirements, unless, at the time the representation is made, proposed respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph III of the proposed order prohibits proposed respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, survey, or report.

Paragraph IV of the proposed order prohibits proposed respondents from representing that the experience represented by any user testimonial or endorsement of any service, procedure, or product represents the typical or ordinary experience of members of the public who use the service, procedure, or product, unless the representation is true, and competent and reliable scientific evidence substantiates that claim, or respondents clearly and prominently disclose either: (1) What the generally expected results would be for program participants; or (2) the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to achieve similar results.

Paragraph V of the proposed order prohibits proposed respondents from making any representation about the relative or absolute efficacy, performance, or benefits of any ophthalmic service, procedure, or product purporting to treat, mitigate, or cure nearsightedness, farsightedness, or astigmatism, unless the representation is true and, at the time the representation is made, proposed respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph VI of the proposed order requires that proposed respondents: (1) Not disseminate to any optometrist or eye care provider any material containing any representations prohibited by the order; (2) send a required notice to each optometrist or eye care provider who has attended one of proposed respondents' seminars since January 1, 1994 requesting that the optometrist cease using any materials previously received from proposed respondents that contain any claims violative of the order, informing the optometrist of this settlement, and attaching a copy of this proposed complaint and order; (3) in the event that proposed respondents receive any information that subsequent to receipt of the required notice any optometrist or eye care provider with whom the proposed respondents have an agreement to market and/or perform CKR services is using or disseminating any advertisement or promotional material that contains any representation prohibited by the order, immediately notify the optometrist or eye care provider that proposed respondents will terminate the optometrist or eye care provider's right to market and/or perform CKR ortho-k if he or she continues to use such advertisements or promotional materials; (4) terminate any such optometrist or eye care provider about whom proposed respondents receive any information that such person has continued to use advertisements or promotional materials that contain any representation prohibited by the order after receipt of the required notice; and (5) for a period of three (3) years following service of the order, send the required notice to each optometrist or eye care provider who attends proposed respondents' seminars who has not previously received the notice; the notices shall be sent no later than the earliest of: (1) The execution of a sales or training agreement or contract between proposed respondents and the prospective optometrist or eye care provider; or (2) the receipt and deposit of payment from a prospective optometrist or eye care provider of any consideration in connection with the sale of any service or rights associated with CKR ortho-k. The mailing shall not include any other documents.

Paragraph VII of the proposed order contains record keeping requirements for materials that substantiate, qualify, or contradict covered claims and requires the proposed respondents to keep and maintain all advertisements and promotional materials containing any representation covered by the proposed order. In addition, Paragraph VIII requires distribution of a copy of the consent decree to current and future officers and agents. Further, Paragraph IX provides for Commission notification upon a change in the corporate respondents. Paragraph X requires proposed respondent Sami G. El Hage, O.D. to notify the Commission when he discontinues his current business or employment and of his affiliation with any new business or employment. The proposed order, in paragraph XI, also requires the filing of a compliance report.

Finally, Paragraph XII of the proposed order provides for the termination of the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 98–4753 Filed 2–24–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[Dkt. 9284]

Mesa County Physicians Independent Practice Association, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 27, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William Baer or Robert Leibenluft, FTC/H–374, Washington, D.C. 20580. (202) 326–2932 or 326–3688.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text to the consent agreement package can be obtained from the FTC Home Page (for February 19, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained

from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (Commission) has accepted, subject to final approval, an agreement to a proposed consent order from Mesa County Physicians Independent Practice Association, Inc. (Mesa IPA), a physician organization in Mesa County, Colorado. The agreement would settle ongoing litigation concerning charges by the Commission that Mesa IPA has violated Section 5 of the Federal Trade Commission Act by: (1) Conspiring to obstruct the entry of third-party payers into Mesa County; (2) acting as the *de facto* exclusive bargaining agent for its physician members; (3) fixing the terms on which its members deal with payers; and (4) collectively refusing to deal with payers.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order to modify in any way their terms. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by Mesa IPA that the law has been violated as alleged in the complaint.

The Complaint

The complaint, issued by the Commission on May 13, 1997, charges that Mesa IPA has restrained competition in the provision of physician services in the Mesa County area by fixing the prices and other terms on which its members deal with third-party payers. The allegations in the Commission's complaint are summarized below.

Mesa IPA, an organization of more than 180 physicians, includes at least 85% of all the physicians, and at least 90% of the primary care physicians (family practitioners, general practitioners, internists, and pediatricians), in private practice in Mesa County, Colorado, an area of over 100,000 people. The IPA was formed in 1987 to protect the economic interests of Mesa County physicians in their dealings with third-party payers. Mesa IPA contracted with Rocky Mountain Health Maintenance Organization, a third-party payer based in Mesa County, whose enrollees comprise at least 50% of the total patient volume of Mesa IPA's members. in 1993, Mesa IPA began negotiating on behalf of its members with several third-party payers seeking to enter Mesa County.

Mesa IPA operated as the *de facto* exclusive bargaining agent for its physician members in dealing with third-party payers. Mesa IPA encouraged its physician members not to deal individually with third-party payers, or to do so only on terms that were approved by the IPA's Contract Review Committee. Mesa IPA's Board of Directors approved a set of guidelines and a schedule of fee conversion factors to be used by the IPA's Contract Review Committee in reviewing contract offers from payers. Mesa IPA's fee conversion factors resulted in significantly higher prices for physician services being charged to several payers than would have been charged absent the agreement among the IPA's members.

Mesa IPA's members have not integrated their medical practices so as to create efficiencies sufficient to justify their collective contract negotiations and other conduct alleged in the complaint.

As a result of Mesa IPA's activities, a wide range of third-party payers of physician services, including preferred provider organizations, health maintenance organizations, and employer health care purchasing cooperatives, were excluded from doing business in Mesa County. Although most payers sought alternatives to Mesa IPA, they were forced either to contract with the IPA to obtain the physician services they needed to market viable plans to employers and consumers, or else to abandon their efforts to enter Mesa County. Mesa IPA's actions have harmed consumers in Mesa County by, among other things, increasing the prices paid by consumers for physician services, depriving consumers of the benefits of competition in the purchase of physician services, and hindering the development of alternative health care financing and delivery systems in Mesa County.

The Proposed Consent Order

The proposed consent order is designed to prevent the illegal concerted action alleged in the complaint, while allowing Mesa IPA to engage in legitimate joint conduct. Paragraph II of the proposed order contains the core operative provisions. It prohibits Mesa IPA from: (1) Engaging in collective negotiations on behalf of its members; (2) orchestrating concerted refusals to deal; (3) acting as an exclusive bargaining agent for its members; (4) restricting the ability of its members to deal with third-party payers and others individually or through arrangements other than Mesa IPA; (5) coordinating the terms of contracts with third-party payers with other physician groups in Mesa County or in any county contiguous to Mesa County; (6) exchanging or facilitating the exchange of information among physicians concerning the terms upon which physicians are willing to deal with third-party payers; and (7) encouraging or pressuring others to engage in any activities prohibited by the order.

Paragraph II also sets forth terms that Mesa IPA must observe, for a period of five years, if it seeks to act as an agent for individual physicians in dealings with third-party payers. Arrangements that do not involve agreements among competing providers on price or price-related terms, sometimes referred to as a ''messenger model,'' can facilitate contracting between physicians and third-party payers. Although messenger models can take various forms, the key in any such arrangement is that it does not create or facilitate any agreement among competitors on price or price-related terms. The order permits Mesa IPA to use a messenger model, but prescribes the manner in which Mesa IPA may structure and operate such an arrangement (should it chose to employ one). This provision is necessary to guard against collusion, especially because the IPA has incorrectly claimed that some of its prior dealings with third-party payers were based on a messenger model. Thus, the messenger model specified in the order is tailored to the particular facts and circumstances of this case.

Paragraph II includes a proviso allowing Mesa IPA to engage in conduct (including collectively determining reimbursement and other terms of contracts with payers) that is reasonably necessary to operate (a) any ''qualified risk-sharing joint arrangement,'' or (b) provided the IPA complies with the order's prior notification requirements,

any ''qualified clinically integrated joint arrangement.'' The proviso addresses the arrangements that the IPA may enter into, rather than the overall nature of the group, because of physician group may enter into legitimate arrangements with some third-party payers but engage in illegal conduct with respect to others. For the purposes of the order, a ''qualified risk-sharing joint arrangement'' must satisfy two conditions. First, it must be one in which participating physicians share substantial financial risk. The order lists ways in which physicians might share financial risk. These track the four types of financial risk sharing set forth in the *Statements of Antitrust Enforcement Policy in Health Care,* issued jointly by the FTC and the Department of Justice.[1]

Second, to be a ''qualified'' risk-sharing arrangement, the arrangement must also be non-exclusive, both in name and in fact. An arrangement that either restricts the ability of participating physicians to contract outside the arrangement (individually or through other networks) with third-party payers, or facilitates refusals to deal outside the arrangement by participating physicians, does not fall within the proviso. Although exclusive physician joint arrangements are not necessarily anticompetitive, they can impair competition, particularly when they include a large portion of the physicians in a market. In light of Mesa IPA's large share of the physician market, this definition does not permit the IPA to form exclusive arrangements.

A ''qualified clinically integrated joint arrangement'' includes arrangements in which the physicians undertake cooperative activities to achieve efficiencies in the delivery of clinical services, without necessarily sharing substantial financial risk. For purposes of the order, such arrangements are ones in which the participating physicians have a high degree of interdependence and cooperation through their use of programs to evaluate and modify their clinical practice patterns, in order to control costs and assure the quality of physician services provided through the arrangement. As with risk-sharing arrangements, the definition of clinically integrated arrangements reflects the analysis contained in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care. In addition, as with risk-sharing arrangements, the clinically integrated arrangements must be non-exclusive.

[1] Statements of Antitrust Enforcement Policy in Health Care, issued August 28, 1996, 4 Trade Reg. Rep. (CCH) ¶ 13,153 (also available at http://www.ftc.gov).

The definition of a clinically integrated arrangement is by necessity less premise than that of a risk-sharing arrangement. Therefore, in order for a qualified clinically integrated joint arrangement to fall within the proviso, Mesa IPA must comply with the order's requirements for prior notification. The prior notification mechanism will allow the Commission to evaluate a specific proposed arrangement and assess its likely competitive impact, in order to help guard against the recurrence of acts and practices that have restrained competition and consumer choice.

Paragraph III requires that Mesa IPA (1) notify its members and certain third parties about the order; (2) amend its ''Physician Manual'' to bring the manual in compliance with the order; and (3) abolish its Contract Review Committee, which the complaint charges was one of the instruments through which the IPA orchestrated its anticompetitive activities. This paragraph also will require termination of any existing contracts with third-party payers that do not comply with Paragraph II of the order, at the earlier of the termination or renewal date of the contract, or receipt of a written request from the payer to terminate the contract. Automatic termination of such contracts is not required, to order to avoid disruption that might result from applying the order's prohibitions to existing contractual arrangements between Mesa IPA and third-party payers. In addition, Mesa IPA must, for the next five years, distribute copies of the complaint and order to new members; annually publish to members a copy of the complaint and order; and annually brief members on the meaning and requirements of the order and the antitrust laws. These provisions are aimed at monitoring, and hence preventing, possible anticompetitive conduct.

Paragraphs IV, V, and VI consist of various reporting procedures, consistent with those found in other Commission consent orders, that are designed to assist the Commission in monitoring compliance with the order. Finally, Paragraph VII terminates the order twenty years after the date it is issued, in accordance with Commission policy.

The consent order does not require Mesa IPA to reduce its share of primary care physicians in Mesa County. Although the ''Notice of Contemplated Relief'' issued along with the complaint in this case included such a structural change as a possible form of relief, the Commission has determined that structural relief is not necessary given changes in the market since the Commission issued its complaint. In particular, evidence suggests that significant numbers of IPA members are now contracting with third-party payers outside Mesa IPA on competitive terms, alternatives to Mesa IPA are developing, and a number of third-party payers have been able to enter the market or expand their presence in the market. Accordingly, the Commission has concluded that a consent order governing Mesa IPA's conduct will provide the necessary relief.

Donald S. Clark,

Secretary.

[FR Doc. 98–4754 Filed 2–24–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 971–0091]

PacifiCorp, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 27, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Joseph Krauss, FTC/S–3627, Washington, D.C. 20580. (202) 326–2713.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 18, 1998), on the World Wide Web, at ''http://

www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission has accepted from PacifiCorp and The Energy Group PLC (TEG), for public comment, an Agreement Containing Consent Order (Proposed Consent Order). The Commission has also entered into a Hold Separate Agreement that requires Proposed Respondents to hold separate and maintain certain assets until they are divested. The purpose of the Proposed Consent Order is to remedy the likely anticompetitive effects of PacifiCorp's acquisition of TEG.

II. Description of the Parties and the Transaction

PacifiCorp, which is headquartered in Portland, Oregon, provides retail electric utility service in seven western states: Oregon, Washington, California, Utah, Idaho, Wyoming, and Montana. PacifiCorp's 1996 retail electricity sales totaled 2.1 billion dollars. PacifiCorp also makes wholesale electricity sales to other utilities in the western United States. PacifiCorp's 1996 wholesale electricity sales totaled 739 million dollars. Finally, PacifiCorp also operates five coal mines in the northwestern United States and owns a power marketer that trades electric power throughout the United States.

TEG is a diversified energy company headquartered in London, England. TEG owns Peabody Coal Company (Peabody), which produces roughly 15 percent of the coal mined in the United States. TEG also owns a power marketer, which trades electric power throughout the United States and owns both electric power plants and an electric power transmission system in England. TEG's total revenue for the fiscal year ending September 30, 1996 was roughly 6 billion dollars.

PacifiCorp seeks to acquire 100 percent of the voting securities of TEG.

III. Industry Background

The generation and marketing of electricity is moving from a regulated environment to a competitive environment.[1] Currently, utilities in most states own both generating facilities and transmission facilities. State public utility commissions regulate rates charged by these utilities. In this regulated environment, utilities trade electricity to some extent in a wholesale market. To meet its electricity needs, a utility can purchase electricity from another utility or from an independent producer. The Federal Energy Regulatory Commission (''FERC'') regulates interstate wholesale electricity sales and transmission. FERC permits wholesale electricity sales to be made at market rates if a power generator can show that it does not possess market power in the region in which it operates. Consequently, wholesale electricity rates are determined by the balance of supply and demand.

Many states are in the process of deregulating their electric utility industries. As this process progresses, the vertical integration that has historically characterized the industry is likely to diminish, and transmission and generation functions will be separated. In the deregulatd environment, electricity transmission would remain a regulated monopoly in which the operator of the transmission system is prohibited by FERC Orders 888 and 889 from discriminating against particular users. Electric power generator, however, would become competitive, allowing customers to choose their supplier of electricity. The end result of this deregulation process will be a market in which retail rates are no longer regulated by state utility commissions, but are determined by the balancing of supply and demand in a competitive market. The differences between wholesale and retail electricity rates, which are largely a product of their different regulatory environments, will disappear or will be significantly reduced.

In the current wholesale electricity market, short periods of time (e.g., hour or one-half hour periods) often represent distinct product markets because electricity demand cannot easily be shifted from one time period to another and because electricity cannot easily be stored in large quantities. As retail electricity sales are deregulated, retail rates will also likely be priced on an hour-by-hour basis.

Constraints on transmission capacity typically delimit geographic markets as regional areas comprised of several states. One such geographic market is the area included within the Western Systems Coordinating Council (''WSCC''). The WSCC coordinates interchange of electricity among power plants and transmission systems located within the eleven western states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, and parts of southwestern Canada and northwestern Mexico.

While transmission constraints limit the geographic area within which electricity is generated and consumed, trading among buyers and sellers in the wholesale electricity market links electricity markets into larger trading areas, one of the largest being the United States as a whole.

Electricity demand in a particular region at a particular time is met by utilizing or ''dispatching'' power plants in an order that is likely to be based substantially on plants' variable cost of generating electricity. Given current technology and fuel prices, nuclear power plants have low variable costs and are dispatched first. Hydroelectric plants operating on a run-of-stream basis also have very low variable costs and are usually dispatched as long as they are operating on that basis.[2] Coal-fired power plants have higher variable costs, and natural gas plants generally have even higher variable costs.

As a consequence of the dispatch order discredited above, competition between a small number of plants can be critical in setting price. In the WSCC, during periods of lower or off-peak demand, gas-fired plants generally are not utilized because of their high variable costs.[3] Consequently, for off-peak periods in the WSCC, coal-fired power plants frequently are the price-setting, marginal plants.

California is one of the first states that has started to deregulate its retail electricity sales. California is currently in the process of establishing a power exchange (''PX''), modeled on the

[1] See Timothy Brennan, *A shock to the System: Restructuring America's Electricity Industry* (1996); Joskow, *Restructuring, Competition and Regulatory Reform in the U.S. Electricity Sector, 11(3) Journal of Economic Perspectives 119–138 (1997); and Comment of the Staff of the Bureau of Economics of the Federal Trade Commission before the Federal Energy Regulatory Commission* (August 7, 1995).

[2] Although hydroelectric power plants have low variable costs, river flow is often insufficient to dispatch these plants at full capacity 24 hours a day. When river flow is low, some hydroelectric capacity is held back during off-peak periods and dispatched at periods of peak electricity demand.

[3] Off-peak hours in the western U.S. are generally recognized by the industry to consist of the eight hours between 11:00 PM and 7:00 AM Monday through Saturday, and all day Sunday. Peak hours are recognized by the industry to consist of consist of the sixteen hours between 7:00 AM and 11:00 PM Monday through Saturday.

system used in the United Kingdom, which will run a centralized auction for the purchase of electricity. Under the California reforms, each generating plant will bid to supply power to the state's PX. The PX will then rank generators' bids from lowest to highest prices, and choose the lowest-cost bids necessary to meet projected demand. All suppliers will receive the price of the last increment of supply necessary to fulfill demand, even if they bid a lower price. Consequently, in the system anticipated to be used in California, the marginal supplier will set the price for the entire system.

Entry into an electricity market can occur through the construction of a new power plant or the construction of new transmission capacity, which would enable distant electricity producers to compete more effectively. However, the time required for obtaining regulatory approval and for construction prevents either type of entry from quickly correcting anticompetitive behavior.

IV. Threat to Competition

A. Raising Rivals' Costs

Navajo Generating Station (Navajo) is a 2,250-megawatt coal-fired power plant located in the north-central section of Arizona. Navajo is supplied exclusively from Peabody's Kayenta mine via an 80-mile dedicated rail line. Mohave Generating Station (Mohave) is a 1,580-megawatt coal-fired power plant located in southern Nevada. Mohave is supplied exclusively from Peabody's Black Mesa Mine through a 275-mile coal slurry pipeline. Long-term contracts govern the terms on which Peabody supplies Navajo and Mohave.

Navajo and Mohave are absolutely dependent upon the Kayenta and Black Mesa coal mines for their fuel supply because of their extreme isolation relative to rail lines and other coal mines. There are no other economic sources of fuel, coal or otherwise, for these two large power plants.

PacifiCorp owns roughly 9,000 megawatts capacity in the Western Systems Coordinating Council (WSCC), an organization of electric utilities and power marketers organized to improve the reliability of power transmission and delivery in the western United States and parts of southwestern Canada and northwestern Mexico. The WSCC represents a geographic market since transmission constraints severely limit imports. The WSCC represents a geographic market since transmission constraints severely limit imports. Sub-regions within the WSCC may also represent geographic markets, at certain times, given that the transmission capacity connecting subregions is limited and may be inadequate to balance supply and demand across the subregions.

A firm can sell its product at a higher price if its rivals charge higher prices. Thus, a firm can profitably increase its own price if it can take actions at low cost to itself that raise the costs, and subsequently the price, of its rivals. By vertically integrating with suppliers of a large share of some key input, a firm may be able to increase its rivals' costs. Given this, PacifiCorp's acquisition of Peabody, which is the exclusive supplier of coal to certain power plants that compete with PacifiCorp's own power plants, raises antitrust concern. Specifically, PacifiCorp would have an incentive to increase fuel costs at Navajo and Mohave in order to drive up the market price of electricity in the western United States. In the near term, PacifiCorp would be able to realize this higher price on its net wholesale electricity sales. In the long-term, assuming deregulation, PacifiCorp might also be able to realize this higher price on some of its retail electricity sales.

The extent of the anticompetitive harm caused by PacifiCorp's acquisition of Peabody depends on two factors: First, how much discretion does the mine owner have to affect the fuel costs at Navajo and Mohave given the long-term contracts between Peabody and the plan owners? Second, over what periods, if any, and to what extent will changing the costs of Navajo and Mohave affect the market price of electricity?

The long-term contracts that govern the supply of coal to Navajo and Mohave have a modified cost-plus format that makes them vulnerable to cost manipulation. A long history of cost disputes between the parties underlines the supplier's discretion to determine cost levels at the power plants. Consequently, post-merger, PacifiCorp could increase Navajo and Mohave's costs. Alternatively, an independent, profit-maximizing Peabody might find it in its interests to grant the power plants a discount on coal pricing. A merged PacifiCorp/Peabody, however, might decline to grant such discounts because increased output at Navajo and Mohave might decrease wholesale electricity prices in the WSCC and cause PacifiCorp/Peabody to earn less on its electricity sales. In this context, failure to grant a price concession amounts to a price increase.

Peabody documents reveal that price concessions in the near future for both Navajo and Mohave are a real possibility. Peabody documents show that the company has considered granting Navajo price discounts, because the plant has been underutilized during off-peak hours in the recent past. Moreover, Peabody documents also reveal that it expects the coming deregulation of the electricity industry will intensify competitive pressures on both coal-fired power plants and their coal suppliers. Peabody documents also reveal that Mohave will face a costly decision in the next several years on whether to install scrubbers to comply with environmental regulations and will implicitly be looking to its coal supplier for cost relief.

PacifiCorp's roughly 9,000 megawatts of generating capacity, Navajo's 2,250 megawatts of generating capacity, and Mohave's 1,580 megawatts of generating capacity represent a comparatively small share of the 138,000 megawatts of generating capacity in the WSCC. In a market with numerous competitors such as electricity generation in the WSCC, one might assume if coal costs at two plants such as Navajo and Mohave were to increase and their generation consequently declined, other plants would simply increase output and there would be no effect on the market-clearing price. However, there is substantial evidence that manipulating fuel cost at Navajo could have a significant effect on the market price for wholesale electricity.[4] A Peabody document recognizes that if Navajo were to go to full capacity utilization during off-peak hours, it would produce 1,200 megawatts of additional power, depressing electricity prices. Also, computer modeling using programs well-accepted in the industry shows that manipulating prices at Navajo would have an effect on wholesale electricity prices in the WSCC.

How can participation of suppliers comprising only a small fraction of capacity affect the market price for electric power? The answer lies in the way in which power plants are dispatched. Power plants tend to have very flat cost functions until they reach their capacity.

Thus, power plants tend to operate at maximum capacity if they can economically do so at the prevailing price. Otherwise, they tend to be idled.[5]

[4] At current electricity prices, Mohave operates at full capacity. Hence Mohave is currently an infra-marginal producer and unlikely to be a price setter. However, as California deregulates its electricity market, prices are likely to fall and Mohave could then be in a position to be a marginal, price-setting plant.

[5] Because coal-fired plants require a start-up period of several days, their output would be cut

Continued

Consequently, most of the power plants generating electricity, at any particular time period, have almost no ability to expand output and offset anticompetitive behavior. Given these circumstances, the power plants that could defeat anticompetitive behavior here would be those power plants with excess capacity that could produce and deliver to the areas served by Navajo and Mohave electricity at the same cost (or slightly above) Navajo's or Mohave's. The evidence indicates that there are no such power plants here.

During periods of low electricity demand in the WSCC (e.g., nighttime hours during the spring), electricity demand is met using some hydroelectric capacity, nuclear power plants, and some coal-fired power plants. Gas-fired power plants tend to be idled during these periods. Since coal-fired power plants are the last plants to be dispatched during these time periods, the market price of electricity during these periods is determined by the price at which the last-dispatched coal-fired power plant supplies electricity. Since periods of low electricity demand represent a substantial portion of the year and since fuel costs at Navajo and Mohave affect market price during these times, higher fuel prices at Navajo and Mohave can cause significant harm to consumers. Indeed, to give a rough sense of how this acquisition could increase concentration in markets for wholesale electricity during off-peak hours, a hypothetical merger of PacifiCorp's electric plants with Mohave and Navajo would make the market for coal-fired electricity in the WSCC highly concentrated and give PacifiCorp a 35% share, a level at which, under the *Merger Guidelines*, could lead to unilateral anticompetitive effect.

Cost manipulation at Navajo and Mohave could affect electricity prices in the WSCC not only during those off-peak hours when Navajo and Mohave are the marginal, price-setting plants, but also during a broader period of time. As noted above, power plants are dispatched in large part based on their variable cost, which in turn is largely determined by their fuel costs. This dispatch order can be thought of as a supply curve for electricity. Given this supply curve, if the fuel price at one power plant increases, then this power plant is removed from its current position in the supply curve and placed in a position further along the supply curve. This reorders the supply curve as higher priced plants are dispatched earlier along the affected section of the supply curve. This leads to higher prices every time electricity demand in a particular period intersects the affected section of the supply curve. Higher fuel prices at Navajo and Mohave could have a significant effect on price along a significant portion of the supply curve. If either plant were forced to close down, its removal would affect prices at all points above the plant on the supply curve.

B. Abuse of Proprietary Information

Power plant operators currently compete to supply electricity in informal wholesale markets characterized by bilateral contracts. In some states (e.g., California), power plant operators will soon compete in formal auctions to supply electricity. In all of these situations, power plant operators buy and sell both directly and through ''power marketing'' affiliates that have been expressly created to compete in the deregulating wholesale market for electric power.

Competition in the wholesale electricity market could be adversely affected by this acquisition throughout the United Stats because PacifiCorp may gain access, through Peabody's coal contracts and coal supply relationships, to highly sensitive data on competitors' costs and to real-time information relating to operating conditions of competing generators of electrical power.

A coal supplier is able to obtain competitively-sensitive information about the day-to-day operation of the power plant it supplies, including when the plant is experiencing downtime and when it is facing transmission bottlenecks. In addition, because coal costs comprise 90% of a coal-fired power plant's variable cost of generating electricity, a coal supplier will know cost information sufficient to predict the price the power plant will likely bid.

Peabody is a significant supplier of coal to coal-fired plants, supplying 27% of the coal that goes to such plants in the WSCC and 15% of the coal going to such plants in the United States. Many of Peabody's coal supply contracts have no protection against the transfer of such competitively-sensitive information, since they were executed prior to regulatory reform and before purchasers under these contracts had reason to be concerned about the competitive sensitivity of the information that could be revealed to competitors through such contracts or through the day-to-day relationship between the coal supplier and customer. Consequently, by acquiring Peabody, PacifiCorp will gain an invaluable window on real-time information relating to operating conditions and production plans at many of the approximately 150 power plants supplied by Peabody. By enabling PacifiCorp to predict supply shifts and consequent price movements in the market, this information gives PacifiCorp a significant competitive advantage in power marketing.

PacifiCorp will be able to trade on that information at the expense of other traders of wholesale electricity. Expected profits for both incumbents and prospective entrants will be lower if PacifiCorp possesses inside information regarding competitors' costs, supply conditions, and future operating plans. Consequently, as a result of PacifiCorp's perceived information advantage regarding electricity supply and costs, competitive entry in power marketing will be discouraged, and existing power marketing companies may defer greater investments in such enterprises and perhaps even exit, making the market for wholesale electricity operate less efficiently.

V. The Proposed Complaint and Consent Order

The Federal Trade Commission has accepted for public comment an Agreement Containing Consent Order with PacifiCorp and TEG in settlement of the charges in the proposed complaint. The proposed complaint alleges that PacifiCorp's acquisition of TEG violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The proposed complaint alleges that the Acquisition will lessen competition in the supply of electricity in the WSCC and in various geographic markets in the United States as a whole.

To remedy the alleged harm to competition from raising rivals costs, the proposed Consent Order would require PacifiCorp to divest Peabody Western Coal Company (PWCC), the Peabody subsidiary that owns the Black Mesa and Kayenta mines, to an acquirer approved by the Commission. The required divestiture solves the competitive concerns raised in this acquisition in the WSCC by assuring the PacifiCorp would not have an anticompetitive incentive to raise fuel prices at Navajo and Mohave in order to raise the price of electricity in the WSCC.[6] The divestiture remedy is

back to some minimal level (e.g., 40 percent of capacity) when they are uneconomic for short periods of time (e.g., nighttime).

[6] Disvestiture is unnecessary elsewhere because there is no evidence that other captive coal-fired power plants are marginal price-setters in their geographic market as Navajo and Mohave are.

consistent with longstanding Commission policy which favors the structural approach to remedies, rather than the behavioral approach which seeks to govern conduct through the use of rules.[7]

The fuel supply contracts between PWCC and Navajo and Mohave give the Navajo owners a right of first refusal to buy the Kayenta mine and Mohave owners a right of first refusal to buy the Black Mesa mine. Because these rights of first refusal could delay the divestiture process, the proposed Consent Order affords PacifiCorp a period of nine months following the Acquisition to complete the required divesture, and under certain circumstances, extends the time for divestiture to as late as March 1, 2000. Under the circumstances of this case, the Commission believes that the unusually long time afforded Respondents to complete the divestiture and possible extension of that time under the terms of the proposed Consent Order are likely to lead to substantial economic harm. PacifiCorp's incentive to increase the fuel price at Navajo and Mohave depends on PacifiCorp's sales of electricity at the market price. In the near-term, most of PacifiCorps electricity sales are at regulated rates or a prices specified by long-term contracts. Thus, in the near-term, PacifiCorp will not have a strong incentive the increase fuel prices at Navajo and Mohave because PacifiCorp has limited net sales of electricty at the market price. However, as PacifiCorp's wholesale contracts are renegotiated and as PacifiCorp's retail sales are deregulated, PacifiCorp gains an ever greater incentive to increase electricity prices by raising the fuel price at Navajo and Mohave.

To remedy the alleged threat to competition from abuse of confidential customer information, the proposed consent order forbids Peabody from transferring PacifiCorp non-public information regarding Peabody customers who object to such disclosure and who either purchase coal from Peabody under contracts with a term of one-year or longer or who purchased in excess of one million tons of coal from Peabody during the preceding year. By preventing the transfer of this information, the Proposed Consent Order prevents PacifiCorp from trading on proprietary information in a way that is likely to retard development of a fully competitive market in the wholesaling of electric power.

[7] *See* William J. Baer, *FTC Perspectives on Competition Policy and enforcement Initiatives in Electric Power,* before the Conference on the New Rules of the Game for Electric Power: Antitrust & Anticompetitive Behavior (Washington D.C., Dec. 4, 1997) at 12–13

VI. Opportunity for Public Comment

The proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested person. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the proposed Consent Order and the comments received and will decide whether it should withdraw from the Agreement Containing Consent Order, make final the Consent Order, or take such other action as the Commission may determine to be in the public interest.

The Commission anticipated that the proposed Consent Order will cure the anticompetitive effects of the Acquisition as alleged in the proposed complaint. The purpose of this analysis is to invite public comment on the proposed Consent Order, including the proposed divestitures, to aid the Commission in its determination of whether to make final the proposed Consent Order. This analysis is not intend to constitute an official interpretation of the proposed Consent Order, nor is it intended to modify the term of the proposed Consent Order in any way.

Donald S. Clark,

Secretary.

[FR Doc. 98–4755 Filed 2–24–98; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR); Revision of Medical Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The following Standard Form is revised to add standard information fields and change the stocking to local reproduction: SF 515, Medical Record—Tissue Examination.

You can obtain the updated camera copy in three ways: From the ''U.S. Government Management Policy CD-ROM; On the internet. Address: http://www.gsa.gov/forms, or ; From CARM, Attn.: Barbara Williams, (202) 501–0581.

DATES: Effective upon publication in the **Federal Register** (February 25, 1998).

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: February 18, 1998.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 98–4796 Filed 2–24–98; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration; Delegation of Authority

Notice is hereby given that I have delegated to the Commissioner of Food and Drugs the authorities vested in the Secretary of Health and Human Services under Title III, Section 354 of the Public Health Service Act (43 U.S.C. 262 *et seq*), as amended hereafter.

This delegation supersedes the delegation memorandum from the Acting Assistant Secretary for Health to the Commissioner of Food and Drugs dated, June 1, 1993, titled ''Delegation of Authority for Section 354 of the Public Health Service Act, as amended by Public Law 102–539, the Mammography Quality Standards Act of 1992.''

This delegation shall be exercised under the Department's existing delegation of authority and policy on regulations. In addition, I have affirmed and ratified any actions taken by you or your subordinates which involved the exercise of the authorities delegated herein prior to the effective date of the this delegation. This delegation is effective upon signature.

Dated: February 11, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–4723 Filed 2–24–98; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

HHS Management and Budget Office; Office of Facilities Services; Statement of Organization, Functions and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services is being amended at Chapter AM, HHS Management and Budget Office, Chapter AMR, Office of Facilities Services, as last amended at 61 FR 55988–90, October 30, 1996. The functional statement for the Office of Facilities Services is being amended to reflect its current responsibility for

Health and Wellness Centers. The change is as follows:

Under paragraph, ''C. AMR.20 Functions,'' subparagraph ''2'', Division of Policy Coordination (AMR1), delete item g and replace with the following:

g. Establishes, maintains, and promulgates HHS policy for the Health and Wellness and Day Care Centers. Provides technical assistance on a Department-wide basis as required.

Dated: February 12, 1998.

John J. Callahan,

Assistant Secretary for Management and Budget.

[FR Doc. 98–4724 Filed 2–24–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research; Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following subcommittees scheduled to meet during the month of March 1998:

Name: Health Care Policy and Research Special Emphasis Panel ''Effectiveness of Children's Mental Health and Substance Abuse Treatment in the General Sector''.

Date and Time: March 19–20, 1998, 8 a.m.

Place: Doubletree Hotel, 1750 Rockville Pike, Parklawn Room, Rockville, Maryland 20852.

Open March 19, 9:00 a.m. to 9: 15 a.m.

Closed for remainder of meeting.

Name: Health Care Policy and Research Special Emphasis Panel ''Quality of Care Under Varying Features of Managed Care Organizations''.

Date and Time: March 26–27, 1998, 8 a.m.

Place: Doubletree Hotel, 1750 Rockville Pike, Halpine Room, Rockville, Maryland 20852.

Open March 26, 8 a.m. to 8:30 a.m.

Closed for remainder of meeting.

Purpose: To review and evaluate grant applications.

Agenda: The open session of the meetings will be devoted to business covering administrative matters and reports. During the closed sessions, the Subcommittees will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c) (6), the Administrator, Agency for Health Care Policy and Research, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Mrs. Sheila Simmons, Committee Management Officer, Office of Scientific Affairs, Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1452 x 1627.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: February 17, 1998.

John M. Eisenberg,

Adminstrator.

[FR Doc. 98–4752 Filed 2–24–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Request for Applications Under the Office of Community Services' Fiscal Year 1998 Combined Program Announcement

AGENCY: Office of Community Services, ACF, DHHS

ACTION: Announcement of availability of funds and request for applications under the Office of Community Services' Combined Program Announcement for FY 1998.

SUMMARY: The Office of Community Services (OCS) invites eligible entities to submit applications for FY 1998 funding of competitive grants serving low income persons and families under the following OCS programs:

(1) Urban and Rural Community Economic Development
(2) Community Food and Nutrition
(3) Job Opportunities for Low-Income Individuals
(4) Residential Energy Assistance Challenge Option (REACH) Program
(5) CSBG/Training, Technical Assistance and Capacity Building
(6) Family Violence Prevention and Services

Applications will be screened and evaluated as indicated in this Combined Program Announcement. Awards will be contingent on the outcome of the competition and the availability of funds. There is no limit on the number of applications that can be submitted under a specific Program/Priority Area as long as each application contains a proposal for a different project. However, an applicant can receive only one grant in each Program/Priority Area. Also, applicants that receive more than one grant for a common budget/project period must be mindful that salaries and wages claimed for the same persons cannot collectively exceed 100% of total annual salary.

ADDRESSES: Prior to submitting an application, potential applicants must obtain a copy of the Application Kit, containing additional program information, forms, and instructions. Application Kits are available by writing or calling the Office of Community Services at 5th Floor West, Aerospace Building, 370 L'Enfant Promenade, S.W., Washington DC 20447.

To obtain a copy of the applicable Application Kit, call: (202) 401–9354 and 401–9345 for Community Economic Development, (202) 401–9354 and 401–9345 for Community Food and Nutrition Kit, (202) 401–1195 for REACH and/or JOLI Kit (202) 401–4787 for CSBG/T&TA and/or Family Violence Kit.

FOR FURTHER INFORMATION CONTACT: Requests for program-specific technical information should be directed to the Program Contact Person identified for each program covered by this Combined Program Announcement.

A copy of the **Federal Register** containing this Combined Program Announcement is available for reproduction at most local libraries and Congressional District Offices. It is also available on the Internet through GPO Access at the following web address: http://www.access.gpo/su__docs/aces/aces140.html

If this Combined Program Announcement is not available at these sources, it may be obtained by writing to the office listed under **ADDRESSES** above.

APPLICATION DEADLINES: The closing dates for submission of applications are provided in the Supplementary Information section of this Combined Program Announcement. Mailed applications postmarked after the closing date will be classified as late. Refer to application submission below for other details.

SUPPLEMENTARY INFORMATION:

A. Program Announcements

Individual Program Announcements for FY 1998 will not be published in the **Federal Register**. Rather, OCS is publishing this Combined Program Announcement in the **Federal Register**. Where applicable, this Combined Program Announcement contains the following information for each of the above-listed programs: Legislative Authority; Eligible Applicants and Availability of Funds; Eligible Activities; Review Criteria; Project Period and Budget Period; Type of Awards; Matching Requirement; Date of Application Kit; Application Due Date; and Program Contact Person. Detailed information on how to obtain Application Kits containing additional

program information, forms, and instructions for preparing and submitting applications can be found in the next paragraph.

B. General Instructions

In order to be considered for a grant under this Combined Program Announcement, an application must be submitted on the forms supplied and in the manner prescribed by OCS. Detailed descriptions of evaluation criteria which will be used to determine award selection is contained in the Application Kit. When requesting an Application Kit, the applicant must specify the particular Program for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any program-specific evaluation criteria. Applications Kits for each program include all necessary forms and instructions; they are available for reading and downloading from the Internet at the OCS Website at: http://www.acf.dhhs.gov/programs/ocs

C. Application Submission

Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants and Audit Resolution, 370 L'Enfant Promenade, S.W., Mail Stop 6C–462, Washington, D.C. 20447; with the note ''Attention: [insert Name of Program or CFDA #]''. Mailed applications for the REACH program should be addressed to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services, Division of Community Demonstration Programs, 370 L'Enfant Promenade, S.W., 5th Floor West, Washington, D.C. 20447; Attention: Application for REACH Program.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications handcarried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants and Audit Resolution, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/ package containing the application with the note ''Attention: [insert Program Name or CFDA #]''. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.) ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late Applications

Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines

ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of the mail service. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

D. Programs Included in This Combined Program Announcement

Pertinent information of concern for potential applicants for each of the above-listed programs is set forth below:

1. Urban and Rural Community Economic Development (CFDA # 93.570)

Deadline Date: May 15, 1998.

(A) *Legislative Authority:* Section 681(a) and 681(b)

(2) of the Community Services Block Grant Act, as amended.

(B) *Eligible Applicants and Availability of Funds:* The OCS is authorized to make funds available to support program activities of national or regional significance to alleviate the causes of poverty in distressed communities with special emphasis on community and economic development activities:

(1) Operational Grants (Sub-Priority Area 1.1)

Funds are awarded for the purpose of providing employment and ownership opportunities for low-income people through business, physical or commercial development. Eligible applicants are private, locally initiated, non-profit community development corporations (CDCs), governed by a board consisting of low income residents of the community and business and civic leaders which has as a principal purpose planning, developing, or managing low income housing or community development projects.

Funds Available: $17,000,000. Approximately 25 grants will be awarded competitively.

(2) Historically Black Colleges and Universities (Sub-Priority Area 1.2)

Funds are awarded to CDCs in conjunction with HBCUs for the purposes stated above. The CDC must partner with an HBCU and the HBCU must play a significant role in the project. Maximum grant award will not exceed $350,000. Funds Available: $2,100,000. Approximately 6 grants will be awarded competitively.

(3) Pre-Development Grants (Sub-Priority Area 1.3)

Funds are provided to recently established CDCs which need funds for evaluating the feasibility of potential projects which address identified needs in low income communities, develop a business plan related to one of those projects, and mobilize resources to be contributed to one of those projects. Eligible applicants are private, locally initiated, non-profit community development corporations (CDCs), governed by a board consisting of low income residents of the community and business and civic leaders. In addition, the CDCs must not have received prior OCS funding; have been in existence for no more than 3 years or have been in existence longer than 3 years, but have no record of participating in economic development-type projects. Maximum grant award will not exceed $75,000. Funds Available: $750,000. Approximately 10 grants will be awarded competitively.

(4) Developmental Grants (Sub-Priority Area 1.4)

Funds are awarded in the form of discretionary grants through a competitive process to provide employment and community

development opportunities for low income individuals through business, physical or commercial development. Maximum grant award will not exceed $250,000. Eligible applicants are organizations which received pre-development grants from OCS in FY 1995 and FY 1996.

Funds Available: $2,500,000. Approximately 10 grants will be awarded competitively.

(5) Administration and Management Expertise (Sub-Priority Area 1.5)

Funds are awarded in the form of discretionary grants through a competitive process to provide administrative and management expertise to OCS funded grantees who have less experience in dealing with the day-to-day issues and challenges presented in promoting community economic development as well as to those grantees who have encountered difficulties in operationalizing their work program. Eligible applicants are OCS funded grantees that have completed several successful projects.

Funds Available: $500,000. Approximately 1 grant will be awarded competitively.

(6) Training and Technical Assistance (Sub-Priority Area 1.6)

Funds are awarded in the form of discretionary grants through a competitive process to develop instructional programs, national conferences, seminars, and other activities to assist community development corporations (CDCs). Eligible applicants are private non-profit organizations. Applicants must operate on a national basis and have significant and relevant experience in working with CDCs. Funds Available: $210,000. Approximately 1 grant will be awarded competitively.

Review Criteria for Applications Submitted Under Sub-Priority Areas 1.1, 1.2, and 1.4

(a) Criterion I: Analysis of Need (Maximum: 5 points).

(b) Criterion II: Organizational Experience in Program Area and Staff Responsibilities.

(i) Organizational Experience in Program Area (0–15 points).

(ii) Staff Skills, Resources and Responsibilities (0–10 points).

(c) Criterion III: Project Implementation (Maximum: 25 points).

(d) Criterion IV: Significant and Beneficial Impact.

(i) Significant and Beneficial Impact (0–5 points).

(ii) Community Empowerment Consideration and Partnership with Child Support Enforcement Agency (0–5 points).

(iii) Cost-per-Job (0–5 points).

(iv) Career Development Opportunities (0–5 points).

(e) Criterion V: Public-Private Partnerships.

(i) Mobilization of resources: (15 points).

(ii) Integration/coordination of services: (5 points).

(f) Criterion VI: Budget Appropriateness and Reasonableness (Maximum: 5 points).

Review Criteria for Applications Submitted Under Sub-Priority Areas 1.3

(a) Criterion I: Analysis of Need (Maximum: 15 points).

(b) Criterion II: Organizational Capability and Capacity.

(i) Organizational experience in program area (5 points).

(ii) Management capacity (5 points).

(iii) Staffing (5 points).

(iv) Staffing responsibilities (5 points).

(c) Criterion III: Project Design, Implementation and Evaluation.

(i) Project implementation component (25 points).

(ii) Evaluation component (5 points).

(d) Criterion IV: Significant and Beneficial Impact (Maximum: 25 Points).

(e) Criterion V: Budget Appropriateness and Reasonableness (Maximum: 10 points).

Review Criteria for Applications Submitted Under Sub-Priority Areas 1.5

(a) Criterion I: Organizational Experience in Program Area and Staff Responsibilities.

(i) Organizational Experience in Program Area (0–10 points).

(ii) Staff Skills, Resources and Responsibilities (0–10 points).

(b) Criterion II: Work Program (Maximum: 30 points).

(c) Criterion III: Significant and Beneficial Impact (Maximum: 30 points).

(d) Criterion IV: Public Private Partnerships (15 Points).

(e) Criterion V: Budget Appropriateness and Reasonableness (Maximum: 5 points).

Review Criteria for Applications Submitted Under Sub-Priority Area 1.6

(a) Criterion I: Need for Assistance (Maximum: 10 points).

(b) Criterion II: Organizational Experience in Program Area and Staff Responsibilities (Maximum: 20 points).

(i) Organizational Experience.

(ii) Staff Skills.

(c) Criterion III: Work Plan (Maximum 35 points).

(d) Criterion IV: Significant and Beneficial Impact (Maximum: 25 points).

(e) Criterion V: Budget Reasonableness (Maximum: 10 points).

(7) Rural Community Development Activities (Sub-Priority 2.0)

Funds are provided to help low income rural communities develop the capability and expertise to establish and/or maintain affordable, adequate and safe water and waste water treatment facilities. Eligible applicants are multi-state, regional private non-profit organizations that can provide training and technical assistance to small, rural communities in meeting their community facility needs. Funds Available: $3,500,000. Approximately 8 grants will be awarded competitively.

Review Criteria for Applications Submitted Under Sub-Priority Area 2.0

(a) Criterion I: Analysis of Need (Maximum: 5 points).

(b) Criterion II: Organizational Experience in Program Area and Staff Responsibilities.

(i) Organizational Experience in Program Area (0–5 points).

(ii) Staff Skills, Resources and Responsibilities (0–10 points).

(c) Criterion III: Project Implementation (Maximum: 25 points).

(d) Criterion IV: Significant and Beneficial Impact (Maximum: 30 points).

(e) Criterion V: Public-Private Partnerships (Maximum: 20 points).

(f) Criterion VI: Budget Appropriateness and Reasonableness (Maximum: 5 points).

(C) *Project Periods and Budget Periods:* Refer to Application Kit for details.

(D) *Type of Awards:* Grants.

(E) *Date of Application Kit:* March 16, 1998.

(F) *Application Deadline:* Applications must be *Postmarked* by May 15, 1998. Detailed application submission instructions are included in the Application Kit.

(G) *Program Contact Person:* Thornell Page (202) 401–5333.

2. Community Food and Nutrition (CFN) (CFDA # 93.571)

Deadline Date: May 1, 1998.

(A) *Legislative Authority:* Section 681A of the CSBG Act; Section 681A is also known as Community Food and Nutrition, the Community Services Block Grant Act, as amended.

(B) *Eligible Applicants and Availability of Funds:* Eligible applicants are States and public and private non-profit agencies/

organizations with a demonstrated ability to successfully develop and implement such programs and activities. Funds Available: $1,600,000. Approximately 33 grants will be awarded competitively.

(C) *Eligible Activities:* The OCS is authorized to make funds available for the purpose of coordinating existing private and public food assistance resources, whenever such coordination is determined to be inadequate, to better serve low income populations; assisting low income communities to identify potential sponsors of child nutrition programs and to initiate new programs in underserved or unserved areas; and developing innovative approaches to meet the nutrition needs of low income people. Funds are provided to improve the health and nutrition status of low income persons through improved access to healthy nutritious foods or by other means.

(D) *Review Criteria for CFN Applications* CRITERION I—Analysis of Needs/Priorities.

(1) Target area and population to be served (0–4 points).

(2) Nature and extent of problem(s) and/or need(s) to be addressed (0–6 points).

Criterion II—Adequacy of Work Program.

(1) Realistic quarterly time targets (0–10 points).

(2) Activities are adequately described and appear reasonably (0–15 points).

Criterion III—Significant and Beneficial Impact.

(a) Applicant proposes to significantly improve or increase nutrition services to low-income people and such improvements or increases are quantified (0–15 points).

(b) Project incorporates promotional health and social services activities for low-income people, along with nutritional services (0–5 points).

(c) Project will significantly leverage or mobilize other community resources and such resources are detailed and quantified (0–5 points).

(d) Project addresses problem(s) which can be resolved by one-time OCS funding or demonstrates that non-Federal funding is available to continue the project without federal support (0–5 points).

Criterion IV—Coordination/Services Integration.

(a) Project shows evidence of coordinated community-based planning in its development. (0–10 points).

(b) Community Empowerment Consideration (0–5 points).

Criterion V—Organization Experience in Program.

Area and Staff Responsibilities (Maximum 15 points).

(a) Organizational experiences in program area. (0–5 points).

(b) Management History (0–5 points).

(c) Staffing Skills, Resources and Responsibilities (0–5 points).

Criterion VI—Adequacy of Budget (Maximum: 5 points).

(E) *Project Period and Budget Period:* For most projects, OCS will grant funds for 1 year. However, in rare instances, depending on the characteristics of any individual project and on the justification presented by the applicant in its application, a grant may be made for up to 17 months..

(F) *Type of Awards:* Grants.

(G) *Date of Application Kit:* March 2, 1998.

(H) *Application Deadline:* Applications must be *Postmarked* by May 1, 1998. Detailed application submission instructions are included in the Application Kit.

(I) *Program Contact Person:* Thornell Page (202) 401–5333.

3. Job Opportunities for Low Income Individuals (JOLI) (CFDA # 93–593)

Deadline Date: May 18, 1998.

(A) *Legislative Authority:* Section 505 of the Family Support Act of 1988, Public Law 100–485, as amended, authorizes the Secretary of DHHS to enter into agreements with non-profit organizations (including community development corporations) for the purpose of conducting projects designed to create employment and business opportunities for certain low income individuals. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, reauthorized Section 505 of the Family Support Act of 1988 with certain amendments effective July 1, l997.

(B) *Eligible Applicants and Availability of Funds:* Applicants eligible to apply for grants under the JOLI program must be not-for-profit organizations exempt from taxation under Section 501(c)(3) or (4) of the Internal Revenue Code. Applicants are encouraged to mobilize resources. Funds Available: $5,500,000. Approximately 5 to 10 grants will be awarded. JOLI grant awards are approved for up to 5 year project periods and are funded for up to a maximum of $500,000 for the full project period.

(C) *Eligible Activities:* Projects funded under the JOLI Program are for the creation of new jobs and employment opportunities, through micro-business/self-employment, the start-up of a new business, or the expansion of an existing business. Project activities may include training, technical assistance, and support of participants to enable them successfully to fill such jobs; but proposed projects for the training and placement of low income individuals in already existing jobs or jobs expected to be available independent of any job creation activity of the proposed project, will not be considered for funding.

(D) *Review Criteria for JOLI Applications.*

(1) Criterion I: Organizational Experience in Program Area and Staff Skills, Resources and Responsibilities (Maximum: 20 points).

(2) Criterion II: Project Theory, Design and Plan (Maximum: 30 points).

(3) Criterion III: Significant and Beneficial Impact (Maximum: 20 points).

(4) Criterion IV: Project Evaluation (Maximum: 15 points).

(5) Criterion V: Public-Private Partnerships (Maximum: 10 points).

(6) Criterion VI: Budget Appropriateness and Reasonableness (Maximum: 5 points).

(E) *Project Periods and Budget Periods:* Refer to Application Kit for details.

(F) *Type of Awards:* Grants.

(G) *Date of Application Kit:* March 2, 1998.

(H) *Application Deadline:* Applications must be *POSTMARKED* by May 18, 1998. Detailed application submission instructions are included in the Application Kit.

(I) *Program Contact Person:* Nolan Lewis (202) 401–5282 or Richard Saul (202) 401–9341.

4. Residential Energy Assistance Challenge (REACH) Option Program (CFDA # 93.568) Deadline Date: May 25, 1998.

(A) *Legislative Authority:* Section 2607B of the Low Income Home Energy Assistance Act, Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97–35, as amended [42 U.S.C. 8626b].

(B) *Eligible Applicants and Availability of Funds:* Eligible applicants are States, Indian Tribes and Tribal Organizations (including Alaskan Native Villages), and Insular Areas that receive direct grants from the Department of HHS under LIHEAP which are expended for implementing a LIHEAP program. Funds are awarded to LIHEAP grantees on the basis of a competitive application process. Funds available: $6,250,000. Up to 10 grants will be awarded competitively to States under Priority Area 1.0. Approximately 4 to 12 grants will be awarded competitively to Indian Tribes and Tribal Organizations under Priority Area 2.0.

(C) *Eligible Activities:* The OCS is authorized to provide competitive grants to LIHEAP grantees that develop innovative programs, administered by community-based organizations, to reduce the energy vulnerability of LIHEAP-eligible households.

(D) *Program Priority Areas:* Under Priority Area 1.0, funds will be awarded to States, District of Columbia, and Puerto Rico for REACH projects administered by non-profit Community Based Organizations, with a priority given to Community Action Agencies and other eligible entities under Section 673 of the Community Services Block Grant Act [42 U.S.C. 9902(1)]. Under Priority Area 2.0, funds will be awarded to Indian Tribes and Tribal Organizations and other Insular Areas.

(E) *Review Criteria for REACH Plans.*

Program Elements, Review and Assessment Criteria for REACH Plans under Priority Area 1.0 (States, District of Columbia, and Puerto Rico).

(a) Criterion I: Organizational Experience and Capability (Maximum: 20 points).

(b) Criterion II: Project Theory, Design and Plan (Maximum: 30 points).

(c) Criterion III: Holistic Program Strategies, Mobilization of Resources, and Project Innovations (Maximum: 10 points).

(d) Criterion IV: Budget Appropriateness (Maximum: 10 points).

(e) Criterion V: Significant and Beneficial Impact (Maximum: 10 points).

(f) Criterion VI: Community Empowerment Consideration (Maximum: 5 points).

(g) Criterion VII: Management and Organization of Project (Maximum: 5 points).

(h) Criterion VIII: Project Evaluation (Maximum: 10 points).

Program Elements, Review and Assessment Criteria for REACH Plans under Priority Area 2.0 (Tribes and Insular Areas other than Puerto Rico).

(a) Criterion I: Organizational Experience and Capability (Maximum: 10 points).

(b) Criterion II: Project Theory, Design and Plan (Maximum: 50 points).

(c) Criterion III: Management and Organization of Project (Maximum: 10 points).

(d) Criterion IV: Budget Appropriateness (Maximum: 10 points).

(e) Criterion V: Significant and Beneficial Impact (Maximum: 10 points).

(f) Criterion VI: Project Evaluation (Maximum: 10 points).

(F) *Type of Awards:* Grants.

(G) *Date of Application Kit:* February 23, 1998.

(H) *Application Deadline:* Applications must be *POSTMARKED* by May 25, 1998. Detailed application submission instructions are included in the Application Kit.

(I) *Program Contact Person:* Anna Guidery (202) 401–5318 or Richard Saul (202) 401–9341.

5. CSBG Training, Technical Assistance and Capacity Building (CSBG/T&TA) (CFDA # 93.570) Deadline Date: May 22, 1998.

(A) *Legislative Authority:* Section 674(a)(1) of the CSBG Act.

(B) *Eligible Applicants and Availability of Funds:* The OCS is authorized to make grants and award contracts to eligible entities, organizations whose membership is composed of CSBG-eligible entities or agencies that administer programs for CSBG-eligible entities.

Funds available: Approximately $3.6 million. Approximately 35 grants will be awarded competitively.

(C) *Program Priority Areas:* Refer to Application Kit for details.

(D) *Review Criteria for CSBG/T&TA Applications* Criterion I: Need for Assistance (Maximum: 20 points).

Criterion II: Work Program (Maximum: 30 points).

Criterion III: Significant and Beneficial Impact (Maximum: 15 points).

Criterion IV: Evidence of Significant.

Collaborations (Maximum: 10 points).

Criterion V: Ability of Applicant to Perform (Maximum: 20 points).

Criterion VI: Adequacy of Budget (Maximum: 5 points).

(E) *Project Periods and Budget Periods:* This announcement is inviting applications for project periods up to 1 year. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for up to 17 months.

Refer to Application Kit for further details.

(F) *Type of Awards:* Grants.

(G) *Date of Application Kit:* March 23, 1998.

(H) *Application Deadline:* Applications must be *POSTMARKED* by May 22, 1998. Detailed application submission instructions are included in the Application Kit.

(I) *Program Contact Person:* Margaret Washnitzer (202–401–2333)

6. Family Violence Prevention Program (CFDA # 93.592)

Deadline Date: May 2, 1998.

(A) *Legislative Authority:* The Family Violence Prevention and Services Act (FVPSA) was enacted as Title III of the Child Abuse Amendments of 1984, P.L. 98–457. It was reauthorized and amended for FY 1995 through FY 2000 by Public Law 103–322, the Violent Crime Control and Law Empowerment Act of 1994 (The Crime Bill). The reauthorization of the Child Abuse Prevention and Treatment Act on October 3, 1996 contained a technical amendment affecting funding levels under the FVPSA.

(B) *Eligible Applicants and Availability of Funds:* Grants are awarded to assist States in supporting the establishment, maintenance, and expansion of programs and projects to prevent incidents of family violence and provide immediate shelter and related assistance for victims of family violence and their dependents. There are no income eligibility requirements.

Funds Available: $1.5 million. Approximately 16 grants will be awarded competitively.

(C) *Priority Areas for FY 1998*

#1—Developing and Enhancing Services for Immigrant, *Migrant and Refugee Battered Women.*

#2—Training Grant Stipends in Domestic Violence for Historically Black, Hispanic-Serving and Tribal Colleges and Universities.

#3—Public Information Community Awareness Campaign Projects for the Prevention of Family Violence.

(D) *Review Criteria for Family Violence Prevention Program Competitive Discretionary Grants*

Criterion I: Need for the Project (Maximum: 10 points).

Criterion II: Goals and Objectives (Maximum: 10 points).

Criterion III: Approach (Maximum: 30 points).

Criterion IV: Results and Benefits (Maximum: 20 points).

Criterion V: Level of Effort (Maximum: 30 points).

(E) Project Periods and Budget Period.

Priority Area #1—Project period not to exceed 17 months.

Priority Area #2—Project period is 36 months (12 month budget periods).

Priority Area #3—Project period not to exceed 12 months.

(F) *Type of Awards:* Grants.

(G) *Matching Requirement:* Successful grantees must provide at least 25 percent of the total cost of the project. The total cost of the project is the sum of the ACF share and the non-Federal share. The non-federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirement through cash contributions. Therefore, a project requesting $75,000 in Federal funds (based on an award of $75,000 per budget period) must include a match of at least $25,000 (25% of total project

cost). Therefore, a total project cost of $100,000 would be comprised of $75,000 Federal funds and $25,000 non-Federal funds. If approved for funding, grantees will be held accountable for commitments of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds. This Matching Requirement applies to all 3 Priority Areas.

(H) *Date of Application Kit:* March 2, 1998.

(I) *Application Deadline:* Applications must be POSTMARKED by May 4, 1998. Detailed application submission instructions are included in the Application Kit.

(J) *Program Contact Persons:* William Riley (202) 401–5529; James Gray (202) 401–5705; Gertrude Knight (202) 401–4787.

Additional Requirement

Applicants for grants must also meet the following requirement:

A. Paperwork Reduction Act of 1995 #0970–0062

Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to OMB for review and approval any reporting and recordkeeping requirements in regulations, including Program Announcements. 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. This Combined Program Announcement does not contain information collection requirements beyond those approved for ACF grant announcements/applications under OMB Control Number 0970–0062.

B. Intergovernmental Review

The programs discussed in this Combined Program Announcement are covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. NOTE: State/Territory participation in the Intergovernmental Review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its SPOC, if applicable, or to ACF.

As of September 1997, a number of jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally recognized Indian Tribes need take no action in regard to E.O. 12372.

A list of these non-participating jurisdictions can be found in the Application Kit.

Although the non-participating jurisdictions no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions.

Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule. When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants and Audit Resolution, 370 L'Enfant Promenade, S.W., Mail Stop 6C–462, Washington, D.C. 20447.

Dated: February 19, 1998.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 98–4828 Filed 2–24–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0085]

FDA Modernization Act of 1997: Guidance for the Recognition and Use of Consensus Standards; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is: (1) Announcing the availability of a guidance entitled ''Guidance on the Recognition and Use of Consensus Standards,'' the purpose of which is to provide guidance to industry and reviewers within the Center for Devices and Radiological Health (CDRH) on the use of recognized consensus standards, including declarations of conformity to the standards, during the evaluation of premarket submissions for medical devices; (2) publishing the initial list of standards that will be recognized for use in the premarket review process; and (3) announcing the agency's policy on updating the list of recognized standards. This guidance will assist manufacturers who elect to declare conformity with consensus standards to meet all or part of medical device review requirements.

DATES: This guidance is effective on February 19, 1998; however, written comments concerning this guidance may be submitted at any time.

ADDRESSES: Written comments concerning this guidance must be submitted to the first contact person listed below. Comments should be identified with the docket number found in brackets in the heading of this document. Submit written requests for single copies of ''Recognition and Use of Consensus Standards'' to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance. This guidance document may also be accessed via the Internet at FDA's web site ''http://www.fda.gov/cdrh''.

FOR FURTHER INFORMATION CONTACT:

To comment on this guidance: Melvyn R. Altman, Associate Director for Standards Policy, enter for Devices and Radiological Health (HFZ–101),

Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–4766, ext. 103.

To recommend additional standards for recognition:

James J. McCue, Director, Standards Program Coordination Staff, enter for Devices and Radiological Health (HFZ–101), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–4766, ext. 137.

SUPPLEMENTARY INFORMATION:

I. Background

Many domestic and international consensus standards address relevant aspects of safety and/or effectiveness of medical devices. Many of these consensus standards have been developed with the participation of FDA staff. Section 204 of the Food and Drug Administration Modernization Act of 1997, Pub. L. 105–115, 111 Stat. 2296 (1997) (FDAMA) amends section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d), allowing the agency to recognize consensus standards established by international and national standards development organizations that may be used to satisfy identified portions of device review requirements. This notice announces the availability of a guidance document entitled ''Guidance on the Recognition and Use of Consensus Standards,'' which describes how FDA will implement that part of the FDAMA.

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). Although ''Guidance on the Recognition and Use of Consensus Standards'' is Level 1 guidance under the GGP's, this guidance will become effective upon issuance. Under the GGP's the agency may elect not to solicit public comment prior to implementation when there is a new statutory requirement * * * that requires immediate implementation and guidance is needed to help effect such implementation'' (62 FR 8961 at 8968). However, comments may be submitted at any time by interested parties, and these comments will be considered in any future revisions to the guidance.

This guidance document may contain collections of information that require OMB clearance under the Paperwork Reduction Act of 1995. FDA will seek such approval and provide an opportunity for comment, as appropriate.

II. Use of Recognized Standards

A person required to submit a premarket application (i.e., Premarket Notification (510(k)), Investigational Device Exemptions application (IDE), Premarket Approval application (PMA), Humanitarian Device Exemption application (HDE), or Product Development Protocol (PDP)) must provide information as required by the statute and regulations to allow FDA to make an appropriate decision regarding the clearance or approval of the submission. This guidance document describes how FDA will recognize consensus standards and use conformance with recognized standards to satisfy review requirements. It does not affect FDA's ability to obtain any information authorized by the statute or regulations. Use of consensus standards in this manner is authorized by section 514 of the act, as amended by FDAMA.

FDA believes that conformance with applicable recognized consensus standards can provide a reasonable assurance of safety and/or effectiveness for many devices. Therefore, information submitted on conformance with such standards will have a direct bearing on determinations of safety and effectiveness made during the review of IDE's, HDE's, PMA's, and PDP's. In case of 510(k)s, information on conformance with recognized consensus standards may help establish the substantial equivalence of a new device to a legally marketed predicate device. This information can serve as a surrogate for comparative information to show that the new device is as safe and effective as the predicate in the areas covered by the standards. Moreover, if a premarket submission contains a declaration of conformity to recognized consensus standards, this will, in most cases, eliminate the need to review actual test data for those aspects of the device addressed by the standards. The content of a declaration of conformity is described in the guidance document and is consistent with the ISO/IEC Guide 22.

Conformance with recognized consensus standards in and of itself, however, may not always be a sufficient basis for regulatory decisions. For example, a specific device may raise a safety or effectiveness issue not addressed by any standard, or a specific FDA regulation may require additional information beyond that which conformity to the recognized consensus standards provides. Under such circumstances, conformity with recognized standards will not satisfy all requirements for marketing, or investigating, the product in the United States.

The guidance document, ''Guidance on the Recognition and Use of Consensus Standards'', represents the agency's current thinking on the use of recognized consensus standards for medical devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

III. List of Recognized Standards

The initial list of consensus standards to be recognized for use in premarket review is presented at the end of this document. This list is also maintained on the FDA web site ''http://www.fda.gov/cdrh''. Also posted on the web site are supplemental data sheets for each recognized standard. These data sheets list the address(es) where the standard can be obtained, information on any limitations to the application of the standard in medical device review, and a list of devices for which declarations of conformity with the recognized standard will be routinely accepted by agency reviewers. In addition to these documents, the web site contains answers to frequently asked questions regarding the use of recognized standards.

IV. Recommendation of Standards for Recognition by FDA

Modifications to the list of recognized consensus standards related to medical devices will be announced in the **Federal Register** at least once a year, or more often if necessary. FDA intends that the next revision to the list of recognized standards will include standards to be recognized by the Center for Biologics Evaluation and Research as well as by CDRH.

Any person may recommend consensus standards as candidates for recognition under new paragraph © of section 514 of the act, by submitting such recommendations, with justification, to the address identified at the beginning of this document. To be properly considered, such recommendations should contain at a minimum the following information: (1) Title of the standard, (2) any reference number and date, (3) name and address of the nationally or internationally recognized standards development organization, (4) a proposed list of devices for which a declaration of conformity should routinely apply, and (5) a brief identification of the testing or performance or other characteristics of

the device(s) that would be addressed by a declaration of conformity.

V. Electronic Access

In order to receive the guidance document ''Recognition and Use of Consensus Standards,'' via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at the second voice prompt press 2, and then enter the document number 321, followed by the pound sign (#). Then follow the remaining voice prompts to complete your request. Persons interested in obtaining a copy of the guidance may also do so by using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH Home Page includes the guidance Document ''Guidance on the Recognition and Use of Consensus Standards'', as well as the list of recognized standards and details on their application and information on obtaining copies. The CDRH home page may be accessed at ''http://www.fda.gov/cdrh''.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA Bulletin Board Service. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select Center for Devices and Radiological Health for general information, or arrow down for specific topics.

VI. Comments

Interested persons may, at any time, submit to the contact person listed above written comments regarding the guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments will be considered in determining whether to amend the current guidance.

	Title of standard	Reference number and date	Name of standards development organization
	Generally Applicable Standards		
1	Biological Evaluation of Medical Devices—Part 1: Guidance on Selection of Tests—First Edition.	ANSI/AAMI/ISO 10993–1	Association for the Advancement of Medical Instrumentation.
2	Medical Electrical Equipment—Part 1: General Requirements for Safety.[1].	IEC 60601–1	International Electrotechnical Commission (IEC).
3	Biological Evaluation of Medical Devices—Part 1: Guidance on Selection of Tests—First Edition (Corrigendum 1–1992)(CEN EN 30993–1:1994).	ISO 10993–1	International Organization for Standardization (ISO).
	In Vitro Devices		
1	How to Define, Determine and Utilize Reference Intervals in the Clinical Laboratory; Approved Guideline.	C28–A (1995)	National Committee for Clinical Laboratory Standards (NCCLS).
2	Method Comparison and Bias Estimation Using Patient Samples; Approved Guideline.	EP9–A (1995)	NCCLS.
3	Assessment of the Clinical Accuracy of Laboratory Tests Using Receiver Operating Characteristic (ROC) Plots; Approved Guideline.	GP–10–A (1995)	NCCLS.
4	Labeling of Home-Use In Vitro Testing Products; Approved Guideline.	GP14–A (1996)	NCCLS.
5	Procedures for the Handling and Processing of Blood Specimens; Approved Guidelines.	H18–A (1990)	NCCLS.
6	Specifications for Immunological Testing for Infectious Diseases; Approved Guideline.	ILA18–A (1994)	NCCLS.
7	Assessing the Quality of Radioimmunassay Systems—Second Edition; Approved.	LAI–A2 (1994)	NCCLS.
8	Performance Standards for Antimicrobial Disk Susceptibility Tests—Sixth Edition; Approved Standard.	M2–A6 (1997)	NCCLS.
9	Methods for Antimicrobial Susceptibility Testing of Anaerobic Bacteria—Third Edition; Approved Standard.	M11–A3 (1993)	NCCLS.
10	Development of In Vitro Susceptibility Testing Criteria and Quality Control Parameters.	M23A	NCCLS.
11	Molecular Diagnostic Methods for Infectious Diseases; Approved Guideline.	MM3–(1995)	NCCLS.
	OB–GYN/Gastroenterology		
1	Hemodialysis Systems	ANSI/AAMI RD5–1992	Association for the Advancement of Medical Instrumentation (AAMI).
2	Standard Performance Specifications for Rubber Contraceptives (Male Condom).	ASTM–D3492–96	American Society for Testing and Materials (ASTM).
3	Standard Performance Specifications for Foley Catheters.	ASTM F623–89	ASTM.

	Title of standard	Reference number and date	Name of standards development organization
	Ophthalmic		
1	Optics and Optical Instruments—Contact Lenses—Determination of the Diameters.	ISO 9338:1996	International Organization for Standardization (ISO).
2	Optics and Optical Intruments—Contact Lenses—Determination of the Thickness—Part 1: Rigid Contact Lenses.	ISO 9339–1:1996	ISO.
3	Optics and Optical Intruments—Contact Lenses—Determination of Strains for Rigid Contact Lenses.	ISO 9340:1996	ISO.
4	Optics and Optical Intruments—Contact Lenses—Determination of Inclusions and Surface Imperfections for Rigid Contact Lens.	ISO 9341:1996	ISO.
5	Optics and Optical Intruments—Contact Lenses—Determination of Cytotoxicity of Contact Lens Material—Part 1: Agar Overlay Test and Growth Inhibition Test.	ISO 9363–1:1994	ISO.
6	Optics and Optical Intruments—Contact Lenses—Determination of Biological Compatibility of Contact Lens Material—Testing of the Contact Lens System by Ocular Study with Rabbit Eyes.	ISO 9394:1994	ISO.
7	Optics and Optical Intruments—Contact Lenses—Determination of Oxygen Permeability and Transmissibility with the FATT Method.	ISO 9913–1:1996	ISO.
8	Optics and Optical Intruments—Contact Lenses—Determination of Curvature.	ISO 10338:1996	ISO.
9	Optics and Optical Intruments—Contact Lenses—Determination of Water Content of Hydrogel Lenses.	ISO 10339:1997	ISO.
10	Optics and Optical Intruments—Contact Lenses—Method for Determining the Extractable Substances.	ISO 10340:1995	ISO.
11	Optics and Optical Intruments—Contact Lenses—Saline Solution for Contact Lens Testing.	ISO 10344:1996	ISO.
12	Optics and Optical Intruments—Contact Lenses and Contact Lens Care Products— Guidance for Clinical Investigations.	ISO 11980:1997	ISO.
	Orthopaedics		
1	Standard Specifications for Unalloyed Titanium for Surgical Implant Applications.	ASTM F67–95	American Society for Testing and Materials (ASTM)
2	Standard Specifications for Cast Cobalt-Chromium-Molybdenum Alloy for Surgical Implant Applications.	ASTM F75–92	ASTM.
3	Standard Practice for Surface Preparation and Marking of Metallic Surgical Implants.	ASTM F86–91	ASTM.
4	Standard Specification for Wrought Cobalt-20 Chromium-15 Tungsten-10 Nickel Alloy for Surgical Implant Aplications (UNS R30605).	ASTM F90–96	ASTM.
5	Standard Specification for Wrought Titanium-6 Aluminum-4 Vanadium ELI (Extra Low Interstitial) Alloy (R56401) for Surgical Implant Applications.	ASTM F136–96	ASTM.
6	Standard Specification for Stainless Steel Bar and Wire for Surgical Implants (Special Quality).	ASTM F138–92	ASTM.
7	Standard Specification for Wrought-18 Chromium-14 Nickel-2.5 Molybdenum Stainless Sheet and Strip for Surgical Implants (UNS S31673).	ASTM F–139–96	ASTM.
8	Standard Specification for Fixation Pins and Wires.	ASTM F366–82(r1993)	ASTM.
9	Standard Specification for Unalloyed Tantalum for Surgical Implant Applications.	ASTM F560–92	ASTM.
10	Standard Practice for Analysis of Retrieved Metallic Orthopaedic Implants.	ASTM F561–87	ASTM.
11	Wrought Cobalt-35 Nickel-20 Chromium-10 Molybdenum Alloy for Surgical Implant Applications.	ASTM F562–95	ASTM.
12	Standard Practice for Care and Handling of Orthopaedic Implants and Instruments.	ASTM F565	ASTM.
13	Standard Practice for Fluorescent Penetrant Inspection of Metallic Surgical Implants.	ASTM F601–86(1992)	ASTM.

	Title of standard	Reference number and date	Name of standards development organization
14	Standard Specification for High-Purity Dense Aluminum Oxide for Surgical Implants.	ASTM F603	ASTM.
15	Standard Specification Classifications for Silicone Elastomers Used in Medical Applications.	ASTM F604	ASTM.
16	Standard Specification for Titanium 6A1–4V E11 Alloy Forgings for Surgical.	ASTM F620	ASTM.
17	Standard Specification for Stainless Steel Forgings for Surgical Implants.	ASTM F621	ASTM.
18	Standard Practice for Radiography of Cast Metallic Surgical Implants.	ASTM F629–86	ASTM.
19	Standard Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants.	ASTM F648–84	ASTM.
20	Standard Specification for Wrought Cobalt-35 Nickel-20 Chromium-10 Molybdenum Alloy Plate, Sheet, and Foil for Surgical Implants.	ASTM F688–95	ASTM.
21	Standard Specification for 18 Chromium—12.5 Molybdenum Stainless Steel for Cast and Solution-Annealed Surgical Implant Applications.	ASTM F745–95	ASTM.
22	Standard Test Method for Pitting or Crevice Corrosion of Metallic Surgical Implant Materials.	ASTM F746–87	ASTM.
23	Standard Specification for Metallic Bone Plates	ASTM F786–82	ASTM.
24	Standard Specification for Metallic Nail-Plate Appliances.	ASTM F787–82	ASTM.
25	Standard Specification for Cobalt-28 Chromium-6 Molybdenum Alloy Forgings for Surgical Implants (UNS R31537).	ASTM F799–96	ASTM.
26	Standard Test Method for Measuring Fretting Corrosion of Osteosynthesis Plates and Screws.	ASTM F897–84 (r1993)	ASTM.
27	Standard Specification for Stainless Steel Billet, Bar, and Wire for Surgical Instruments.	ASTM F899–95	ASTM.
28	Standard Specification for Cobalt-Nickel-Chromium-Molybdenum Alloy Forgings for Surgical Implant Applications.	ASTM F961–96	ASTM.
29	Standard Practice for Permanent Marking of Orthopaedic Implant Components.	ASTM F983–86	ASTM.
30	Standard Test Method for Shear Testing of Porous Metal Coatings.	ASTM F1044–95	ASTM.
31	Standard Specification for Beta-Tricalcium Phosphate for Surgical Implantation.	ASTM F1088–87(R1992)	ASTM.
32	Standard Test Method for Corrosion of Surgical Instruments.	ASTM F1089–87	ASTM.
33	Standard Specification for Wrought Cobalt-20 Chromium-15 Tungsten-20 Nickel Alloy Surgical Fixation Wire UNS R30605.	ASTM F1091–91 (R1996)	ASTM.
34	Standard Specification for Titanium-6 Aluminum-4 Vanadium Alloy Castings for Surgical Implants (UNS R56406).	ASTM F1108–97	ASTM.
35	Standard Test Method for Tension Testing of Porous Metal Coatings.	ASTM F1147–95	ASTM.
36	Standard Test Method for Constant Stree Amplitude Fatigue Testing of Porous Metal-Coated Metallic Materials.	ASTM F1160–91	ASTM.
37	Standard Specification	ASTM F1185–88(1993)	ASTM.
38	Standard Guide for Mechanical Performance Considerations for Intrameduallary Fixation Devices.	ASTM F1264–96a	ASTM.
39	Standard Specification for Wrought Titanium-6 Aluminum-7 Niobium Alloy for Surgical Implant Applications.	ASTM F1295–97	ASTM.
40	Standard Specification for Wrought Nitrogen Strengthened-22 Chromium-12.5 Nickel-5 Manganese-2.5 Molybdemum Stainless Steel Bar and Wire for Surgical Implants.	ASTM F1314–95	ASTM.
41	Standard Specification for Unalloyed Titanium Wire for Surgical Implant Applications.	ASTM F1341–92	ASTM.
42	Standard Specification for Wrought 18 Chromium-14 Nickel-2.5 Molybdenum Stainless Steel Surgical Fixation Wire (UNS S31673).	ASTM F1350–96	ASTM.
43	Standard Specification for Cobalt-Chromium-Molybdenum Powder for Coating of Orthopaedic Implants.	ASTM F1377–92	ASTM.
44	Standard Specification for Wrought T1–6A1–4V Alloy for Surgical Implant Applications.	ASTM F1472–93	ASTM.

	Title of standard	Reference number and date	Name of standards development organization
45	Standard Test Methods for Tension Testing of Calcium Phosphate Coatings.	ASTM F1501–95	ASTM.
46	Standard Specification For Wrought Cobalt-28-Chromium-6-Molybdenum Alloy for Surgical Implants.	ASTM F1537–94	ASTM.
47	Standard Classification of External Skeletal Fixators.	ASTM F1541–94	ASTM.
48	Standard Specification for Titanium and Titanium-6% Aluminum-4% Vanadium Alloy Powders for Coatings of Surgical Implants.	ASTM F1580–95	ASTM.
49	Standard Terminology Relating to Spinal Implants	ASTM F1582–95	ASTM.
50	Standard Specification for Wrought Nitrogen Strengthened-21 Chromium-10 Nickel-3 Manganese-2.5 Molybdenum Stainless Steel Bar for Surgical Implants.	ASTM F1586–95	ASTM.
51	Standard Specification for Calcium Phosphate Coatings for Implantable Materials.	ASTM F1609–95	ASTM.
52	Standard Practice for Cydic Fatigue Testing of Metallic Stemmed Hip Arthroplasty Femoral Components With Torsion.	ASTM F1612–95	ASTM.
53	Standard Test Method for Shear Testing of Calcium Phosphate Coatings.	ASTM F1658–95	ASTM.
54	Standard Test Method for Bending and Shear Fatigue Testing of Calcium Phosphate Coatings on Solid Metallic Substrates.	ASTM F1659–95	ASTM.
55	Standard Specification for Resurfacing Patellar Prosthesis.	ASTM F1672–95	ASTM.
56	Standard Specification for Wrought Titanium-13 Niobium-13 Zirconium Alloy for Surgical Implant Applications.	ASTM F1713–96	ASTM.
57	Standard Test Methods for Static and Fatigue for Spinal Implant Constructs in a Corpectomy Model.	ASTM F1717–96	ASTM.
58	Standard Specification for Elastomeric Flexible Hinge Finger Total Joint Implants.	ASTM F1781–97	ASTM.
59	Standard Test Methods for Evaluating the Static and Fatigue Properties of Interconnection Mechanisms and Subassemblies Used in Spinal Arthrodesis.	ASTM F1798	ASTM.
60	Cyclic Fatigue Testing of Metal Tibial Tray Components of TKR.	ASTM F1800	ASTM.
61	Standard Recommended Practice for Corrosion Fatigue Testing of Metallic Implant Materials.	ASTM F1801	ASTM.
62	Implants for Surgery—Metallic Materials—Part 1: Wrought Stainless Steel.	ISO 5832–1 (1997)	ISO.
63	Implants for Surgery—Metallic Materials—Part 2: Unalloyed Titanium.	ISO5832–2–93	ISO.
64	Implants for Surgery—Metallic—Part 3: Wrought Titanium 6-Aluminum 4-Vanadium Alloy Third Edition (CAN/CSA-Z310.8–M91).	ISO 5832–3 (1996)	ISO.
65	Implants for Surgery—Metallic Materials—Part 4: Cobalt-Chromium-Molybdenum Casting Alloy.	ISO 5832–4–96	ISO.
66	Implants for Surgery—Metal Materials—Part 5: Wrought Cobalt-Chromium-Tungsten-Nickel Alloy.	ISO 5832–5–93	ISO.
67	Implants for Surgery—Metallic Materials—Part 6: Wrought Cobalt-Nickel-Chromium-Molybdenum Alloy.	ISO 5832–6	ISO.
68	Implants for Surgery—Metallic Materials—Part 9: Wrought High Nitrogen Stainless Steel First Edition.	ISO 5832–9 (1992)	ISO.
69	Implants for Surgery—Metallic Materials—Part 10: Wrought Titanium 5-Aluminum 2.5-Iron.	ISO 5832–10:1996	ISO.
70	Implants for Surgery—Metallic Materials—Part 11: Wrought Titanium 6-Aluminum 7-Niobium Alloy First Edition; CABN/CSA–Z310.7:M91.	ISO 5832–11 (1994)	ISO.
71	Implants for Surgery—Metalic Materials—Part 12: Wrought Cobalt-Chromium-Molybdenum Alloy.	ISO 5832–12–96	ISO.
72	Implants for Surgery—Ultra-High Molecular Weight Polyethylene—Part 2: Moulded Forms.	ISO 5834–2:1985	ISO.
73	Implants for Surgery—Skeletal Pins and Wires—Part 1: Material and Mechanical Requirements.	ISO 5838–1:1995	ISO.

	Title of standard	Reference number and date	Name of standards development organization
74	Implants for Surgery—Skeletal Pins and Wires—Part 2: Steinmann Skeletal Pins—Dimensions.	ISO 5838–2:1991	ISO.
75	Implants for Surgery—Skeletal Pins and Wires—Part 3: Kirschner Skeletal Wires.	ISO 5838–3:1993	ISO.
76	Implants for Surgery—Ceramic Materials Based on High Purity Alumina.	ISO 6474–94	ISO.
77	Surgical Instruments—Metallic Materials—Part 1: Stainless Steel.	ISO 7153–1:1991	ISO.
78	Implants for Surgery—Partial and Total Hip Joint Prosthesis—Part 4: Determination of Endurance Properties of Stemmed Femoral Components with Application of Torsion.	ISO 7206–4:1989	ISO.
79	Implants for Surgery—Partial and Total Hip Joint Prosthesis—Part 8: Endurance Performance of Stemmed Femoral Components with Application of Torsion.	ISO 7206–8:1995	ISO.
80	Implants for Surgery—Guidance on Care and Handling of Orthopaedic Implants.	ISO 8828	ISO.
81	Implants for Surgery—Non Destructive Testing—Liguid Penetrant Inspection of Metallic Surgical Implants.	ISO 9583:1993	ISO.
82	Implants for Surgery—Non Destructive Testing—Radiological Examination of Cast Metallic Surgical Implants.	ISO 9584:1993	ISO.
83	Surgical and Dental Hand Instruments—Determination of Resistance Against Autoclaving, Corrosion and Thermal Exposure.	ISO 13402	ISO.
84	Implants for Surgery—Metallic Materials—Unalloyed Tantalum for Surgical Implant Applications.	ISO 13782: 1996	ISO.
85	Non-Active Surgical Implants—General Requirements.	ISO 14630:1997	ISO
	Physical Medicine		
1	Determination of Static Stability	ANSI/RESNA WC/01–1990	Rehabilitation Engineering and Assistive Technology Society of North American (RESNA).
2	Determination of Dynamic Stability of Electric Wheelchairs.	ANSI/RESNA WC/02–1991	RESNA.
3	Determination of the Effectiveness of Brakes	ANSI/RESNA WC/03–1990	RESNA.
4	Determination of Energy Consumption of Electric Wheelchairs.	ANSI/RESNA WC/04–1990	RESNA.
5	Determination of Overall Dimensions, Mass and Turning Space—Wheelchair.	ANSI/RESNA WC/05–1990	RESNA.
6	Determination of Maximum Speed, Acceleration, and Retardation of Electric Wheelchairs.	ANSI/RESNA WC/06–1991	RESNA.
7	Wheelchairs—Determination of Seating and Wheel Dimensions.	ANSI/RESNA WC/07–1991	RESNA.
8	Wheelchairs—Static, Impact and Fatigue Strength Tests.	ANSI/RESNA WC/08–1991	RESNA.
9	Climatic Tests for Electric Wheelchairs	ANSI/RESNA WC/09–1991	RESNA.
10	Determination of the Obstacle-Climbing Ability of Electric Wheelchairs.	ANSI/RESNA WC/10–1990	RESNA.
11	Wheelchairs—Test Dummies	ANSI/RESNA WC/11–1991	RESNA.
12	Coefficient of Friction of Test Surfaces	ANSI/RESNA WC/13–1991	RESNA.
13	Wheelchairs—Testing of Power and Control Systems for Electric Wheelchairs.	ANSI/RESNA WC/14–1991	RESNA.
14	Wheelchairs—Requirements for Information Disclosure, Documentation and Labelling.	ANSI/RESNA WC/15–1991	RESNA.
15	Wheelchairs—Determination of Flammability	ANSI/RESNA WC/16–1991	RESNA.
16	Wheelchairs—Part 1: Determination of Static Stability.	ISO 7176–1:1986	ISO.
17	Wheelchairs—Part 2: Determination of Dynamic Stability of Electric Wheelchairs.	ISO 7176–2:1990	ISO.
18	Wheelchairs—Part 3: Determination of Efficiency of Brakes.	ISO 7176–3:1988	ISO.
19	Wheelchairs—Part 4: Energy Consumption of Electric Wheelchairs and Scooters for Determination of Theoretical Distance Range.	ISO 7176–4:1997	ISO.
20	Wheelchairs—Part 5: Determination of Overall Dimensions, Mass and Turning Space.	ISO 7176–5:1986	ISO.

	Title of standard	Reference number and date	Name of standards development organization
21	Wheelchairs—Part 6: Determination of Maximum Speed, Acceleration and Retardation of Electric Wheelchairs.	ISO 7176–6:1988	ISO.
22	Wheelchairs—Part 9: Climatic Tests for Electric Wheelchairs.	ISO 7176–9:1988	ISO.
23	Wheelchairs—Part 10: Determination of Obstacle-Climbing Ability of Electric Wheelchairs.	ISO 7176–10:1988	ISO.
24	Wheelchairs—Part 11: Test Dummies	ISO 7176–11:1992	ISO.
25	Wheelchairs—Part 13: Determination of Coefficient of Friction of Test Surfaces.	ISO 7176–13:1989	ISO.
26	Wheelchairs—Part 14: Power and Control Systems for Electric Wheelchairs—Requirements and Test Methods.	ISO 7176–14:1997	ISO.
27	Wheelchairs—Part 15: Requirements for Information Disclosure, Documentation and Labeling.	ISO 7176–15:1996	ISO.
28	Wheelchairs—Part 16: Resistance to Ignition of Upholstered Parts—Requirements and Test Methods.	ISO 7176–16:1997	ISO.
	Radiology		
1	Medical X-Ray Screen-Film-Processing Systems, Method for the Sensitometry.	ANSI PH2.43–1982	American National Standards Institute (ANSI).
2	Photography (films)—Medical Hard Copy Imaging Films—Dimensions and Specifications.	ANSI/NAPM IT1.49–1995	National Association of Photographic Manufacturers, (NAPM).
3	Photography (Films)—Medical Radiographic Cassettes/Screens/Films—Dimensions.	ANSI/NAPM IT1.49–1995	NAPM.
4	Medical Ultrasound Safety	AIUM–1994	American Institute of Ultrasound in Medicine (AIUM).
5	Photography-Direct—Exposing Medical and Dental Radiographic Film/Process Systems—Determination of ISO Speed and ISO Average Gradient.	ANSI/NAPM IT2.48–1993	NAPM.
6	Determination of the Maximum Symmetrical Radiation Field from a Rotating Anode X-Ray Tube for Medical Diagnosis.	IEC 806(R1984)	IEC.
7	Information Technology-Digital Compression and Coding of Continuous-Tone Still Images: Requirements and Guidelines.	ISO/IEC 10918–1:1994	ISO or IEC.
8	X-Ray Tube Assemblies for Medical Diagnosis Characteristics of Focal Spots.	IEC60336(R1993)	IEC.
9	Performance Measurements of Scintillation Cameras.	NEMA NU1–1994	NEMA.
10	Determination of Signal to Noise Ratio (SNR) in Magnetic Resonance Images.	NEMA MS1–1988(R1994)	NEMA.
11	Determination of Two-Dimensional Geometric Distortion in Diagnostic Magnetic Resonance Images.	NEMA MS2–1989	NEMA.
12	Determination of Image Uniformity in Diagnostic Magnetic Resonance Images.	NEMA MS3–1989	NEMA.
13	Acoustic Noise Measurement Procedure for Diagnostic Magnetic Resonance Imaging Devices.	NEMA MS4–1989	NEMA.
14	Determination of Slice Thickness in Diagnostic Magnetic Resonance Imaging.	NEMA MS5–1991	NEMA.
15	Characterization of Special Purpose Coils for Diagnostic Magnetic Resonance Images.	NEMA MS6–1991	NEMA.
16	Measurement Procedure for Time-Varying Gradiant Fields (dB/dt) for Magnetic Resonance Imaging Systems.	NEMA MS7–1993	NEMA.
17	Characterization of the Specific Absoption Rate for Magnetic Resonance Imaging Systems.	NEMA MS8–1993	NEMA.
18	Performance Measurements of Positron Emission Tomographs.	NEMA NU2–1994	NEMA.
19	DICOM set—Digital Imaging and Communications in Medicine—Set Includes PS3.1 through PS3.13.	NEMA PS3 (Set)	NEMA.
20	Acoustic Output Measurement Standard for Diagnostic Ultrasound Equipment.	NEMA UD2–1992	NEMA.
21	Standard for Real-Time Display of Thermal and Mechanical Acoustic Output.	NEMA UD3–1992	NEMA.
22	Measurement of Dimensions and Properties of Focal Spots of Diagnostic X-Ray Tubes.	NEMA XR5–1992	NEMA.

	Title of standard	Reference number and date	Name of standards development organization
23	Measurement of the Maximum Symmetrical Radiation Field from a Rotating Anode X-Ray Tube Used for Medical Diagnosis.	NEMA XR10–1986 (R1992)	NEMA.
24	Test Standard for Determination of the Limiting Spatial Resolution of X-Ray Image Intensifier Systems.	NEM XR11–1993	NEMA.
25	Test Standard for the Determination of the Visible Entrance Field Size of an X-Ray Image Intensifier System.	NEMA XR15–1991	NEMA.
26	Test Standard for the Determination of the System Contrast Ratio and the System Veiling Glare Index of an X-Ray Image Intensifier System.	NEMA XR16–1991	NEMA.
27	Test Standard for the Measurement for the Image Signal Uniformity of an X-Ray Image Intensifier System.	NEMA XR17–1993	NEMA.
28	Test Standard for the Determination of the Radial Image Distortion of an X-Ray Image Intensifier System.	NEMA XR18–1993	NEMA.
29	Electrical Thermal and Loading Characteristics of X-Ray Tubes Used for Medical Diagnosis.	NEMA XR19–1993	NEMA.
30	Standard for Safety: Photographic Equipment	UL–122	Underwriters Laboratory (UL).
31	Standard for Safety: X-Ray Equipment	UL–187	UL.
32	Standard for Safety: Medical and Dental Equipment—Third Edition.	UL–544	UL.

[1] The recognition of this standard for all devices was proposed for comment January 13, 1998 (63 FR 1974), and is not yet final. *This listing applies only to radiological imaging devices.*

Dated: February 13, 1998.

D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–4843 Filed 2–20–98; 3:59 pm]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Guidance for Industry on Medical Device Appeals and Complaints: A Guidance on Dispute Resolution; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled ''Medical Device Appeals and Complaints: A Guidance on Dispute Resolution.'' FDA currently has a myriad of dispute resolution and regulatory appeal processes that manufacturers of medical devices and radiological products can avail themselves of in situations where they disagree with a regulatory decision or action initiated by the agency. The agency's Center for Devices and Radiological Health (CDRH) is making this guidance document available in an effort to clarify these various processes and assist the industry in determining which process or processes are appropriate in a given circumstance.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written comments concerning this guidance document to the contact person listed below. Submit written requests for single copies of the guidance document entitled ''Medical Device Appeals and Complaints: A Guidance on Dispute Resolution'' to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: John F. Stigi, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–7491.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance document represents an effort by the agency to catalogue the various types of processes for seeking and achieving resolution of disputes that arise between manufacturers of medical devices and radiological products and components of FDA that are involved in clinical, scientific, and regulatory decisionmaking that affects these industries. Although this guidance document does not advocate one process over another, it intends to: (1) Explain the dispute resolution processes that exist by virtue of Federal law, agency regulations, and administrative practices; and (2) provide general guidance on which processes are most suited for particular situations. In addition, the guidance document offers practical, easy-to-use information on how and where to file requests for reconsideration of agency actions and decisions, as well as requests for dispute resolution, and gives useful information that sets forth the variety of FDA and Department of Health and Human Services components that are responsible for reviewing, investigating, and resolving disputes and external complaints. Because dispute resolution processes for medical devices and radiological products and the agency components charged to administer them will likely undergo change over time, this guidance document is subject to periodic revision. For example, the recently enacted Food and Drug Administration Modernization Act of 1997 mandates the agency to establish discrete processes for the resolution of disputes related to the regulation of medical devices. The guidance document lays the groundwork for new agency procedures which, in the coming months, will be articulated in more detail and incorporated into the document.

This is a level 2 guidance document under FDA's Good Guidance Practices policy. This guidance document does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

II. Electronic Access

In order to receive the ''Medical Device Appeals and Complaints: A Guidance On Dispute Resolution'' guidance document via your fax machine, call the CDRH Facts-on-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt, press 1 to access DSMA Facts, at the second voice prompt press 2, and then enter the document number (396) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance document may also do so by using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a PC with access to the Web. The CDRH home page is updated on a regular basis and includes the ''Medical Device Appeals and Complaints: A Guidance On Dispute Resolution'' guidance document, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. ''Medical Device Appeals and Complaints: A Guidance On Dispute Resolution'' is also available on the medical device reporting page at http://www.fda.gov/cdrh/modact/modern.html.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there, follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there, select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

III. Request for Comments

Interested persons, may at any time, submit to the contact person listed above written comments regarding this guidance document. Comments will be considered in determining whether to revise or revoke the guidance.

Dated: February 11, 1998.

D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–4842 Filed 2–20–98; 4:00 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 98D–0078, 98D–0079, 98D–0080, 98D–0081, 98D–0082, and 98D–0083]

FDA Modernization Act of 1997; Guidance Documents for the Medical Device Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of six guidance documents that represent the Center for Devices and Radiological Health's (CDRH) initial approach to implementation of revelant sections of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115). Many of the procedural changes for CDRH that are required by the FDAMA are being implemented initially through these six guidance documents. Due to the timing of the required implementation, the use of guidance documents is the most expeditious way to initially implement the FDAMA. The agency requests comments on these six guidance documents.

DATES: Submit written comments by May 26, 1998. After the close of the comment period, written comments may be submitted at any time to Ron Jans (address below)

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Comments should be identified with the docket number for the appropriate guidance document found in the SUPPLEMENTARY INFORMATION section. Submit written requests for an IBM PC compatible diskette containing the documents to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the SUPPLEMENTARY INFORMATION section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT:

For information on this document contact: Ronald P. Parr, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–7491, ext. 128.

To submit comments after the close of the comment period contact: Ron Jans, Center for Devices and Radiological Health (HFZ–205), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3744.

SUPPLEMENTARY INFORMATION:

I. Background

The FDAMA was signed by the President on November 21, 1997. Several of the provisions of FDAMA go into effect 90 days after enactment. CDRH has issued a guidance document outlining the general approaches FDA intends to take to implement the highest priority provisions of the new law. FDA published a notice of availability of this general guidance (referred to as the ''Day 1 guidance'') in the **Federal Register** of February 6, 1998 (63 FR 6193).

The agency is announcing the availability of the following six guidance documents (each with a separate docket number) that represent CDRH's initial approach to implementation of the various relevant sections of the FDAMA:

(1) ''Early Collaboration Meetings Under the FDA Modernization Act (FDAMA), Guidance for Industry and CDRH Staff, Final Document'' (Docket Number 98D–0078) (FOD # 310),

(2) ''Guidance on PMA Interactive Procedures for Day-100 Meetings and Subsequent Deficiencies—for Use by CDRH and Industry'' (Docket Number 98D–0079) (FOD # 322),

(3) ''30-Day Notices and 135-day PMA Supplements for Manufacturing Method or Process Changes, Guidance for Industry and CDRH'' (Docket Number 98D–0080) (FOD # 795),

(4) ''Determination of Intended Use for 510(k) Devices; Final Document'' (Docket Number 98D–0081) (FOD # 857),

(5) ''New section 513(f)(2)—Evaluation of Automatic Class III Designation; Guidance for Industry and

CDRH Staff'' (Docket Number 98D–0082) (FOD # 199), and

(6) ''Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff'' (Docket No. 98D–0083) (FOD # 159).

These guidance documents represent the agency's current thinking on CDRH's implementation of the FDAMA. These guidance documents do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both. Under FDA's ''Good Guidance Practices'' policy (62 FR 8961, February 27, 1997), each of these guidance documents is a Level 1 guidance document that may be implemented immediately because it is the subject of a new statute. FDA will review the comments received in order to determine whether to revise or revoke the guidance.

These guidance documents may contain collections of information that require OMB clearance under the Paperwork Reduction Act of 1995. FDA will seek such approval and provide an opportunity to comment, as appropriate.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the World Wide Web for easy access to information including text, graphics, and files that may be downloaded to a PC with access to the Web. Updated on a regular basis, the CDRH Home Page includes these guidance documents, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh/modact/modern.html.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

In order to receive these guidance documents via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number followed by the pound sign (#). The appropriate FOD number is listed next to the title of the document in the list above. Then follow the remaining voice prompts to complete your request.

III. Comments

Interested persons may, by or before May 26, 1998 submit to the Dockets Management Branch (address above) written comments regarding these guidance documents. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number for each guidance listed next to the title of the document in the list found previously. If you wish to comment on more than one guidance document, please submit a separate comment for each guidance document for which you wish to submit a comment. The guidance documents and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

After May 26, 1998, written comments may be submitted at any time to Ron Jans (address above).

Dated: February 12, 1998

D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–4841 Filed 2–20–98; 4:00 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 98D–0106, 98D–0107, 98D–0108]

Medical Devices; Postmarket Surveillance; Guidance Documents; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of three guidance documents on postmarket surveillance of medical devices. These guidance documents are being issued in order to facilitate the implementation of the postmarket surveillance provisions of the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Food and Drug Administration Modernization Act of 1997. FDA will issue further guidance in the near future.

DATES: Submit written comments concerning these guidance documents by May 26, 1998.

ADDRESSES: Submit written to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written requests for single copies of these guidance documents on a 3.5'' diskette to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to these guidance documents.

FOR FURTHER INFORMATION CONTACT: Anita Rayner, Center for Devices and Radiological Health (HFZ–543), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–0639.

SUPPLEMENTARY INFORMATION:

I. Background

The Safe Medical Devices Act of 1990 amended the act, among other things, to add section 522 (21 U.S.C. 360(l)) to require postmarket surveillance for certain medical devices. Section 522 was further amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105-115). As amended, section 522 of the act revises the criteria for determining which devices are subject to postmarket surveillance and revises the procedures for implementing postmarket surveillance. The revised provisions of section 522 become effective on February 19, 1998.

FDA is making the following guidance documents available at this time in order to facilitate the initial implementation of the revised postmarket surveillance provisions:

1. Guidance on Procedures to Determine Application of Postmarket Surveillance Strategies (Docket No. 98D–0106 (FOD # 316));

2. Guidance on Procedures for Review of Postmarket Surveillance Submissions (Docket No. 98D–0107 (FOD # 317)); and

3. SMDA to FDAMA: Guidance on FDAs Transition Plan for Existing Postmarket Surveillance Protocols (Docket No. 98D–0108 (FOD # 318)).

These guidance documents represent the agency's current thinking on postmarket surveillance. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

II. Electronic Access

In order to receive these guidance documents via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number found next to the title of the document listed above followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). The Center for Devices and Radiological Health (CDRH) maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a PC with access to the Web. Updated on a regular basis, the CDRH Home Page includes information on the FDA Modernization Act, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. Information on the FDA Modernization Act is available at http://www.fda.gov/cdrh/modern/modact.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

III. Comments

Interested persons may, by or before May 26, 1998, submit to the Dockets Management Branch written comments regarding these guidance documents. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments will be considered in determining whether to revise or revoke the guidance documents.

Dated: February 19, 1998.

D. B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–4844 Filed 2–20–98; 3:59 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–86]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

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 due: April 27, 1998.

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: Oliver Walker, Housing, Department of Housing and Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Marion Connell, telephone number (202) 708–6409 (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).

The notice is soliciting comments from members of the public and affecting 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: Technical Suitability of Products Program Section 521 of National Housing Act.

OMB Control Number: 2502–0313.

Description of the need for the information and proposed use: HUD will use this engineering data to make a determination of technical suitability. Organizational and production data are used to establish company authority and whether the facilities and capability to produce the material or product are adequate. This prevents design organizations from using the government as a review board.

Form numbers: None.

Members of affected public: Manufacturer seeking acceptance of their product by HUD.

An estimation of the total numbers of hours needed to prepare the information collection is less than 1 hour and a more complex application could take up to 80 hours. The number of respondents is 50, frequency of response is one-time a year.

Status of the proposed information collection: reinstatement.

Authority: Section 236 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 19, 1998.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 98–4719 Filed 2–24–98; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–87]

Notice of Proposed Information Collection; Comment Request

AGENCY: Office of the Assistant Secretary for Housing, HUD.

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 due date: April 27, 1998.

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: Oliver Walker, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 9152, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Contact person, Stuart Margulies, telephone number 202–708–6409 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting 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 affecting 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: Manufactured Home Construction and Safety Standards Act Reporting Requirements.

OMB Control Number, if applicable: 2502–0253.

Description of the need for the information and proposed use: Agency form numbers, if applicable: This information is a requirement under the National Manufactured Housing Construction and Safety Standards Act (the Act) 42 U.S.C. 5400 *et seq.*, Public Law 93–383 and authorizes HUD to establish construction and safety standards for manufactured (mobile) homes and to enforce these standards. To meet these requirements HUD requires the manufacturer to maintain complete records of all information that may indicate the existence of a problem in a manufactured home for which the manufacturer is responsible for providing notification and correction as required by 24 CFR 3282.403.

Members of affected public: Manufacturer, distributor and dealer of manufactured housing.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 338,950 total annual hours are estimated for 402 respondents. The frequency of reporting is one per home for manufacturer/retailer and the hours of response 1,441,500 hours of response.

Status of the proposed information collection: reinstatement without change.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 18, 1998.

Nicolas P. Retsinas,

A/S Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 98–4720 Filed 2–24–98; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4295–N–01]

Notice of Operating Cost Adjustment Factors for Low-Income Housing Preservation and Resident Homeownership Projects Assisted With Section 8 Housing Assistance Payments

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: The Low-Income Housing Preservation and Resident Homeownership Act of 1990 (''LIHPRHA'') requires that future rent adjustments for LIHPRHA projects be made by applying an annual factor to be determined by the Secretary to the portion of rent attributable to operating expenses for the project and, where the owner is a priority purchaser, to the portion of rent attributable to project oversight costs. This notice announces Operating Cost Adjustment Factors (''OCAF(s)''), to be used for rent increases under LIHPRHA, which are based on a formula using data from the Bureau of Labor Statistics that measure changes in wages and the costs of non-food consumer goods. The most recent published OCAF will be applied on the anniversary date of the housing assistance payments contract. An explanation of the methodology employed to develop the OCAFs is set forth below.

EFFECTIVE DATE: April 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ulyses Brinkley, Office of Multifamily Housing Management, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410; telephone (202) 708–0558; (This is not a toll-free number). A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

I. OCAFs

The Low-Income Housing Preservation and Resident Homeownership Act of 1990 (''LIHPRHA'') (see, in particular, section 222(a)(2)(G)(i) of LIHPRHA, 12 U.S.C. 4112(a)(2)(G) and the regulations at 24 CFR 248.145(a)(9)) requires that future rent adjustments for LIHPRHA projects be made by applying an annual factor to be determined by the Secretary to the portion of project rent attributable to operating expenses for the project and, where the owner is a priority purchaser, to the portion of project rent attributable to project oversight costs. The Secretary has determined to use the OCAF as the annual factor.

II. Budget-Based Method of Calculating Contract Rent Increases

If an owner believes that the contract rents approved by the Secretary pursuant to the OCAF are not adequate, an owner may request that its contract rent increase be calculated using the budget-based method. Owners shall: (1) Submit documentation to HUD pursuant to the procedures in Chapter 7 of HUD Handbook 4350.1, Insured Project Servicing Handbook, and (2) demonstrate that an increase in contract rents above that provided by the OCAF is necessary to reflect extraordinary necessary expenses of owning and maintaining the Housing. If the Secretary determines that the project rents pursuant to the OCAF are insufficient to cover project operating expenses, the Secretary may increase contract rents in excess of the amount determined pursuant to the OCAF to reflect extraordinary necessary expenses of owning and maintaining the project. Any contract rent increase resulting

from using the budget-based method shall be effective for the year approved.

III. Method for Calculating OCAF

In seeking to find the best operating cost adjustment factors for this purpose, the Department analyzed several sources of data. HUD's own data on rental project operating costs formed the largest and most reliable set of time-series data on actual project expenses. Bureau of Labor Statistics (BLS) data on wages and prices were found to offer the most reliable surrogate data sources.

After exploring alternative approaches, two methods of developing OCAFs were considered for detailed review. One was to use administrative and operating expense data for unsubsidized FHA-insured projects as the basis for developing factors. The other was to use BLS data on wages and prices as a surrogate indicator of operating cost changes.

An analysis of the HUD FHA data from the Form HUD–92410 showed that utility, tax, and insurance expenses had such a high degree of variability that measurements of area- or regional-level average or median expense changes had little relevance to most projects, and that these data could not be used to provide meaningful measures of change. Analysis efforts were therefore concentrated on the ''Administrative'' and ''Operating and Maintenance'' expense items reported on the HUD 92410. It was found that a large percentage of FHA-insured, unassisted projects had unusual changes in year-to-year administrative and operating costs, possibly due to expensing of major repairs using reserve funds that are transferred into the operating expense account. This is of concern, since using operating expense change factors that partly reflect unspecified inclusions of reserve expenditures means that the data do not provide a good indicator of normal, on-going operating expenses or of changes in those expenses. This also appears to explain why change factors developed using FHA-insured administrative and operating expense data do not have a significant central grouping tendency, but instead are spread relatively evenly over a wide range of values. Use of an average or median value has less meaning in such situations than it normally does, since only a few projects have values near the average.

Starting in 1993, HUD began to collect more detailed budget information for all FHA-insured projects, including information on funds transferred from project reserves to cover work reported as operating and maintenance expenses. In future years, this information may make it feasible to develop reliable OCAFs based on costs incurred by unassisted, FHA-insured projects. The Department intends to re-examine the feasibility of this approach as more data become available, but believes that actual operating expense data are not a reliable basis for developing OCAFs at this time and does not intend to use these data to calculate OCAFs.

The second option studied takes advantage of the fact that nearly all administrative and operating expenses are either labor-related or are tied to the cost of non-food producer goods. Labor-related costs should normally tend to move with regional changes in wages, while the cost of most producer goods should change in a similar manner throughout the country. The cost of changes in goods used in administrative and maintenance work can be measured by the BLS Producer Price Index. Wage and employment data are collected on a comprehensive and highly reliable basis by the Bureau of Labor Statistics (BLS). HUD uses BLS wage data in calculating median family income levels, and it uses BLS government wage data as the main determinant of the annual increases for Public Housing Allowed Expense Levels.

Research on Public Housing program administrative and operating expenses has shown that approximately 60 percent of such expenses are labor-related and 40 percent are tied to purchased goods. Since 1983 HUD has used this 60-percent-wage/40-percent-price-index ratio to update Public Housing Allowed Operating Expenses. The approach has been the subject of research and has been found to work well. It was used to develop OCAF factors that measure changes in ''Administrative'' and ''Operating and Maintenance'' expenses, as follows:

OCAF = (60%*BLS private sector wage change + 40%*BLS non-food PPI change) * (avg. operating and maintenance costs/avg. non-debt service costs)

The FY 1998 OCAF figures, shown on the accompanying appendix, were produced for the metropolitan and nonmetropolitan area parts of each of the ten HUD Regions using the BLS data from the final annual ES–202 series data on employment and wages. This is the same level of geography used for Section 8 Annual Adjustment Factors (AAFs), and has the advantage of capturing regional economic trends while avoiding the sometimes erratic changes that would result from use of more localized data. Future OCAF factors will be published on an annual basis.

IV. Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(c)(6) of the HUD regulations, the policies and procedures contained in this notice set forth rate determinations and related external administrative requirements and procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites, and therefore are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12612, Federalism

The General Counsel,as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. This notice pertains to Operating Cost Adjustment Factors (''OCAF(s)''), to be used for rent increases under LIHPRHA, and does not substantially alter the established roles of the Department, the States, and local governments.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 14.187.

Date: January 23, 1998.

Andrew Cuomo,

Secretary.

APPENDIX—LOW INCOME HOUSING PRESERVATION AND RESIDENT HOMEOWNERSHIP ACT OF 1990

[FY 1998 Operating Cost Adjustment Factors]

HUD region	Area	Total (percent)	Metro (percent)	Nonmetro (percent)
1	NEW ENGLAND	1.0	1.1	0.9
2	NEW YORK-NEW JERSEY	1.0	1.0	0.2
3	MID-ATLANTIC	1.2	1.2	0.8
4	SOUTHEAST	1.3	1.2	1.6
5	MIDWEST	1.4	1.4	1.5
6	SOUTHWEST	1.0	1.1	0.7
7	GREAT PLAINS	1.2	1.1	1.7
8	ROCKY MOUNTAINS	1.7	1.7	1.6
9	PACIFIC/HAWAII	1.2	1.2	1.7
10	NORTHWEST/ALASKA	0.8	0.8	6.4
U.S. TOTAL		1.1	1.1	1.3

[FR Doc. 98–4717 Filed 2–24–98; 8:45 am]
BILLING CODE 4210–27–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

North Belts Travel Plan/Magpie-Confederate Vegetation Restoration Project; Including Timber Harvest, Prescribed Fire, Watershed Improvement, Road Reconstruction and Obliteration, Trail Relocation, and Travel Management

Travel management will be addressed on both Forest Service and Bureau of Land Management jurisdictions. Bureau of Land Management, Butte District, Headwaters Resource Area, Helena National Forest, Broadwater, Lewis & Clark, and Meagher Counties, Montana.

AGENCY: Forest Service, USDA/Bureau of Land Management, USDI.

ACTION: Notice; intent to prepare Environmental Impact Statement and a BLM Resource Management Plan (RMP) amendment.

SUMMARY: The USDA, Forest Service and Bureau of Land Management USDI are gathering information and preparing an Environmental Impact Statement (EIS) for the North Belts Travel Plan/Magpie-Confederate Vegetation Restoration Project located approximately 25 air miles east of Helena, Montana.

The Forest Service proposes to treat forested areas with approximately 1480 acres of commercial timber harvest and 3725 acres of prescribed fire. An estimated three miles of new construction and three miles of road reconstruction will be needed to access the treatment areas. All new construction will be obliterated following harvest, Prescribed fire is also proposed for 6452 acres of grasslands (315 acres of which belong to the BLM). The Bureau of Land Management and Forest Service propose to develop long-term travel management plans for the northern Big Belt Mountains and Spokane Hills. The proposal includes corrective measures to facilitate watershed improvement and reduce or eliminate various problems on existing roads and trails. The proposed action would implement new travel management plans that identify designated routes which would be available for motorized vehicle use with a mix of seasonal and vehicle type restrictions.

The proposal is designed to help achieve the goals and objectives of the 1986 Helena National Forest Plan, move selected areas towards the desired conditions identified from the Forest Plan, and BLM Headwaters Resource Management Plan of 1984. These needs are supported by the findings of the Big Belts Integrated Resource Analysis. The purpose is to maintain healthy, sustainable ecosystems that (1) reduce fire risk, (2) provide wildlife habitat similar to the habitat that existed when fire was a natural component of the ecosystem, (3) enhance soil and water, (4) provide recreation opportunities, and (5) provide reasonable long-term travel management.

No Forest Plan amendments are proposed. Further analysis of the proposed action and alternatives to the proposal may result in a decision(s) that include amendments to the Forest Plan. Amendments to the BLM Headwaters Resource Management Plan are expected to be identified and therefore plan amendment procedures will be followed from the onset.

DATES: Comments should be received in writing on or before March 31, 1998.

ADDRESSES: The responsible official for the USDA Forest Service is Thomas J. Clifford, Forest Supervisor, Helena National Forest, Supervisor's Office, 2880 Skyway Drive, Helena, MT 59601. Phone: (406) 449–5201. The responsible official for the USDI Bureau of Land Management is Merle Good, Headwaters Resource Area Manager, Butte District Office, P.O. Box 3388, Butte, Montana 59702.

FOR FURTHER INFORMATION CONTACT: George Weldon, District Ranger, Townsend Ranger District, or Quinn Carver, Interdisciplinary Team Leader, Townsend Ranger District, 415 S. Front, Townsend, MT 59644. Phone: (406) 266–3425.

SUPPLEMENTARY INFORMATION: The project would occur on Bureau of Land Management lands of the Butte District and National Forest lands of the Helena and Townsend Ranger Districts. The activities would take place within portions of T.11, T.12 and 13N., R.2W., T.9–13N., R.1W., T.10–13N., R.1E., T.9–12N., R.2E., and T.9–11N., R.3E., Montana Principle Meridian.

Portions of the timber harvest and prescribed fire treatment units are within the Hellgate Gulch and Cayuse Mountain roadless areas. No road construction is proposed within either roadless area.

The decisions to be made, based on this environmental analysis, are:

1. Whether or not to treat the vegetation at this time, and if so, how would the treatments be accomplished.

2. What type of transportation systems will be necessary to accommodate the long-term needs of the public while considering other resource needs and objectives.

This EIS will tier to the Helena Forest Plan Final EIS of April 1986 and the BLM Headwaters Resource Management Plan of 1984, which provide program goals, objectives, and standards and

guidelines for conducting management activities in these areas. All activities associated with the proposal will be designed to maintain or enhance the resource objectives identified in the BLM Headwaters Resource Management Plan and Helena Forest Plan further refined in the Big Belts Integrated Resource Analysis.

The Forest Service and Bureau of Land Management are seeking information and comments from Federal, State, and local agencies together with organizations or individuals who may be interested in or affected by the proposed action. The Forest Service and Bureau of Land Management invite written comments and suggestions on the issues for the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS.

Preparation of the EIS will include the following steps:

1. Identification of issues to be analyzed in depth.
2. Identification of additional reasonable alternatives.
3. Identification of potential environmental effects of the alternatives.

Timber harvest includes even-aged management treatments such as clearcutting with reserves, seed tree with reserves, and shelterwood with reserves. Intermediate treatments such as commercial thinning will also be considered. Prescribed burning will be used to treat nonforested and forested vegetation. Alternatives to this proposal will include the ''no action'' alternative, in which none of the proposed treatments would be implemented. Other alternatives will examine variations in the location, amount and method of vegetative management.

The preliminary issues identified are:

1. The effects on forest health and sustaining ecosystems.
2. The effects on recreation and visual resources.
3. The effects on wildlife.
4. The effects on the roadless and wilderness character of the Roadless Areas.
5. The effects on fish, water quality, and riparian areas.
6. The potential for increase in noxious weed populations or distribution.

The Forest Service and Bureau of Land Management will jointly analyze and disclose in the DEIS and FEIS the environmental effects of the proposed action pertaining to each agency and a reasonable range of alternatives. The DEIS and FEIS will disclose the direct, indirect and cumulative environmental effects of each alternative and its associated site specific mitigation measures.

Public participation is especially important at several points of the analysis. Interested parties may visit with the Forest Service/Bureau of Land Management officials at any time during the analysis. However, two periods of time are specifically identified for the receipt of comments. The first comment period is during the scoping process when the public is invited to give written comments to the Forest Service and Bureau of Land Management. The second review period is during the 90 day review of the DEIS when the public is invited to comment on the DEIS

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in March of 1999. At that time, the EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the DEIS will be 90 days from the date the notice of availability is published in the **Federal Register**.

At this early stage in the scoping process, the Forest Service and Bureau of Land Management believe it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviews of DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Secondly, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service and Bureau of Land Management at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service and Bureau of Land Management in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service and Bureau of Land Management in preparing the FEIS. The FEIS is expected to be filed in February of 2000.

Dated: February 18, 1998.

Thomas J. Clifford,

Forest Supervisor.

Dated: February 18, 1998.

Merle Good,

Headwaters Resource Area Manager, Bureau of Land Management.

[FR Doc. 98–4708 Filed 2–24–98; 8:45 am]

BILLING CODE 3410–11–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–401]

Certain CD-Rom Controllers and Products Containing Same; Notice of Commission Determination not To Review Initial Determination Granting Motion To Amend the Complaint and Notice of Investigation To Add an Additional Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') granting complainant's motion to amend the complaint and notice of investigation to add an additional respondent.

FOR FURTHER INFORMATION: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3107.

SUPPLEMENTARY INFORMATION: The Commission instituted the above-captioned patent-based section 337 investigation on August 20, 1997, on a complaint filed by Oak Technology, Inc. of Sunnyvale, California. The complaint and subsequent notice of investigation originally named four respondents—Winbond Electronics Corp. of Hsinchu, Taiwan; Winbond Electronics North America Corp. of San Jose, California; Wearnes Technology (Private) Ltd. of Singapore; and Wearnes Electronics

Malaysia Sendirian Berhad of Johor, Malaysia (collectively, the ''original respondents'').

On October 14, 1997, Oak Technology filed a motion pursuant to Commission rule 210.14(b), 19 CFR 210.14(b), to amend the notice of investigation and complaint by adding Wearnes Peripherals International (Private) Ltd. of Singapore (''WPI'') as an additional respondent. WPI and the original respondents opposed the motion to amend. The Commission investigative attorney filed a response in support of the motion. Oak Technology was granted leave to reply to WPI's opposition, and WPI was granted leave to file a sur-reply.

On January 23, 1998, the ALJ issued an initial determination (Order No. 5) granting Oak Technology's motion to add WPI as a respondent. No petitions for review were filed. The Commission has determined not to review the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

Issued: February 18, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–4788 Filed 2–24–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–370 Sanctions Proceeding]

Certain Salinomycin Biomass and Preparations Containing Same; Termination of Sanctions Proceeding; Vacatur of Recommended Determination; Cancellation of Commission Hearing

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission determined to grant a joint motion to terminate the sanctions proceedings and vacate the presiding administrative law judge's (ALJ) recommended determination (RD) on monetary sanctions. The Commission reserved its authority, in an appropriate case, to pursue sanctions on its own initiative under rule 210.4(d)(1)(ii) without regard to whether there has been a private settlement agreement.

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 6, 1995, based on a complaint filed by Kaken Pharmaceutical Co. Inc. (Kaken). On November 6, 1995, the ALJ issued his final initial determination (ID) in this investigation, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, by respondents Hoechst Aktiengesellschaft, Hoechst Veterinar GmbH, and Hoechst-Roussel Agri-Vet Co. (collectively, Hoechst). His determination was based on his findings that the patent at issue was invalid for failure to disclose the best mode of operation and unenforceable due to inequitable conduct during prosecution of the patent before the U.S. Patent and Trademark Office. The ALJ's ID was not reviewed by the Commission and was ultimately upheld on appeal to the U.S. Court of Appeals for the Federal Circuit, *Kaken Pharmaceutical Co.* v. *USITC,* Appeal Nos. 96–1300,-1302, nonprecedential opinion dated March 31, 1997.

On January 19, 1996, Hoechst filed a motion for sanctions against Kaken, which the Commission referred to the presiding ALJ for issuance of an RD. Hoechst's motion alleged, *inter alia,* that Kaken committed sanctionable conduct by filing a complaint totally lacking in merit. On May 14, 1997, the ALJ issued his RD in which he recommended that the Commission impose on Kaken and its attorneys joint and several liability for an amount of money equal to double the entire attorneys fees and costs of the Hoechst respondents incurred in both the section 337 investigation on the merits and in the proceeding on sanctions. All parties filed comments on the RD. On August 8, 1997, Kaken and its attorneys requested an opportunity to present oral argument before the Commission and leave to reply to Hoechst's comments. On October 24, 1997, the Commission granted the motion for oral argument and issued notice of a hearing date of December 10, 1997. 62 FR 58746 (Oct. 30, 1997).

On November 5, 1997, Hoechst, Kaken, and Kaken's attorneys filed a joint motion for termination of the sanctions proceedings based on Hoechst's withdrawal of its motion for sanctions. The parties also moved that the RD be vacated. They stated that Hoechst and Kaken have entered into a worldwide settlement agreement with respect to salinomycin that includes the reissue patent that formed the basis of Kaken complaint at the Commission. They stated that, as a result, all issues between Hoechst and Kaken have been fully resolved. On November 17, 1997, the Commission investigative attorney (IA) supported the motion to terminate. On November 21, 1997, the Commission determined to postpone the oral argument indefinitely while it considered the joint motion to terminate. 62 FR 63193 (Nov. 26, 1997).

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov or ftp://ftp.usitc.gov).*

Issued: February 18, 1998

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–4789 Filed 2–24–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

National Institute of Justice

[OJP(NIJ)–1160]

RIN 1121–ZA97

Meeting Announcement of the National Commission on the Future of DNA Evidence

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of meeting.

SUMMARY: Announcement of the first meeting of the National Commission on the Future of DNA Evidence.

DATES: March 18, 1998.

ADDRESSES: Great Hall, Department of Justice, 10th and Constitution Ave. NW, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Christopher H. Asplen, AUSA, Executive Director (202) 616–8123.

SUPPLEMENTARY INFORMATION: Individuals interested in attending the meeting must call Laura Lacky at (202) 307–5847 two weeks in advance of meeting and provide name, date of birth and social security number for security purposes. Attendees must also present government issued photo identification at the time of the meeting. All attendees are subject to metal detection devices.

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The purpose of the National Commission on the Future of DNA Evidence is to provide the Attorney General with recommendations on the use of current and future DNA methods, applications and technologies in the operation of the criminal justice system, from the Crime scene to the courtroom. Over the course of its Charter, the Commission will review critical policy issues regarding DNA evidence and provide recommended courses of action to improve its use as a tool of investigation and adjudication in criminal cases.

The Commission will address issues in five specific areas: (1) The use of DNA in post-conviction relief cases, (2) legal concerns including *Daubert* challenges and the scope of discovery in DNA cases, (3) criteria for training and technical assistance for criminal justice professionals involved in the identification, collection and preservation of DNA evidence at the crime scene, (4) essential laboratory capabilities in the face of emerging technologies, and (5) the impact of future technological developments in the use of DNA in the criminal justice system. Each topic will be the focus of the in-depth analysis by separate working groups comprised of prominent professionals who will report back to the Commission.

John Schwarz,

Acting Director, National Institute of Justice.

[FR Doc. 98–4800 Filed 2–24–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning two information collections: (1) Employment Information Form (WH–3 and WH–3–Spanish); and (2) Survivor's Form for Benefits (CM–912), formerly, Survivor's Claim for Benefits (CM–912) and Survivor's Notification of Beneficiary's Death (CM–1089). Copies of the proposed information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before April 27, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Contact Ms. Patricia Forkel at the U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–3201, Washington, DC 20210, telephone (202) 219–7601. The Fax number is (202) 219–6592. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Employment Information Form

I. Background

Section 11(a) of the Fair Labor Standards Act, 29 U.S.C. 201 et seq., provides that the Secretary of Labor may investigate and gather data regarding the wages, hours, or other conditions and practices of employment in any industry subject to the Act. Similar provisions are also contained in the Public Contracts Act, the Service Contracts Act, the Davis Bacon Act, the Consumer Credit Protection Act, the migrant and Seasonal Agricultural Worker Protection Act, and the Family and Medical Leave Act of 1993, all of which are enforced by the Wage and Hour Division of the U.S. Department of Labor. The Form WH–3 is an optional form used by complainants and others to provide information about alleged violations of the labor standards provisions of the Acts cited above. The form is provided in both English and Spanish versions.

II. Current Actions

The Department of Labor (DOL) seeks approval of this revised information collection in order to meet the statutory requirements to investigate alleged violations of the various labor standards laws enforced by the Wage and Hour Division. The form has been revised from the current version in order to incorporate information regarding the Family and Medical Leave Act, to clarify the form, and to add and delete certain data elements.

Type of Review: Revision.

Agency: Employment Standards Administration.

Title: Employment Information Form.

OMB Number: 1215–0001.

Agency Numbers: WH–3 and WH–3 Spanish.

Affected Public: Individuals or households, farms, businesses or other for-profit; not-for-profit institutions; Federal Government; State, local or Tribal Government.

Total Respondents: 37,000.

Frequency: On occasion.

Total Responses: 37,000.

Average Time Per Response: 20 minutes.

Estimated Total Burden Hours: 12,333.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Survivor's Form for Benefits

I. Background

This collection of information is required to administer the benefit payment provision of the Black Lung benefits Act for survivors of deceased coal miners. Completion of this form constitutes the application for benefits by survivors and assists in determining the survivor's entitlement to benefits.

II. Current Actions

The Department of Labor (DOL) seeks approval of this revised information collection in order to carry out its responsibility to meet the statutory requirements of the Black Lung Benefits Act to pay benefits to eligible survivors of Black Lung beneficiaries. This information clearance request revises the current form CM–912, Survivor's Form for Benefits, to simplify the information collection and to incorporate information formerly collected on the Form CM–1089, Survivor's Notification of Beneficiary's Death, approved under OMB 1215–1089. Upon OMB approval of the revised CM–912, the CM–1089 will be eliminated.

Type of Review: Revision.

Agency: Employment Standards Administration.

Title: Survivor's Form for Benefits.

OMB Number: 1215–0069.

Agency Numbers: CM–912.

Affected Public: Individuals or households.

Total Respondents: 3,300.

Frequency: On time application.

Total Responses: 3,300.

Average Time Per Response for Reporting: 8 minutes.

Estimated Total Burden Hours: 440.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): $945.00.

Dated: February 19, 1998.

Margaret J. Sherrill,

Chief, Branch of Management, Review and Internal Control, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 98–4827 Filed 2–24–98; 8:45 am]

BILLING CODE 4510–27–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 63, No. 32, at 82222, February 18, 1998.

PREVIOUSLY ANNOUNCED TIME AND DATE: 10:00 a.m., Thursday, March 5, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

CHANGES IN THE MEETING: The status of the Commission meeting to consider and act upon the following item has been changed from open to closed:

1. *Secretary of Labor* v. *Wayne R. Steen, employed by Ambrosia Coal & Construction Co.*, Docket No. PENN 94–15 (Issues include whether on second remand the judge properly assessed a $2,000 penalty against Wayne R. Steen under sections 110(c) and 110(i) of the Mine Act for violating 30 CFR § 77.404(a)).

It was determined by a unanimous vote of the Commission to change the status of this meeting from open to closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: February 20, 1998.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 98– 4983 Filed 2–23–98; 3:36 p]

BILLING CODE 6735–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business required the deletion of the following item from the previously announced open meeting (Federal Register, page 9019, February 23, 1998) scheduled for Wednesday, February 25, 1998.

4. Final Amendments to Interpretive Ruling and Policy Statement (IRPS) 94–1, (Chartering Manual).

The Board voted unanimously that Agency business required that this item be deleted from the open agenda and earlier announcement of this change was not possible.

The previously announced items were:

1. Requests from Three (3) Federal Credit Unions to Convert to Community Charters.

2. Request from a Federal Credit Union to Convert to a Federal Mutual Savings Association.

3. Request from a Corporate Federal Credit Union for a Field of Membership Amendment.

4. Final Amendments to Interpretive Ruling and Policy Statement (IRPS) 94–1, (Chartering Manual).

5. Final Rule: Concerning Sections 701.26(b) and 701.27, and Part 712, NCUA's Rules and Regulations, Credit Union Service Contracts, Credit Union Service Organizations, and Advertising.

6. Final Rule: Amendments to Part 708a, Appendix A, NCUA's Rules and Regulations, Mergers or Conversions of Federally Insured Credit Unions to Non Credit Union Status.

7. Final Rule: Amendments to Part 708b, Subpart C, NCUA's Rules and Regulations, Mergers of Federally Insured Credit Unions; Voluntary Termination or Conversion of Insured Status.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–4984 Filed 2–23–98; 3:44 pm]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Institute of Museum and Library Services, Office of Library Services; Submission for OMB Review, Comment Request; 1998 Indian Library Services Application and Guidelines; 1998 Native Hawaiians Library Services Application and Guidelines

AGENCY: Institute of Museum and Library Services.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services has submitted the following public information request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13,44 U.S.C. Chapter 35).

Currently, the Institute of Museum and Library Services is soliciting comment concerning a two new collections entitled, 1998 Indian Library Services Application and Guidelines and 1998 Native Hawaiians Library Services Application and Guidelines. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Director of Discretionary Programs, Director, Dr. Joyce Ray (202) 606–8536. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Background

Public Law 104–208 enacted on September 30, 1996 contains the Library Services and Technology Act, a reauthorization and refocusing of federal library programs. This legislation calls upon the Director of the Institute of Museum and Library Services to award grants to Indian tribes and to organizations that primarily serve and represent Native Hawaiians (as the term is defined in section 9212 of the Native Hawaiian Education Act (20 U.S.C. 7912) to enable such tribes and organizations to carry out activities to:

- Establish or enhance electronic linkages among or between libraries; electronically link libraries with educational, social or information services; assist libraries in accessing information through electronic networks;
- Encourage libraries in different areas, and encourage different types of libraries, to establish consortia and share resources; or
- Pay costs for libraries to acquire or share computer systems and telecommunications technologies; and
- Target library and information services to persons having difficulty using a library and to underserved urban and rural communities, including children (from birth through age 17) from families and incomes below the poverty line (as defined by the Office of Management and Budget) and revised annually in accordance with section 673(2) applicable to family size involved.

Type of Review: New collection.
Agency: Institute of Museum and Library Services.
Title: 1998 Indian Library Services Application and Guidelines.
OMB Number: N/A.
Affected Publics: Indian Tribes.
Total Respondents: 225.
Frequency: Annually.
Total Responses: 250.
Average Time per Response: 2 hours.
Estimated Total Burden Hours: 500.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Type of Review: New Collection.
Agency: Institute of Museum and Library Services.
Title: 1998 Native Hawaiians Library Services Application and Guidelines.
OMB Number: N/A.
Affected Publics: Organizations that primarily serve and represent Native Hawaiians (as the term is defined in section 9212 of the Native Hawaiian Education Act (20 U.S.C. 7912).
Total Respondents: 1.
Frequency: Annually.
Total Responses: 1.
Average Time per Response: 4 hours.
Esimated Total Burden Hours: 4.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Director Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., N.W., Washington, DC 20506.

Dated: February 20, 1998.

Mamie Bittner,
Director Public and Legislative Affairs.

[FR Doc. 98–4776 Filed 2–24–98; 8:45 am]
BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 70—Domestic Licensing of Special Nuclear Material.
2. *Current OMB approval number:* 3150–0009.
3. *How often the collection is required:* Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses and amendments may be submitted at any time. Renewal applications are submitted every five years. Applications for renewal for certain major fuel cycle facilities are submitted every ten years, with updates of the safety demonstration section submitted every two years. Nuclear material control and accounting information is submitted in accordance with specified instructions. Nuclear criticality safety training program information pursuant to DG–3008 is submitted with the application or renewal.
4. *Who is required or asked to report:* Applicants for and holders of specific NRC licenses to receive title to, own, acquire, deliver, receive, possess, use, or initially transfer special nuclear material.
5. *The number of annual responses:* 1,138.
6. *The number of hours needed annually to complete the requirement or request:* 81,575 (an average of approximately 67.3 hours per response for applications and reports, plus approximately 23.6 hours per recordkeeper).
7. *Abstract:* 10 CFR Part 70 establishes requirements for licenses to own, acquire, receive, possess, use, and transfer special nuclear material. Draft Regulatory Guide DG–3008 provides guidance on an acceptable nuclear criticality safety training program. The information in the applications, reports

and records is used by NRC to make licensing and other regulatory determinations concerning the use of special nuclear material. The revised estimate of burden reflects an increase primarily because of the addition of requirements for documentation for termination or transfer of licensed activities.

Submit, by April 27, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 19th day of February, 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–4763 Filed 2–24–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review of continued approval of information collection under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* State Agreements Program, as authorized by Section 274(b) of the Atomic Energy Act.

3. *Current OMB approval number:* 3150–0029.

4. *How often the collection is required:* One time or as needed.

5. *Who is required or asked to report:* Thirty Agreement States who have signed Section 274(b) agreements with NRC.

6. *An estimate of the number of responses:* 95.

7. *An estimated number of annual respondents:* 30.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 570 (approximately six hours per response).

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* Agreement States are surveyed on a one-time or as-needed basis, i.e., in response to a specific incident, to gather information on licensing and inspection practices and other technical and statistical information. The results of such information requests, which are authorized under Section 274(b) of the Atomic Energy Act, are utilized in part by NRC in preparing responses to Congressional inquiries. Agreement State comments are also solicited in the areas of proposed procedure and policy development.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by March 27, 1998: Martin Offutt, Office of Information and Regulatory Affairs (3150–0029), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 19th day of February, 1998.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–4762 Filed 2–24–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; Laboratory Testing of Nuclear-Grade Activated Charcoal (M97978)

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter concerning the laboratory testing of nuclear-grade activated charcoal that is used in the safety-related air-cleaning units of engineered safety feature ventilation systems of nuclear power plants to reduce the potential onsite and offsite consequences of a radiological accident by adsorbing iodine. The purpose of the proposed generic letter is to: (1) Alert addressees that the NRC has determined that testing nuclear-grade activated charcoal to standards other than American Society for Testing and Materials (ASTM) D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon,'' does not provide assurance for complying with their current licensing basis as it relates to the dose limits of General Design Criterion (GDC) 19 of Appendix A to 10 CFR Part 50 and Subpart A of 10 CFR Part 100, and that ASTM D3803–1989 should be used for both new and used charcoal because it allows for accurately monitoring the degradation of the charcoal over time; (2) request that addressees determine whether their technical specifications (TS) reference ASTM D3803–1989 for charcoal filter laboratory testing and if not, either amend their TS to reference ASTM D3803–1989 or propose an alternative test protocol and provide the requested information; (3) alert addressees of NRC intent to exercise enforcement discretion under certain conditions; and (4) require that addressees submit written responses to this generic letter.

The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading.

The proposed generic letter has been endorsed by the Committee to Review Generic Requirements (CRGR). Relevant information that was sent to the CRGR will be placed in the NRC Public Document Room. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, as appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the NRC Public Document Room.

DATES: Comment period expires March 27, 1998. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules and Directives Branch, Division of Administrative Services, U.S. Nuclear Regulatory Commission, Mail Stop T6–D69, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John P. Segala, (301) 415–1858.

SUPPLEMENTARY INFORMATION:

NRC Generic Letter 97–XX: Laboratory Testing of Nuclear-Grade Activated Charcoal

Addressees

All holders of operating licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to:

(1) Alert addressees that the NRC has determined that testing nuclear-grade activated charcoal to standards other than American Society for Testing and Materials (ASTM) D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon,'' does not provide assurance for complying with their current licensing basis as it relates to the dose limits of General Design Criterion (GDC) 19 of Appendix A to 10 CFR Part 50 and Subpart A of 10 CFR Part 100. In addition, the staff has determined that ASTM D3803–1989 should be used for both new and used charcoal because it allows for accurately monitoring the degradation of the charcoal over time.

(2) Request that all addressees determine whether their technical specifications (TS) reference ASTM D3803–1989 for charcoal filter laboratory testing. Addressees whose TS do not reference ASTM D3803–1989 should either amend their TS to reference ASTM D3803–1989 or propose an alternative test protocol and provide the information discussed in the requested actions.

(3) Alert addressees of the staff's intent to exercise enforcement discretion under certain conditions.

(4) Require that all addressees send the NRC written responses to this generic letter, relating to implementation of the requested actions.

Background

Safety-related air-cleaning units used in the engineered safety feature (ESF) ventilation systems of nuclear power plants reduce the potential onsite and offsite consequences of a radiological accident by adsorbing radioiodine. To ensure that the charcoal filters used in these systems will perform in a manner that is consistent with the licensing basis of a facility, most licensees have requirements in their facility TS to periodically test (in a laboratory) samples of charcoal taken from the air-cleaning units.

The NRC's and the nuclear industry's understandings of the appropriate laboratory tests for nuclear-grade charcoal have evolved over the years since the issuance of Regulatory Guide (RG) 1.52, ''Design, Testing, and Maintenance Criteria for Postaccident Engineered-Safety-Feature Atmosphere Cleanup System Air Filtration and Adsorption Units of Light-Water-Cooled Nuclear Power Plants,'' which is referenced in many plant TS. It was initially assumed that high-temperature/high-relative humidity (RH) conditions were the most severe. Later, with more testing experience, it became clear that the most conservative test is at low temperature/high humidity. The use of outdated test protocols or inappropriate test conditions can lead to an overestimation of the charcoal's ability to adsorb radioiodine following an accident.

Problems associated with the performance of the laboratory test of charcoal under inappropriate test conditions were discussed in Attachment 1 of Information Notice (IN) 86–76. Attachment 1, ''Summary of Control Room Habitability Reviews,'' noted that charcoal was being tested at much higher temperatures than any expected during the course of an accident, and that the performance of the laboratory test at that temperature can result in erroneously high efficiency measurements.

In 1982, the American Society of Mechanical Engineers (ASME) Committee on Nuclear Air and Gas Treatment (CONAGT) conducted an inter-laboratory comparison test using ASTM D3803–1979 and found that seven U.S. laboratories and eight foreign laboratories obtained vastly different results when testing samples of the same charcoal. After efforts to resolve the differences failed, the NRC contracted with EG&G at Idaho National Engineering Laboratory (INEL) to assess the problem. As a result of this assessment, the NRC issued IN 87–32. Through IN 87–32, the NRC informed licensees of deficiencies in the testing of nuclear-grade charcoal, specifically noting serious problems with the capabilities of the testing laboratories and with the testing standard (ASTM D3803–1979). The NRC contractor detailed the specific problems in its technical evaluation report, EGG–CS–7653, ''Final Technical Evaluation Report for the NRC/INEL Activated Carbon Testing Program.'' Specifically, EG&G reported that ASTM D3803–1979 had unacceptable test parameter tolerances and instrument calibration requirements, and that ASTM D3803–1979 was nonconservative in not requiring humidity pre-equilibration of used charcoal. The information notice indicated that the protocol developed by EG&G could be utilized for performing the laboratory test until the D–28 committee responsible for ASTM D3803 revised the standard. The committee completed the revision and issued it in December 1989. The problems associated with the testing laboratories were resolved after the number of U.S. firms performing such tests dropped from seven to the current two.

On April 29, 1993, representatives from ASME and CONAGT met with the NRC staff to express their concerns about laboratory testing of charcoal. CONAGT discussed the variation in laboratory test results obtained (methyl iodide penetration) when temperature, RH, face velocity, bed depth, test protocol, and impregnate were varied. CONAGT stated that the 1989 version of

ASTM D3803 is the only acceptable test method for TS applications and compared the results of laboratory tests performed using the 1986 version of ASTM D3803 (which is the 1979 version with editorial changes) to results using the 1989 version. The results from the 1986 protocol showed significantly higher iodine-removal capabilities than the results from the 1989 version.

In addition, CONAGT indicated that testing charcoal at temperatures greater than 30 °C [86 °F] almost always results in the charcoal meeting the TS acceptance criteria, even when the charcoal is deficient. To support this premise, CONAGT presented the results of laboratory tests conducted at temperatures of 30 °C [86 °F], 80 °C [176 °F], and 130 °C [266 °F]. The data show significant increases in iodine-removal capabilities as the test temperature increases. CONAGT indicated that all systems located outside of containment should be tested at 30 °C [86 °F], which is more representative of the limiting accident conditions. Tests conducted at 80 °C [176 °F] or 130 °C [266 °F] are inappropriate because tests at these temperatures result in the regeneration of the charcoal. At elevated temperatures, the charcoal contains less moisture than at 25 °C [77 °F] and 30 °C [86 °F] which results in the charcoal having more surface area available for adsorption of iodine. Therefore, testing at the elevated temperatures results in an overestimation of the actual iodine-removal capability of the charcoal, and testing at 25 °C [77 °F] or 30 °C [86 °F] gives results that represent a more realistic assessment of the capability of the charcoal. CONAGT concluded its presentation by stating that the major problems associated with the laboratory test of charcoal are the designation of the test protocol and the TS that designate the test to be performed.

On November 6, 1996, the staff visited the two remaining laboratories that test nuclear-grade activated charcoal, NCS Corporation and NUCON International, Inc. Both laboratories have resolved the poor reproducibility problem identified in the EG&G report by performing all tests with calibrated equipment that is capable of maintaining the tight tolerances of the test parameters as specified in ASTM D3803–1989. Tight tolerances are very important when tests are performed at high RH, because slight variations in RH result in unacceptably large differences in the tested efficiency of the charcoal.

Discussion

Although some licensees have changed their TS to reference the latest testing standard (ASTM D3803–1989), many still use outdated standards and/or test conditions that may overestimate the capability of the charcoal in their ESF systems. As a result, the ability of the charcoal filters in these systems to perform in a manner consistent with the licensing basis for the facility may be in question.

The licensees of three plants (V.C. Summer, Davis-Besse and Oconee) determined that the tests they performed were not in compliance with their TS and submitted emergency TS amendments (see Enclosure 1 for details). As a result of the emergency TS changes, the staff has performed an internal survey of the TS of operating plants to determine whether other plants have the potential for similar compliance problems. The survey indicated that at least one-third of operating reactor licensees may be out of compliance with their TS because, although the plant TS reference RG 1.52 or American National Standards Institute (ANSI) N509–1976, ''Nuclear Power Plant Air-Cleaning Units and Components,'' the licensees may have used later versions of the standards for the laboratory tests of their nuclear-grade charcoal. On the basis of this survey, the staff established the following four groups of plants:

(1) Plants in compliance with their TS that test in accordance with ASTM D3803–1989.

(2) Plants in compliance with their TS that test in accordance with a test protocol other than ASTM D3803–1989.

(3) Plants not in compliance with their TS that test in accordance with ASTM D3803–1989.

(4) Plants not in compliance with their TS that test in accordance with a test protocol other than ASTM D3803–1989.

Licensees in Group 1 have TS that require charcoal to be tested in accordance with ASTM D3803–1989, which adequately demonstrates the capability of the charcoal. As discussed in Enclosure 1, the staff considers ASTM D3803–1989 to be the most accurate and most realistic protocol for testing charcoal in ESF ventilation systems because it offers the greatest assurance of accurately and consistently determining the capability of the charcoal. For example, it requires the test to be performed at a constant low temperature of 30°C [86°F]; it provides for smaller tolerances in temperature, humidity, and air flow; and it has a humidity pre-equilibration.

Licensees in Group 2 have TS that require charcoal to be tested in accordance with test standards other than ASTM D3803–1989. On the basis of available laboratory test results for more than 50 charcoal samples, there were significant differences in filter efficiencies for about 15 to 20-percent of the tested samples when comparing the test results from ASTM D3803–1979 and ASTM D3803–1989. When the charcoal samples were tested in accordance with ASTM D3803–1979, they always appeared to have very high efficiencies. However, when the same charcoal samples were tested in accordance with ASTM D3803–1989, significant reduction in efficiency was noted. Depending on the system arrangement, this reduction in filter efficiency can result in calculated doses to the control room operators exceeding the GDC 19 limits by as much as a factor of 1.5 to 2. For pressurized-water reactors (PWRs) with secondary containments and for all boiling-water reactors (BWRs), this reduction in filter efficiency can result in offsite doses from a filtered pathway increasing by as much as a factor of 10 to 15. As a result, the testing of nuclear-grade activated charcoal to standards other than ASTM D3803–1989 does not provide assurance for complying with the plant's licensing basis as it relates to the dose limits of GDC 19 and Part 100.

In addition, the staff has determined that ASTM D3803–1989 should be used for both new and used charcoal because it allows for accurately monitoring the degradation of the charcoal over time. The original rationale for testing used and new charcoal differently was the belief that a long equilibration period would regenerate the used charcoal by removing contaminants adsorbed by the charcoal during normal plant use. However, an EG&G technical evaluation report, described in Enclosure 1, demonstrated that this is not true. As a result, ASTM D3803–1989 specifies testing both used and new charcoal in the same manner.

Currently, before shipping, suppliers test most new charcoal with the ASTM D3803–1989 protocol at 30°C [86°F] and 95-percent RH in addition to the test protocol and test conditions the addressee records on the purchase order. The results from the new charcoal tested via ASTM D3803–1989 present a solid baseline for the initial capability of the charcoal. Using ASTM D3803–1989 to test used charcoal is a very accurate and reproducible method for determining the capability of the charcoal. By comparing the results of the used charcoal tests with the new charcoal test baseline, the addressee can be certain of the charcoal's level of degradation.

Analyses of design-basis accidents assume a particular engineered safety features (ESF) charcoal filter adsorption

efficiency when calculating offsite and control room operator doses. Licensees then test charcoal filter samples to determine whether the filter adsorber efficiency is greater than that assumed in the design-basis accident analysis. The laboratory test acceptance criteria contain a safety factor to ensure that the efficiency assumed in the accident analysis is still valid at the end of the operating cycle. Because ASTM D3803–1989 is a more accurate and demanding test than older tests, addressees that upgrade their TS to this new protocol will be able to use a safety factor as low as 2 for determining the acceptance criteria for charcoal filter efficiency. This safety factor can be used for systems with or without humidity control because the lack of humidity control is already accounted for in the test conditions (systems without humidity control test at 95-percent RH and systems with humidity control can test at 70-percent RH). The staff has previously approved reductions in the safety factor for plants adopting the ASTM D3803–1989 standard on a case-by-case basis. (The staff plans to make conforming changes to RG 1.52.)

The licensees that received emergency TS changes were in Groups 3 and 4. Licensees in Groups 3 and 4 have TS that require charcoal to be tested in accordance with RG 1.52 or ANSI N509–1976, and are not in compliance with their TS because the specified test protocol can not be successfully completed as discussed in Enclosure 1. These licensees are either (1) testing in accordance with the desired ASTM D3803–1989 (Group 3) or (2) using earlier revisions of ASTM D3803 or an older standard which they believe are acceptable (Group 4). The staff does not have confidence that the results from RG 1.52 or ANSI N509–1976 meet the intent of the TS which is to ensure that the doses are within the required limits. Therefore, licensees in these groups have not adequately demonstrated compliance with their licensing basis as it relates to the dose limits of GDC 19 and Part 100.

The staff believes that (1) conflicting guidance, (2) complex and ambiguous standards, and (3) licensee belief that using later versions of the standard would satisfy their TS requirements, contributed to confusion regarding charcoal testing. These factors may explain why licensees did not adopt ASTM D3803–1989 (See Enclosure, for further discussion). In addition, based on the available laboratory test results, the staff believes that most charcoal in use is not degraded to an extent that would adversely affect control room habitability or public health and safety. This confidence in charcoal performance and given the low probability of a design basis accident, justify the time frames for the resolution of this matter. Therefore, the staff intends to exercise enforcement discretion, consistent with Section VII.B.6 of the Enforcement Policy, for all addressees in Groups 3 and 4, provided:

- Within 60 days of the date of this generic letter, either charcoal samples are tested in accordance with ASTM D3803–1989 and the results meet the current TS acceptance criteria or all of the charcoal is replaced with new charcoal that has been tested in accordance with ASTM D3803–1989;
- Acceptable charcoal sample test results discussed in the first condition are submitted to the NRC within 60 days of the date of this generic letter;
- A TS amendment request is submitted to the NRC within 60 days of the date of this letter; and
- The charcoal samples continue to be tested in accordance with ASTM D3803–1989 until the TS amendment is approved by the NRC.

In cases in which the charcoal samples have been previously tested in accordance with ASTM D3803–1989 for the last scheduled laboratory test and the results met the current TS acceptance criteria (Group 3), the results can be used to satisfy the first condition above.

Licensees in Group 2 have been complying with their TS by testing their charcoal in accordance with their TS. Therefore, enforcement discretion is not required.

Requested Actions

Addressees are requested to take the following actions:

1. If your current TS require the laboratory testing of charcoal samples for each ESF ventilation system to be conducted in accordance with ASTM D3803–1989, then no TS amendment is required.

2. If your current TS do not require the laboratory testing of charcoal samples to be conducted in accordance with ASTM D3803–1989, then:

(i) Your charcoal samples should be tested in accordance with ASTM D3803–1989 and the results should be submitted to the NRC within 60 days of the date of this generic letter. If your charcoal samples were already tested in accordance with ASTM D3803–1989 for the last scheduled laboratory test and the results met the current TS acceptance criteria, then the results should be submitted to the NRC within 60 days of the date of this generic letter. In either case, the charcoal samples should continue to be tested in accordance with ASTM D3803–1989 until the TS amendment is approved by the NRC, and

(ii) Your TS should be amended to require the laboratory testing of charcoal samples to be conducted in accordance with:

(a) ASTM D3803–1989, or

(b) An alternate test protocol should be proposed for the laboratory testing of charcoal and the following information should be submitted for staff review to determine the acceptability of the alternate protocol:

1. Summary of the test method
2. Precision of the method
3. Description of the test apparatus along with tolerances
4. Parameter specifications
5. Material requirements
6. Hazards
7. Preparation of the apparatus before initiation of the test
8. Calibration requirements of the test equipment
9. Test procedure
10. Manner of calculating penetration and error
11. Repeatability and reproducibility of the results for 1-percent and 10-percent penetration and the penetration at a 95-percent confidence interval for charcoal tested at 70-percent RH and at 95-percent RH
12. Bias associated with the method
13. Results from an independent laboratory which demonstrate that the alternate test protocol gets results that are consistent with, or more conservative than, that associated with ASTM D3803–1989

The demonstration identified in Item 13 above should be based upon a series of tests comparing the alternate test protocol and ASTM D3803–1989, and it should apply to both new and used charcoal tested at 70-percent RH and at 95-percent RH. The independent laboratory should be able to demonstrate that the alternate protocol is at least as conservative as ASTM D3803–1989, and should be able to perform the ASTM D3803–1989 test and achieve repeatable and reproducible results. The laboratory should not be engaged in the measurement of iodine penetration of charcoal as a business either for TS compliance purposes or for the sale and/or production of activated charcoal for nuclear power plant applications.

Requested Information

Within 60 days of the date of this generic letter, addressees are requested to provide to the NRC the following information:

1. Identify the current TS requirements for the laboratory testing

of charcoal samples for each ESF ventilation system including the specific test protocol, temperature, RH, and penetration at which the TS require the test to be performed. If your current TS specifically require testing in accordance with the ASTM D3803–1989 protocol, and you have been testing in accordance with this standard, then no additional information is required.

2. If you choose to adopt the ASTM D3803–1989 protocol, then submit a TS amendment request to require testing to this protocol. The request should contain the test temperature, RH, and penetration at which the proposed TS will require the test to be performed and the basis for these values. If the system has a face velocity greater than 10 percent of 0.203 m/s [40 ft/min], then the revised TS should specify the face velocity. Also, indicate when the next laboratory test is scheduled to be performed. (Enclosure 2 is a sample TS that the NRC considers acceptable.)

3. If you are proposing an alternate test protocol, then address the attributes discussed in Section 2(ii) of the Requested Actions and submit a TS amendment request to require testing to this alternate protocol. The request should contain the test temperature, RH, and penetration at which the proposed TS will require the test to be performed and the basis for these values. If the system has a face velocity greater than 10 percent of 0.203 m/s [40 ft/min], then the revised TS should specify the face velocity. Also, indicate when the next laboratory test is scheduled to be performed.

Required Response

Within 30 days of the date of this generic letter, addressees are required to submit a written response indicating: (1) Whether the requested actions will be completed, (2) whether the requested information will be submitted and (3) whether the requested information will be submitted within the requested time period. Addressees who choose not to complete the requested actions, or choose not to submit the requested information, or are unable to satisfy the requested completion date, must describe in their response any alternative course of action that is proposed to be taken, including the basis for establishing the acceptability of the proposed alternative course of action and the basis for continued operability of affected systems and components as applicable.

Address the required written response to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555–0001, under oath or affirmation, under the provisions of Section 182a, Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). In addition, send a copy to the appropriate regional administrator.

Backfit Discussion

Appendix A to 10 CFR Part 50, General Design Criteria (GDC) for Nuclear Power Plants, and the plant safety analyses require and/or commit that licensees design and test safety-related structures, systems and components to offer adequate assurance that they can perform their safety functions. Specifically, GDC 19 of Appendix A to 10 CFR Part 50 specifies dose limits to ensure that control room operators are provided with adequate radiation protection under accident conditions. Following the accident at Three Mile Island (TMI), TMI Action Plan Item III.D.3.4, ''Control Room Habitability Requirements,'' as specified in NUREG–0737, ''Clarification of TMI Action Plan Requirements,'' required all licensees to perform evaluations and identify appropriate modifications to ensure that control room operators are adequately protected from the release of radioactive gases and that the nuclear power plant can be safely operated or shut down under design-basis accident conditions (GDC 19). When modifications were proposed by licensees, the NRC issued Orders confirming licensee commitments. As a result, all licensees are required to meet the dose limits of GDC 19. In addition, Subpart A of 10 CFR Part 100 specifies reference dose values which can be used in the evaluation of the suitability of proposed sites for nuclear power plants with respect to potential reactor accidents that could result in the release of significant quantities of radioactive fission products. The expectation is that the site location and the engineered safety features included as safeguards against the hazardous consequences of an accident, should one occur, should ensure a low risk of public exposure. In this regard, licensees commit to dose limits that can be used as the basis for assessing the performance of safety-related structures, systems and components. Accordingly, licensees are required to test the nuclear-grade activated charcoal of their engineered safety feature ventilation systems in accordance with a suitable testing standard to ensure that the charcoal filters are capable of performing their required safety function and that the licensing bases of their respective facilities regarding onsite and offsite dose consequences continue to be satisfied.

The actions requested in this generic letter are considered compliance backfits under the provisions of 10 CFR 50.109. If some licensees test their charcoal in accordance with their TS which reference an outdated test standard, the staff does not have confidence that the results of those tests will demonstrate compliance with the plant's licensing basis as it relates to the dose requirements of GDC 19 and Part 100, including commitment to the resolution of TMI Action Plan Item III.D.3.4. Therefore, the staff has endorsed the testing standard ASTM D3803–1989 for referencing in plant TS. In accordance with the provisions of 10 CFR 50.109(a)(4)(i), regarding compliance backfits, a full backfit analysis was not performed. However, an evaluation was performed in accordance with NRC procedures, including a statement of the objectives of and reasons for the requested actions and the basis for invoking the compliance exception and is reflected in this backfit discussion.

Federal Register Notification

(To be completed after the public comment period.)

Paperwork Reduction Act Statement

This Generic Letter contains information collections that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collections were approved by the Office of Management and Budget, approval number 3150–0011, which expires September 30, 2000.

The public reporting burden for this mandatory information collection is estimated to average 40 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the generic letter and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Enclosures:

(1) Background Information on the Laboratory Testing of Nuclear-Grade Activated Charcoal.

(2) Sample Technical Specifications.

Enclosure 1

Background Information on the Laboratory Testing of Nuclear-Grade Activated Charcoal

Charcoal Testing Requirements

Analyses of design-basis accidents assume a particular engineered safety features (ESF) charcoal filter adsorption efficiency when calculating offsite and control room operator doses. Licensees then test charcoal filter samples to determine whether the filter adsorber efficiency is greater than that assumed in the design-basis accident analysis. The laboratory test acceptance criteria contain a safety factor to ensure that the efficiency assumed in the accident analysis is still valid at the end of the operating cycle.

Guidance on the frequency of, and the test method for, the laboratory testing of charcoal appears in various documents, including all revisions of Regulatory Guide (RG) 1.52, ''Design, Testing, and Maintenance Criteria for Postaccident Engineered-Safety-Feature Atmosphere Cleanup System Air Filtration and Adsorption Units of Light-Water-Cooled Nuclear Power Plants,'' and other NRC documents on plant technical specifications (TS). Guidance on the laboratory test protocol appears in such standards as American National Standards Institute (ANSI) N509, ''Nuclear Power Plant Air-Cleaning Units and Components;'' ANSI N510, ''Testing of Nuclear Air-Cleaning Systems;'' Military Specification RDT M 16–1T, ''Gas Phase Adsorbents for Trapping Radioactive Iodine and Iodine Components;'' and American Society for Testing and Materials (ASTM) Standard D3803, ''Standard Test Method for Nuclear-Grade Activated Carbon.''

All of the standards describe a pre-equilibration period, a challenge period, and an elution period. During the pre-equilibration (pre-sweep) period, the charcoal is exposed to a flow of air controlled at the test temperature and relative humidity (RH) before the challenge gas is fed through the charcoal. The pre-equilibration period ensures that the charcoal has stabilized at the specified test temperature and RH for a period of time, which results in the charcoal adsorbing all available moisture before the charcoal is challenged with methyl iodide. During the challenge period, air at the test temperature and RH with radio-labeled methyl iodide is injected through the charcoal beds to challenge the capability of the charcoal. During the elution (post-sweep) period, air at the test temperature and RH is passed through the charcoal beds to evaluate the ability of the charcoal to hold the methyl iodide once it is captured.

The ASTM D3803–1989 standard has two additional testing periods that are not required by other standards: the stabilization period and the equilibration period. During the stabilization period, air at the test temperature is passed through the charcoal beds to bring the system up to the operating temperature before the start of pre-equilibration. During the equilibration period, air at the test temperature and RH is passed through the charcoal beds to ensure the charcoal adsorbs all the available moisture before the feed period. During this period, the system is more closely monitored than in the pre-equilibration period to ensure that all parameters are maintained within their limits.

Depending upon the plant's TS, typical test temperatures are usually one of the following: 25°C [77°F], 30°C [86°F], 80°C [176°F], or 130°C [266°F]. In addition, the TS usually require that the test be conducted at 70-percent RH if the ESF system controls the RH to 70-percent or less, or at 95-percent if the RH is not controlled to 70-percent.

The standard technical specifications (STS) and many plant-specific TS specify Regulatory Position C.6.a of RG 1.52, Revision 2, as the requirement for the laboratory testing of the charcoal. Regulatory Position C.6.a refers to Table 2 of RG 1.52. Table 2 references Test 5.b of Table 5–1 of ANSI N509–1976, ''Nuclear Power Plant Air-Cleaning Units and Components.'' Test 5.b references the test method from paragraph 4.5.3 of Military Specification RDT M 16–1T, ''Gas Phase Adsorbents for Trapping Radioactive Iodine and Iodine Components'' (date not indicated), but specifies that the test is to be conducted at 80°C [176°F] and 95-percent RH with preloading and postloading sweep at 25°C [77°F]. This test is referred to as the ''25–80–25 test.'' The essential elements of this test are as follows:

- 70-percent or 95-percent RH.
- 5-hour pre-equilibration (pre-sweep) time, with air at 25°C [77°F] and plant-specific RH.
- 2-hour challenge, with gas at 80°C [176°F] and plant-specific RH.
- A 2-hour elution (post-sweep) time, with air at 25°C [77°F] and plant-specific RH.

The latest acceptable methodology for the laboratory testing of the charcoal is ASTM Standard D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon.'' ASTM D3803–1989 is updated guidance based on an NRC verification and validation effort on ASTM D3803–1979, which is updated guidance based on RDT M 16–1T. The essential elements of the ASTM D3803–1989 test are as follows:

- 70-percent or 95-percent RH.
- 2-hour thermal stabilization, with air at 30°C [86°F].
- 16-hour pre-equilibration (pre-sweep) time, with air at 30°C [86°F] and plant-specific RH.
- 2-hour equilibration time, with air at 30°C [86°F] and plant-specific RH.
- 1-hour challenge, with gas at 30°C [86°F] and plant-specific RH.
- 1-hour elution (post-sweep) time, with air at 30°C [86°F] and plant-specific RH.

The major differences between the ANSI N509–1976 and ASTM D3803–1989 standards for charcoal testing are as follows:

Major differences	ASTM D3803–1989	ANSI N509–1976
Pre-Equilibration (Pre-Sweep) Temperature	30°C [86°F]	25°C [77°F].
Challenge Temperature	30°C [86°F]	80°C [176°F].
Elution (Post-Sweep) Temperature	30°C [86°F]	25°C [77°F].
Total Pre-Test Equilibration	18 hours	5 hours.

Major differences	ASTM D3803–1989	ANSI N509–1976
Tolerances of Test Parameters	Smaller	Larger.

As stated above, ASTM D3803–1989 challenges the representative charcoal samples at 30°C [86°F] rather than at 80°C [176°F]. The quantity of water retained by charcoal is dependent on temperature, and less water is retained as the temperature rises. The water retained by the charcoal decreases its efficiency in adsorbing other contaminants. At 30°C [86°F] and 95-percent RH, charcoal will retain about 40 weight-percent water. At 80°C [176°F] and 95-percent RH, charcoal retains only about 2 to 3 weight-percent water. Because most charcoal is anticipated to be challenged at a temperature closer to 30°C [86°F] rather than 80°C [176°F], the lower temperature test condition of ASTM D3803–1989 will yield more realistic results than would a test performed at 80°C [176°F].

ASTM D3803–1989 specifies a test temperature of 30°C [86°F] for both the pre- and post-test sweep rather than 25°C [77°F]. There is little difference in the adsorption behavior of charcoal between these two temperatures. A temperature of 25°C [77°F] is more conservative; however, the increase from 25°C [77°F] to 30°C [86°F] does not represent a significant variation in the test results.

ASTM D3803–1989 provides results that are reproducible compared to RDT M 16–1T because it has smaller tolerances on various test parameters, and it requires that the charcoal sample be pre-equilibrated for a much longer period. The longer pre-equilibration time is more conservative because it will completely saturate the representative charcoal sample until it is in the condition to which the subject charcoal adsorbers are expected to be exposed during design-basis conditions. Therefore, testing in accordance with ASTM D3803–1989 will result in a more realistic prediction of the capability of the charcoal.

TS Testing Reference

Laboratory tests of the charcoal are typically required (1) once every refueling outage, (2) when certain events occur that could adversely affect the ability of the charcoal to perform its intended function, and (3) following a defined period of ESF system operation. The TS require demonstration by laboratory testing that the charcoal is capable of performing at a level greater than that assumed in the NRC staff's safety evaluation report. If it fails to perform at that level, the charcoal must be replaced.

The determination of the appropriate test conditions, test protocol, and acceptance criteria for laboratory testing of nuclear-grade activated charcoal is frequently not a straightforward process. It sometimes requires a complex journey through a number of documents to ascertain the appropriate test conditions, test protocol, and acceptance criteria. As described earlier, if the plant has STS, the STS reference Regulatory Position C.6.a of RG 1.52 for the requirements for the laboratory testing of charcoal. Regulatory Position C.6.a refers to Table 2 of the regulatory guide. Table 2 references Test 5.b of Table 5–1 of ANSI N509–1976. Test 5.b from Table 5–1 references the test method from paragraph 4.5.3 of RDT M 16–1T (date not indicated), but specifies that the test is to be conducted at 80°C [176°F] and 95-percent RH with pre-loading and postloading sweep at 25°C [77°F]. This test is referred to as the ''25–80–25 test.''

Also contributing to the potential confusion are the various ways in which TS are written, and conflicting NRC guidance on testing, particularly NRC letters to the nuclear industry and NRC papers presented at national conferences. This problem arose from the evolving understanding of what constituted an appropriate test. At various times, the NRC has stated that the newest version of a standard can be used and the test can be conducted at a temperature of 30 °C [86 °F]. At other times, the NRC indicated that the TS are requirements and that the tests must be performed at the 25–80–25 conditions. In various forums, the NRC has also stated that a technical argument may be made for using the newer standard. However, in some instances when newer standards were utilized to demonstrate conformance with the TS, the NRC required licensees to submit TS amendment requests because the newer standards were not referenced in the TS. Therefore, it is understandable that licensees may be confused about laboratory testing protocols, testing conditions, and acceptance criteria. As a result, many licensees are not testing charcoal in accordance with their TS, although the tests they conduct may be more conservative than the tests required by the TS.

Additionally, the 25–80–25 test has difficulties in that none of the protocols in any version of RDT M 16–1T or ASTM D3803 addresses performing the laboratory test at multiple temperatures as required by ANSI N509–1976. If the test protocol described in paragraph 4.5.3 of RDT M 16–1T (1973) is followed verbatim, a thermal step change must be made after the 5-hour pre-equilibration period to increase the temperature from 25 °C [77 °F] to 80 °C [176 °F] for the challenge period. The problem with such thermal step changes is that they result in condensation forming on the charcoal. The condensation of free water in the sample bed is cause for aborting the test, according to the 1977 version of RDT M 16–1T and subsequent versions of ASTM D3803. Therefore, the 25–80–25 test cannot be performed pursuant to any existing test protocol.

Because paragraph 4.5.3 cannot be followed verbatim, a few licensees have changed the 25–80–25 test to thermally equilibrate the charcoal before introducing the challenge gas. Following the pre-sweep conditioning at 25 °C [77 °F], the bed temperature is raised to 80 °C [176 °F] before introducing the challenge gas. Although such testing does not cause condensation in the test rig, it is not acceptable because the results are not easily reproducible, and even when the test is successfully completed, the results may not be conservative.

Section 2 of ANSI N509–1976 states for the various documents that supplement ANSI N509 that the issuance of a document in effect at the time of the purchase order shall apply unless otherwise specified. In the case of charcoal, the purchase order date could be considered the date that the charcoal is procured. Therefore, TS that have the STS wording may allow the licensee the flexibility to use a more recent laboratory protocol than the 1973 version of RDT M 16–1T, depending on the procurement date for the charcoal, without a TS change. However, although the flexibility of protocol selection exists, the requirement to perform a 25–80–25 test for those plants that have TS that reference either Revision 1 or Revision 2 of RG 1.52, Table 5–1 of ANSI N509–1976, or ANSI N510–1975 can only be relieved by license amendment.

Categorization of Plants

Since February 1996, the staff has issued three emergency TS changes to licensees that had determined that the tests they performed were not in compliance with their TS, because the required testing standards and test protocols did not support a test in which the temperature is changed as required by the TS. If the temperature in the test apparatus is changed from 25 °C [77 °F] to 80 °C [176 °F] during the test without modifying the test protocol, water condenses on the charcoal, thereby causing the test to be aborted (to fail). The emergency TS changes were issued for the V.C. Summer, Davis-Besse, and Oconee facilities. The details of these TS changes are discussed below.

On February 10, 1996, the licensee for the V.C. Summer Nuclear Station, South Carolina Electric & Gas Company (SCE&G), requested an emergency TS change. The systems involved were the control room emergency ventilation system and the fuel handling building exhaust system. On February 10, 1996, the NRC granted the emergency TS change. The emergency TS change was requested because SCE&G had determined that laboratory tests of the charcoal of the control room ventilation system and the fuel-handling building system had not been performed in compliance with the V.C. Summer TS. The laboratory test performed for V.C. Summer was a 25–25–25 test in lieu of the 25–80–25 required by its TS. The licensee had been performing the 25–25–25 test because, in consultation with its testing laboratory, it concluded that performance of the 25–80–25 test would result in condensation on the charcoal and, thus, an invalid test.

On March 29, 1996, the Toledo Edison Company requested an emergency TS change for the Davis-Besse plant. The systems involved were the hydrogen purge, the shield building emergency ventilation, and the control room. The TS for Davis-Besse required the laboratory test to be performed in accordance with RG 1.52, Revision 2. In this case, the licensee was performing a 30–30–30 test using the testing protocol of ASTM D3803–1979 in lieu of the 25–80–25 test. On March 29, 1996, the NRC granted the emergency TS change to allow the 30–30–30 test.

On April 2, 1996, Duke Power Company requested an emergency TS change for the Oconee Nuclear Station. The systems involved were the reactor building purge, the spent fuel pool ventilation, and the penetration room ventilation. The TS for Oconee required the laboratory test of charcoal to be performed in accordance with ANSI N510–1975, which requires the performance of the 25–80–25 test. However, the licensee was actually performing a 30–30–30 test using the test protocol of ASTM D3803–1989. The NRC granted an emergency TS change on April 2, 1996, to permit the 30–30–30 test.

In each of these cases, the test performed to demonstrate compliance with TS provided results that the staff considered closer to reflecting the capability of the charcoal than the test required by the TS. In addition, the licensees believed that using the newer standard would satisfy their TS requirement. Their bases for this belief were the limitations of the test referenced in RG 1.52, their interpretation of ANSI N509 as allowing the use of later versions of the test protocol, and some of the guidance provided by the NRC. In the case of Oconee, the test actually performed is the test that the staff believes is the appropriate one, ASTM D3803–1989. However, because these tests had not been conducted in compliance with the plant's TS, each licensee would have had to shut down its plant or remain in a cold-shutdown mode until the test required by the TS could be successfully performed, or until the TS were amended.

On March 21, 1996, Carolina Power & Light Company flew a charcoal sample from the Brunswick standby gas treatment system (SGTS) to its testing laboratory in Ohio for the performance of the 25–80–25 test to comply with the Brunswick TS before restart of an idle unit. The Brunswick TS required that the laboratory tests be performed in accordance with Revision 1 of RG 1.52. Previously, the licensee directed its testing laboratory to perform an 80–80–80 test. To perform the 25–80–25 test, the laboratory equilibrated the charcoal to 80 °C [176 °F] before introducing the challenge gas. The licensee has not requested a TS change for Brunswick to correct the problem and is awaiting guidance from the NRC.

As a result of the emergency TS changes, the staff has performed an internal survey of operating plant TS to determine whether other plants have the potential for similar problems with compliance. The survey indicated that at least one-third of operating reactor licensees may not be in compliance with their TS because they reference the flawed 25–80–25 testing protocol and may have used later versions of the standards for the laboratory tests of their nuclear-grade charcoal. On the basis of this survey, the staff established the following four categories of plants:

(1) Plants in compliance with their TS that test in accordance with ASTM D3803–1989.

(2) Plants in compliance with their TS that test in accordance with a test protocol other than ASTM D3803–1989.

(3) Plants not in compliance with their TS that test in accordance with ASTM D3803–1989.

(4) Plants not in compliance with their TS that test in accordance with a test protocol other than ASTM D3803–1989.

The licensees in Category 1 have TS that require charcoal to be tested in accordance with ASTM D3803–1989, which adequately demonstrates the capability of the charcoal. The licensees in Category 2 have TS that require charcoal to be tested in accordance with test standards other than ASTM D3803–1989. The licensees that received emergency TS changes were in Categories 3 and 4. Licensees in Categories 3 and 4 have TS that require charcoal to be tested in accordance with the 25–80–25 test.

Enclosure 2

Sample Technical Specifications

For Plants With Improved Standard Technical Specifications

C. Demonstrate for each of the ESF systems that a laboratory test of a sample of the charcoal adsorber, when obtained as described in [Regulatory Guide 1.52, Revision 2], shows the methyl iodide penetration less than the value specified below when tested in accordance with ASTM D3803–1989 at a temperature of ≤ 30°C [86°F] and greater than or equal to the relative humidity specified below.

ESF Ventilation System	Penetration	RH

Note: The use of any standard other than ASTM D3803–1989 to test the charcoal sample may result in an overestimation of the capability of the charcoal to adsorb radioiodine. As a result, the ability of the charcoal filters to perform in a manner consistent with the licensing basis for the facility is indeterminate.

ASTM D3803–1989 is a more stringent testing standard because it does not differentiate between used and new charcoal, it has a longer equilibration period performed at a temperature of 30°C [86°F] and a relative humidity (RH) of 95% (or 70% RH with humidity control), and it has more stringent tolerances that improve repeatability of the test

$$\text{Allowable Penetration} = \frac{[100\% - \text{Methyl Iodide Efficiency For Charcoal Credited in SER}]}{\text{Safety Factor}}$$

When ASTM D3803–1989 is used with 30°C [86°F] and 95% RH (or 70% RH with humidity control) is used, the staff will accept the following:

Safety factor ≥ 2 for systems with or without humidity control.]

For Plants With Older Technical Specifications

Each engineered safety feature (ESF) ventilation system shall be demonstrated OPERABLE:

a. At least once per 18 months or (1) after any structural maintenance on the HEPA filter or charcoal adsorber housings, or (2) following painting, fire, or chemical release in any ventilation zone communicating with the system by:

(1) Verifying, within 31 days after removal, that a laboratory test of a sample of the charcoal adsorber, when obtained in accordance with Regulatory Position C.6.b of Regulatory Guide 1.52, Revision 2, March 1978, shows the methyl iodide penetration less than [see note in preceding section titled ''For Plants With Improved Standard Technical Specifications'']% when tested in accordance with ASTM D3803–1989 at a temperature of ≤ 30°C [86°F] and greater than or equal to a relative humidity of [see note in preceding section titled ''For Plants With Improved Standard Technical Specifications'']%.

b. After every 720 hours of charcoal adsorber operation, by verifying, within 31 days after removal, that a laboratory test of a sample of the charcoal adsorber, when obtained in accordance with Regulatory Position C.6.b of Regulatory Guide 1.52, Revision 2, March 1978, shows the methyl iodide penetration less than [see note in preceding section titled ''For Plants With Improved Standard Technical Specifications'']% when tested in accordance with ASTM D3803–1989 at a temperature of ≤ 30°C [86°F] and greater than or equal to a relative humidity of [see note in preceding section titled ''For Plants With Improved Standard Technical Specifications'']%.

Dated at Rockville, Maryland, this 19th day of February 1998.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–4761 Filed 2–24–98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 2, 1998, through February 12, 1998. The last biweekly notice was published on February 11, 1998 (63 FR 6968).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received

within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 27, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: October 4, 1996, as supplemented by letters dated June 6, September 19, November 7, and December 16, 1997.

Description of amendment request: The proposed amendment for each unit identified above would change the distance criterion in Action b to Limiting Condition for Operation (LCO) 3/4.1.3, ''Movable Control Assemblies,'' by which more than one full-length or part-length control element assembly (CEA) is misaligned from any other CEA in its group. Action b states, in part, that if the misalignment is greater than the specified distance criterion, the reactor core is to be placed in at least hot standby within 6 hours. The proposed amendment would reduce the distance criterion from 19 inches to 9.9 inches, and replace hot standby in 6 hours by ''open the reactor trip breakers.''

This proposed amendment is included as a ''more restrictive'' change in the conversion of the current Technical Specifications (CTS) to the Improved Technical Specifications, which was noticed in the **Federal Register** (62 FR 18153) on April 14, 1997. The proposed amendment would be included in Action F to LCO 3.1.5, ''Movable Control Assemblies,'' of the Improved Technical Specifications. This proposed amendment is a change to the current Technical Specifications and is in addition to the six proposed changes to the CTS or proposed deviations to the Improved Standard Technical Specifications (NUREG–1432) which were identified in the notice of April 14, 1997.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes provide more stringent requirements than previously existed in the CTS. The more stringent requirements will not result in operation that will increase the probability of initiating an analyzed event. If anything, the new requirements may decrease the probability or consequences of an analyzed event by incorporating the more restrictive changes discussed in the specific Discussion of Changes [for specification 3.1.5]. These changes will not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements will not alter the operation and will continue to ensure process variables, structures, systems, or components are maintained consistent with safety analyses and licensing basis [for the plant]. These changes have been reviewed to ensure that no previously evaluated accident has been adversely affected. Therefore, these changes will not involve a significant increase in the probability or consequences of an accident evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Making existing requirements more restrictive and adding more restrictive requirements to the CTS will not alter the plant configuration (no new or different type of equipment will be installed) or change the methods governing normal plant operation. These changes do impose different requirements. However, they are consistent with the assumptions made in the safety analyses, licensing basis, and NUREG–1432 [for the plant]. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes provide more stringent requirements than previously existed in the CTS. An evaluation of these changes concluded that adding these more restrictive requirements either increases or has no impact on the margin of safety. The changes provide additional restrictions which may enhance plant safety. These changes maintain requirements of the safety analysis, licensing basis, and NUREG–1432 [for the plant]. As such, no question of safety is involved. Therefore, these changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999.

NRC Project Director: William H. Bateman.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: September 19, 1997.

Description of amendment request: The proposed amendment would relocate the Radioactive Effluent Technical Specifications (RETS) and the Radiological Environmental Monitoring Program to the Offsite Dose Calculation Manual (ODCM), in accordance with the recommendations of Generic Letter 89–01 and NUREG–1433. In addition, changes to other sections of the TSs are being proposed to align the current TSs with NUREG–1433.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Operation of PNPS in accordance with the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated because of the following:

Definitions

Definitions perform a supporting function for other sections of the TS. The proposed change to incorporate the definition for the Offsite Dose Calculations Manual (ODCM) into Section 5.0, ''Programs and Manuals'', subsection 5.5.1 of the proposed TS will carry forward the requirements contained in the DEFINITION, with minor editorial rewording to be consistent with NUREG 1433, and result in no technical changes. Since the requirements will remain, the impact on initiators of analyzed events or the assumptions assumed in the mitigation of accidents or transient events will not change. Editorial rewording (either adding or deleting) and reformatting is proposed to provide clarity and does not change any technical requirements.

The definitions being proposed for relocation do not impact reactor operation, identify a parameter which is an initial condition assumption for a DBA or transient, identify a significant abnormal degradation of the reactor coolant pressure boundary, and do not

provide any mitigation of a design basis event.

RAD Effluents

All editorial rewording (either adding or deleting) and renumbering is made to restructure the section accounting for the requirements relocated in accordance with Generic Letter 89–01. During the editorial rewording and renumbering of the Improved Technical Specifications, no technical changes (either actual or interpretational) to the TS were made unless they were identified and justified.

Adding a note to clearly indicate that the first sample for noble gas activity is not required for 31 days after SJAE is placed in operation has always been considered the intent of this surveillance requirement. This allowance is consistent with the frequency for the required surveillance and allows time for concentrations of longer lived isotopes to reach equilibrium. In addition, other instrumentation continuously monitors the offgas to alert operators of significant increases in radioactivity.

The proposed change provides more stringent requirements than previously existed in the Technical Specifications. The more stringent requirements will not result in operation that will increase the probability of initiating an analyzed event. If anything, the new requirements may decrease the probability or consequences of an analyzed event by incorporating the more restrictive changes discussed above. The change will not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, or components as described in the safety analyses.

These proposed changes relocate requirements from the Technical Specifications to the T. S. BASES, FSAR, or ODCM. The licensee controlled document containing the relocated requirements will be maintained using the provisions of 10 CFR 50.59 or a change control process in the Administrative Controls Section of the Technical Specifications. Since any changes to these licensee controlled documents will be evaluated per an NRC approved change control process, no increase in the probability or consequences of an accident previously evaluated will be allowed.

Basing the potential fission product release rate on gross gamma activity rate is more representative of the whole body dose that would be received by an individual at the site boundary should a release occur. Therefore, reasonable assurance that the potential whole body accident dose to an individual at the exclusion area boundary will not exceed a small fraction of the limits specified in 10 CFR Part 100 is maintained.

Allowing the sample to be taken from either pretreatment monitor station will have no effect on the objective of assuring that the potential whole body accident dose to an individual at the exclusion area boundary will not exceed a small fraction of the limits specified in 10 CFR Part 100, because both monitor stations are prior to treatment, adsorption, or delay of the noble gases.

RAD Material Source

The requirements for miscellaneous radioactive materials do not impact reactor operation, identify a parameter which is an initial condition assumption for a DBA or transient, identify a significant abnormal degradation of the reactor coolant pressure boundary, and do not provide any mitigation of a design basis event.

Major Design Features

The reformatting, renumbering, and rewording along with the other changes listed involve no technical changes to existing Technical Specifications. The proposed changes are administrative in nature and do not impact initiators or assumptions of analyzed accidents or transient events.

The proposed change provides more stringent requirements than previously existed in the Technical Specifications. The more stringent requirements will not result in operation that will increase the probability of initiating an analyzed event. If anything, the new requirements may decrease the probability or consequences of an analyzed event by incorporating the more restrictive changes discussed above. The change will not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, or components as described in the safety analyses.

These proposed changes relocate requirements from the Technical Specifications to the FSAR. Since any changes to the FSAR must be evaluated per 10 CFR 50.59, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed.

Administrative Controls

The reformatting, renumbering, and rewording along with the other changes listed involves no technical changes to existing Technical Specifications. The change to the existing Technical Specifications was done in order to be consistent with the NUREG–1433. During development of NUREG–1433, certain wording preferences or English language conventions were adopted. The proposed change to this section is administrative in nature and does not impact initiators of analyzed events. It also does not impact the assumed mitigation of accidents or transient events.

The proposed change provides more stringent requirements than previously existed in the Technical Specifications. These more stringent requirements are administrative in nature (*e.g.*, specifying additional responsibilities for plant personnel, ensuring overtime control, incorporating program and manual requirements already in place, and adding details to reports). These additional requirements will not alter the plant configuration (no new or different type of equipment will be installed) or changes in methods governing normal plant operation, not alter assumptions relative to the mitigation of an accident or transient event, or alter the operation of process variables, structures, systems, or components as described in the safety analyses.

This proposed change relocates requirements from the Technical Specifications to licensee controlled documents. The licensee controlled documents containing the relocated requirements are required to meet the applicable regulation and any change process invoked by the regulation. Since any changes to the licensee controlled document must continue to meet the regulation, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed.

This change proposes to provide flexibility in meeting the minimum shift staffing for up to two hours in order to provide for unexpected absence. The proposed change does not affect the probability of an accident. The actions of an individual are not assumed to be an initiator of any analyzed event. Also, the change does not negate the requirement to have licensed individuals in the control room. This proposed change does not impact the assumptions of any design basis accident. This change will not alter assumptions relative to the mitigation of an accident or transient event.

This change proposes to relax the requirement to have an individual qualified in radiation protection procedures to be onsite when fuel is in the reactor. The proposed change will allow the position to be vacant for up

to two hours in order to provide for unexpected absence.

The proposed change does not affect the probability of an accident. The actions of an individual qualified in radiation protection procedures are not assumed to be an initiator of any analyzed event. Also, the consequences of an accident are not affected by the presence of an individual qualified in radiation protection. This proposed change does not impact the assumptions of any design basis accident. This change will not alter assumptions relative to the mitigation of an accident or transient event. This change will not have any impact on the plant safety because the presence of a person qualified in radiation protection is not required for the mitigation of any accident.

This change proposes to relax the requirement for submitting the Radioactive Effluent Release Report and to relocate the report details outside the TS. The current TS require the report to be submitted semi-annually. This proposed change will allow the report to be submitted annually as required by 10 CFR 50.36a. The proposed change does not affect the probability of an accident. Neither the submittal requirements nor the contents of the Radioactive Effluent Release Report is assumed to be an initiator of any analyzed event. Also, the consequences of an accident are not affected by submittal requirements nor the contents of the Radioactive Effluent Release Report. This proposed change does not impact the assumptions of any design basis accident. This change will not alter assumptions relative to the mitigation of an accident or transient event. This change has no impact on the safe operation of the plant. The report will still be required to be submitted and does not affect any plant equipment or requirements for maintaining plant equipment. The submittal of this report is not required for the mitigation of any accident.

The proposed alternatives for control of access to high radiation areas are consistent with the intent of 10 CFR 20.1601(a) and (b). The proposed changes do not affect the probability of an accident. The controls used for access to high radiation areas are not assumed in the initiation of any analyzed event. Also, the consequences of an accident are not affected by these changes. These changes are both consistent with good radiological safety practice and will provide an adequate level of radiation protection. These proposed changes do not impact the assumptions of any design basis accident. These changes will not alter assumptions relative to the mitigation of an accident or transient event. These changes have no impact on safe operation of the plant.

Radiological Environmental Monitoring

The proposed changes only alter the format and location of procedural details and administrative controls of the radioactive effluents, radiological environmental monitoring, and solid radioactive waste programs. The changes are administrative in nature and do not involve any change to the configuration or operation of plant equipment. The Radiological Effluent Technical Specifications (RETS) procedural details are being moved to the Offsite Dose Calculation manual (ODCM). In addition, new administrative controls have been added to the Technical Specifications which will provide an equivalent level of assurance that activities involving radioactive effluents, solid radioactive waste, and radiological environmental monitoring are conducted in full compliance with regulatory requirements. Since any changes to these requirements will require NRC approval, no increase in the probability or consequences of an accident previously evaluated will be allowed.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Operation of PNPS in accordance with the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated because of the following:

Definitions

These proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not impose any new or different requirements or eliminate any existing requirements.

Relocating these definitions will not alter the plant configuration (no new or different type of equipment will be installed) or change methods governing normal plant operation. Relocating requirements will not impose different requirements and adequate control of information will be maintained. Relocating these definitions will not alter assumptions made in the safety analysis and licensing basis.

RAD Effluents

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not impose any new or different requirements or eliminate any existing requirements.

Making existing requirements more restrictive and adding more restrictive requirements to the Technical Specifications will not alter the plant configuration (no new or different type of equipment will be installed) or change methods governing normal plant operation. These changes are consistent with current design bases, licensing bases or assumptions made in the safety analysis.

These changes do not alter the plant configuration (no new or different type of equipment will be installed) or methods governing normal plant operation. These changes will not impose different requirements and adequate control of information will be maintained. These changes do not alter assumptions made in the safety analysis and licensing basis.

The proposed change will not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. Operation of the plant will not be altered by this change. This change will not place the plant in any new condition or introduce any mode of operation not previously analyzed.

The proposed change will not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. Operation of the plant will not be altered by this change. This change will not place the plant in any new condition or introduce any mode of operation not previously analyzed.

RAD Material Source

Relocating these requirements will not alter the plant configuration (no new or different type of equipment will be installed) or change methods governing normal plant operation. Relocating requirements will not impose different requirements and adequate control of information will be maintained. Relocating requirements does not alter assumptions made in the safety analysis and licensing basis.

Major Design Features

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not impose any new or different requirements or eliminate any existing requirements.

Making existing requirements more restrictive and adding more restrictive requirements to the Technical Specifications will not alter the plant configuration (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The change does impose different requirements. However, the change is consistent with assumptions made in the safety analyses.

These changes relocate requirements to the FSAR. These changes do not alter the plant configuration (no new or different type of equipment will be installed) or the methods governing normal plant operation. These changes do not impose different requirements and adequate control of information will be maintained. This change will not alter assumptions made in the safety analysis and licensing basis.

Administrative Controls

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not impose any new or different requirements or eliminate any existing requirements.

Making existing requirements more restrictive and adding new requirements to the Technical Specifications will not alter the plant configuration (no new or different type of equipment will be installed) or changes in the methods governing normal plant operation.

This change relocates requirements to a licensee controlled document. This change will not alter the plant configuration (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. This change will not impose different requirements and adequate control of information will be maintained. This change will not alter assumptions made in the safety analysis and licensing basis.

This change proposes to provide flexibility in meeting the minimum shift staffing for up to two hours in order to provide for an unexpected absence. The proposed change will not create the possibility of an accident. This change will not physically alter the plant (no new or different type of equipment will be installed).

This change proposes to relax the requirement to have an individual qualified in radiation protection procedures to be onsite when fuel is in the reactor. The proposed change will allow the position to be vacant for up to two hours in order to provide for unexpected absence. The proposed change will not create the possibility of an accident. This change will not physically alter the plant (no new or different type of equipment will be installed) or the methods of operation.

This change will not physically alter the plant (no new or different type of equipment will be installed). The changes in methods governing normal plant operation are consistent with the current safety analysis assumptions.

The proposed change will not create the possibility of an accident. This change will not physically alter the plant (no new or different type of equipment will be installed). The changes in methods governing normal plant operation are consistent with the current safety analysis assumptions.

Radiological Environmental Monitoring

The procedural requirements of the RETS will be maintained in the ODCM. Operation of the plant will not be altered by the changes proposed to the administration of the RETS. This change will not place the plant in any new condition or introduce any mode of operation not previously analyzed.

3. Does this change involve a significant reduction in a margin of safety?

Operation of PNPS in accordance with the proposed change will not involve a significant reduction in a margin of safety because of the following:

Definitions

Definitions perform a supporting function for other sections of the TS and the proposed editing, omission or relocation of definitions associated with this change will not, by itself, reduce existing restrictions on plant operations.

The definitions to be transposed from the Technical Specifications to the ODCM are the same as the existing Technical Specifications. Future changes to the ODCM will be controlled in accordance with proposed technical specification 5.5.1 ''Offsite Dose Calculation Manual (ODCM)''.

RAD Effluents

The change is administrative in nature and does not involve any technical changes. The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumptions. Also, because the change is administrative in nature, no question of safety is involved.

Adding these new requirements and making existing ones more restrictive does not affect any safety analysis assumptions. As such, no question of safety is involved.

The requirements to be relocated from the Technical Specifications to the FSAR T.S. BASES, or ODCM are the same as the existing Technical Specifications and any future changes to this licensee controlled document will be evaluated per an NRC approved change control process.

Specifying a release rate based only on gamma activity is more representative of the whole body dose that would be received by an individual at the site boundary should a release occur. The actual margin of safety could be increased because potential errors in converting beta activity to whole body exposures are eliminated

The sample used to determine the gaseous activity rate will continue to be taken prior to treatment, adsorption, or delay of the noble gases.

RAD Material Source

This change relocates requirements from the Technical Specifications to a licensee controlled document. This change will not reduce a margin of safety since it has no impact on any safety analysis assumptions. In addition, the requirements to be transposed from the Technical Specifications to the licensee controlled documents are the same as the existing Technical Specifications. Since any future changes to these licensee controlled documents must be evaluated per the cited regulations or requirements of 10 CFR 50.59, no reduction (significant or insignificant) in a margin of safety will be allowed.

Major Design Features

The changes are administrative in nature and do not involve any technical changes. The proposed changes do not impact initiators or assumptions of analyzed accidents or transient events.

These new or more restrictive requirements are consistent with the current design and licensing bases; therefore, a margin of safety is not affected.

These changes relocate requirements from the Technical Specifications to the FSAR. The requirements to be are the same as the existing Technical Specifications. Since any future changes to the FSAR must be evaluated per the requirements of 10 CFR 50.59, no reduction (significant or insignificant) in a margin of safety will be allowed.

Administrative Controls

The change is administrative in nature and will not involve any technical changes. The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumptions.

Adding these new requirements and making existing ones more restrictive does not introduce any new tests or changes in methods governing normal plant operation. Therefore, the changes do not impact any safety analysis assumptions.

This change relocates requirements from the Technical Specifications to a licensee controlled document. The licensee controlled documents containing the relocated requirements are required to meet the applicable regulation and any change process invoked by the regulation. Since any changes to a licensee controlled document must continue to meet the regulation, no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed.

This change proposes to provide flexibility in meeting the minimum shift staffing for up to two hours in order to provide for unexpected absence. This proposed change has no effect on the assumptions of a design basis accident. The safety analysis assumptions will still be maintained; thus, no question of safety exists.

This change proposes to relax the requirement to have an individual qualified in radiation protection procedures to be onsite when fuel is in the reactor. The proposed change will allow the position to be vacant for up to two hours in order to provide for unexpected absence. The margin of safety is not affected by the presence or absence on site of an individual qualified in radiation protection procedures. This proposed change has no effect on the assumptions of the design basis accident. This change will not have any impact on the plant safety because the presence of a person qualified in radiation protection is not required for the mitigation of any accident. The safety analysis assumptions will still be maintained; thus, no question of safety exists.

This proposed change has no effect on the assumptions of the design basis accident. This change has no impact on the safe operation of the plant. The report will still be required to be submitted and does not affect any plant equipment or requirements for maintaining plant equipment. The safety analysis assumptions will still be maintained; thus, no question of safety exists.

The proposed alternatives for control of access to high radiation areas are consistent with the intent of 10 CFR 20.1601(a) and (b). The margin of safety is not reduced due to these proposed changes. These changes are both consistent with good radiological safety practices and have been found to provide an adequate level of radiation protection. In addition, these changes provide the benefit of ensuring radiation dose to all workers is minimized by providing the flexibility to select the best means of providing a barrier and access control to a high radiation area given the plant location and radiological conditions. These proposed changes have no impact on the safe operation of the plant. The safety analysis assumptions will still be maintained; thus, no question of safety exists.

Radiological Environmental Monitoring

The proposed changes relocate the procedural details and Bases for RETS from the Technical Specifications to the ODCM. The RETS procedural details and Bases will be maintained by these programs. In addition, new administrative controls have been added to the Technical Specifications which assure the proper control and maintenance of these documents and provide an equivalent level of assurance that activities involving radioactive effluents, solid radioactive waste, and radiological environmental monitoring are conducted in full compliance with regulatory requirements.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 0236.

Attorney for licensee: W.S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Cecil O. Thomas.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: November 7, 1997.

Description of amendment request: The proposed amendment would revise the technical specifications and associated bases to allow the licensee to perform 10 CFR Part 50, Appendix J, Type A testing on Byron, Unit 2, and Braidwood, Unit 2, containments at least once per 10 years based on a single successful Type A test, rather than two successful Type A tests.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Performance of Type A tests at a different interval does not involve a change to any structures, systems, or components, does not affect reactor operations, is not an accident initiator, and does not change any existing safety analysis previously evaluated in the UFSAR [Updated Final Safety Analysis Report]. Therefore, there is no significant increase in the probability of an accident previously evaluated.

Several tables of UFSAR Chapter 15, ''Accident Analyses,'' provide containment leak rate values used in assessing the consequences of accidents discussed in this chapter. Although decreasing the test frequency can increase the probability that an increase in containment leakage could go undetected for an extended period of time, the risk resulting from this proposed change is inconsequential as documented in NUREG–1493, ''Performance-Based Containment Leakage Test Program''. This document indicated that given the insensitivity of reactor risk to containment leakage rate and a small fraction of leakage paths are detected solely by Type A testing, increasing the interval between integrated leak rate tests is possible with minimal impact on public risk. Further, industry experience presented in this document indicated that Type A testing has had insignificant impact on uncertainties involved with containment leak rates.

Based on risk information presented in NUREG–1493, the proposed change does not increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant design, systems, components, or reactor operations, only the frequency of test performance. New conditions or parameters that contribute to the initiation of accidents would not be created as a result of this proposed change. The change does not involve new equipment and existing equipment does not have to be operated in a

different manner, therefore there are no new failure modes to consider.

Changing test intervals as shown in NUREG–1493 has no impact on, nor contributes to the possibility of a new or different kind of accident as evaluated in the UFSAR. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

With the exception of the test frequency, the actual tests will not change. Quantitative risk studies documented in NUREG–1493 regarding extended testing intervals demonstrated that there was minimal impact on the public health and safety. Reducing the frequency, as stated in the NUREG resulted in an ''imperceptible'' increase in risk to public safety. Further, a table in this NUREG regarding risk impacts due to a reduction in testing frequency suggested that there was also minimal difference in risk to the public safety when the test frequency was relaxed.

The proposed change will not reduce the availability of systems and components associated with containment integrity that would be required to mitigate accident conditions nor are any containment leakage rates, parameters or accident assumptions affected by the proposed change.

The proposed change does not involve a significant reduction in a margin of safety, based on the above information.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: December 30, 1997.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) 3.7.1.3, ''Condensate Storage Tank,'' (CST) and its associated Bases for Byron and Braidwood to raise the minimum allowable CST level to ensure that a sufficient volume of water is available to meet the design basis requirements for the auxiliary feedwater (AFW) system supply. The proposed amendment would also revise the AFW system transfer to essential service water (SX) trip setpoint and allowable value in Table 3.3–4 to ensure that the design basis requirements for the AFW system are accurately reflected in the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The amount of water in the CST [Condensate Storage Tank] at the beginning of an accident and the setpoint for AF [auxiliary feedwater] pump suction pressure-low trip have no impact on the probability of occurrence of any accident analyzed in the UFSAR [Updated Final Safety Analysis Report]. This is due to the availability of the safety-related SX [essential service water] water supply as a backup system. Therefore, the probability of an accident previously evaluated is unchanged.

The loss of the Safety Category II CST under accident conditions has already been evaluated in the UFSAR. The SX system is the emergency source of water supply to the AF system under accident conditions. The design basis analysis for the essential service water (SX) system and the Limiting Condition for Operation requirements for the ultimate heat sink ensure that a sufficient supply of water is available to plant operators to mitigate the consequences of all analyzed accidents. None of the proposed changes to the CST minimum level or the setpoints documented in TS Table 3.3–4, functional unit 6.g. has any negative impact on the assumptions or results of these analyzed accidents. To the contrary, the proposed changes will ensure that the CST remains available as the primary supply of water to the AF system and that automatic suction transfer will occur for circumstances where the Safety Category II CST becomes unavailable (*e.g.*, seismic event or tornado).

The level in the CST and the associated instrumentation and setpoints help ensure that sufficient water is available to plant operators to mitigate the consequences of accidents that are analyzed in the UFSAR. The SX system is the emergency source of water credited in the UFSAR. However, the proposed Technical Specification Bases require that sufficient water be maintained in the CST to respond to postulated events where the CST remains available (*e.g.*, non-seismic related events and events with no tornado assumed). The proposed CST levels ensure that this requirement is met. The water level requirement for the CST provides additional assurance that plant operators remain capable of responding to postulated events as described in the UFSAR. Therefore, the proposed changes do not increase the consequences of an accident previously evaluated.

Therefore this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are being implemented to account for instrument accuracy and AF system suction requirements that affect the volume of useable water in the CST. The amendment request incorporates the full design requirements of the AF System and components to ensure that sufficient water is maintained in the CST. The changes reduce the probability of an undesirable introduction of lower quality essential service (SX) system water into the steam generators unless required due to the unavailability of the CST during emergency conditions (*e.g.*, seismic event or tornado). Although the SX system is the safety-related water supply to AF, the water contains high levels of impurities and sediment that could eventually degrade the steam generators. The CST contains demineralized water. Therefore, the long term reliability and availability of the steam generators is enhanced by precluding introduction of SX water into the steam generators unless required under emergency conditions. The proposed CST levels account for the incremental increase in CST water

volume required due to the larger metal mass and primary volume of the replacement steam generators for Byron Unit 1 and Braidwood Unit 1. Finally, the trip setpoint and allowable values in Table 3.3–4 of the TS are being updated to reflect the current design basis of the AF system. The required CST level changes when plant modifications are completed. Each configuration has been evaluated and the associated CST level maintains a sufficient water volume to perform its design function.

The modification to the suction pressure circuitry involves the addition of an electronic ''lead-lag'' circuit card for the motor-driven AF pump, which experiences the most severe startup suction pressure transients. This circuit card will be set up for ''lag'' only operation and will filter the suction pressure signal during transients associated with pump startup or other sudden changes in flow or pressure. This will prevent an inadvertent trip during transient conditions when the CST is available. In situations where the CST is unavailable, the suction pressure will decrease with no recovery until switchover. Under this condition, the output of the lead-lag card will continue to decrease as well until the switchover setpoint is reached. The time constant of the lead-lag card was selected such that the resulting time delays in actuating SX switchover and pump trip are consistent with pump protection requirements.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. This conclusion is also valid when considering the planned modifications to the AF suction pressure transient circuitry.

3. The change does not involve a significant reduction in a margin of safety.

The proposed change is made in the conservative direction with respect to the current TS requirements for minimum CST level and AF pump CST to SX switchover setpoints. Increasing the volume of water contained in the CST level provides redundancy to the safety-related source of water to the AF supply, which is the SX system. In combination, the CST and the SX system ensure that sufficient water is available to feed the steam generators under all anticipated normal and emergency conditions to cool a unit from full power conditions down to 350 degrees Fahrenheit, when the residual heat removal system can be placed into service. The proposed changes ensure the CST will have sufficient water to meet all normal operating conditions and mitigate the consequences of all analyzed accidents except those that result in CST unavailability. In addition, automatic switchover of the AF water supply from the CSTs to SX will occur as assumed in the current safety analyses for events where the CST becomes unavailable. The SX system remains capable of supplying the emergency source of water to the AF supply.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: January 28, 1998 (NRC–98–0002).

Description of amendment request: The proposed amendment would revise technical specification (TS) surveillance requirements 4.8.2.1.a.2, 4.8.2.1.b, and 4.8.2.1.c.4 to accommodate differences in the monitored parameters between the existing batteries and the batteries that will be installed for Division II during the sixth refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a change in the manner in which the plant is operated. TS Section 4.8.2.1 is being revised to reflect the new Division II battery cell/system characteristics and associated requirements. The new battery will have an increased capacity over the present battery, while maintaining the existing battery system voltage requirements. This is possible because the present and new battery specific gravity (1.215) and type (lead calcium) are the same. Also, the end of battery system discharge voltage remains the same as 210 VDC. The Division II batteries will continue to furnish power to redundant essential loads as required and as designed. The new surveillance requirement voltages are based on the same volts/cell criteria used for the existing batteries. Furthermore, failure or malfunction of the station batteries does not initiate any of the analyzed accidents previously evaluated in the UFSAR [updated final safety analysis report]. The changes described will therefore not involve an increase in the probability or consequences of an accident previously evaluated.

2. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The new battery is Class 1E qualified equipment and is being maintained within the same overall design parameters as the existing battery. That is, the battery terminal voltage on float voltage conditions (2.167 volt[s]/cell), overvoltage conditions (2.5 volts/cell) and charger capability (2.15 volts/cell) are the same as the original design. Furthermore, the end of system discharge voltage of the battery system is maintained the same; therefore, there is no negative impact to plant loads supplied by the batteries. Failures of the batteries and chargers have been considered in both the existing and modified configurations. The proposed changes will not change performance or reliability nor introduce any new or different failure modes or common mode failure and will therefore not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The changes do not involve a significant reduction in the margin of safety.

The changes act to increase overall battery capacity from 560 ampere-hours to 1200 ampere-hours with the minimum battery discharge voltage remaining at 210 VDC (or 105 VDC per battery). The battery terminal voltage on float voltage conditions (2.167 volt[s]/cell), overvoltage conditions (2.5 volts/cell) and charger capability (2.15 volts/cell) are the same as the original design. The new surveillance requirement voltages are based on the same volts/cell criteria used for the existing batteries. The batteries' ability to satisfy the design requirements (battery duty cycle) of the dc system will not be reduced from original plant design and will therefore not have any negative impact to plant loads the battery supplies. The

proposed changes therefore do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Cynthia A. Carpenter.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: January 28, 1998 (NRC–98–0003).

Description of amendment request: The proposed amendment would revise technical specification (TS) 3.4.10, TS Figure 3.4.10–1 and the associated bases by changing the prohibited and restricted operating regions associated with core thermal-hydraulic stability. TS 3.4.1.4, TS Figure 3.4.1.4–1, and the associated bases would also be revised to reflect stability-related improvements in operating restrictions for idle recirculation loop startup. Finally, in an unrelated change, TS Tables 3.3.7.5–1 and 4.3.7.5–1 would be revised to delete neutron flux from the parameters the licensee is required to monitor by TS 3.3.7.5, Accident Monitoring Instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Thermal Hydraulic Stability and Idle Recirculation Loop Startup

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

These changes act to prohibit operations which have been found to carry a significant potential for the formation of core thermal-hydraulic instabilities and eliminates inappropriate technical specifications for maintaining <50% recirculation loop flow before starting the idle recirculation pump. As such, operation in compliance with the proposed provisions does not affect any initiating mechanism for previously evaluated accidents or the response of the plant to a previously evaluated accident. The actions taken lead to placing the plant in a safe condition and are not themselves associated with an initiator for a previously evaluated accident. Therefore, the change does not represent a significant increase in the probability or consequences of any previously evaluated accident.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the change acts to restrict operations previously allowed. The change also provides remedial actions that act to place the plant in a safe condition. The actions specified are within the analyzed domain of plant operations. Unless an instability event is in progress, the new allowance to use a core flow increase to leave the Exit Region is no different than normal plant maneuvering. If an instability event is in progress, the new ACTION 3.4.10.c to scram the reactor takes precedence. The allowance to start an idle loop with the active loop flow <50% of rated flow has been shown to have no adverse [e]ffect on scram avoidance or jet pump riser brace vibration. Therefore, the proposed changes do not create a new or different type of accident.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

Consistent with the latest BWROG [Boiling Water Reactor Owners Group] guidance, the changes act to expand the Exit region compared to the current TS for core thermal-hydraulic instability and provide improved remedial actions which promptly terminate the potential for instability. These changes therefore do not involve a significant reduction in a margin of safety.

Post-Accident Monitoring

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a change in plant design or a change in the manner in which the plant is operated. The long term post-accident design requirements of the Neutron Monitoring System (NMS) are not based on operator use for transients with scram, accidents with scram, and other occurrences without scram (Reference 6 [of January 28, 1998, application]). For lesser events such as transients without scram, the NMS enhances the operator actions, since successful verification that power is below approximately 3% power can avoid non-routine operator actions (Reference 6). These lesser events establish design requirements for the NMS. The failure of this instrumentation during post-accident conditions will not prevent the operator from determining reactor power levels. Alternate parameter status will be available from which reactor power may be inferred. Based on the multiple inputs available to the operator, sufficient information will be available upon which to base operational decisions and to conclude that reactivity control has been accomplished. This change will therefore not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not introduce a new mode of plant operation and does not involve the installation of any new equipment or modifications to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed change eliminates a TS listing of a function to reflect the actual safety significance. As such it has no effect on actual plant operation and thus no impact on any margin of safety.

Based on the above, Detroit Edison has determined that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Cynthia A. Carpenter.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: January 28, 1998 (NRC–98–0006).

Description of amendment request: The proposed amendment would revise technical specification (TS) surveillance requirement 4.4.3.2.2.a to extend the interval for leak rate testing of pressure isolation valves from 18 months to 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the periodicity of TS Surveillance Requirement (SR) 4.4.3.2.2.a from ''At least once per 18 months'' to ''At least once per 24 months.'' This change revises the testing periodicity only; no other testing methodology is being affected. The testing periodicity is being revised to be consistent with other Category ''A'' valves since the Pressure Isolation Valves (PIVs) are classified as Category ''A'' valves. Both ASME [American Society of Mechanical Engineers] [Code] Section XI and NUREG–1482 require Category ''A'' valves to be leak tested on a periodicity of at least once every 2 years.

The function of the PIVs is to protect the low pressure portions of safety systems from the RCS [reactor coolant system] pressure. Periodic valve leak rate testing is performed on the PIVs to assure system integrity is maintained and to prevent the design pressure of the low pressure systems from being exceeded. The frequency of the inservice test could increase the probability that an increase in PIV seat leakage may occur. If this were to occur and the leakage was significant (assuming leakage through both the inboard and outboard valves of the same penetration), the excess leakage would be detected by the system leakage detection instrumentation which would require corrective actions to be taken to assure that leakage remained within allowable limits. Considering that past test results show very minimal seat leakage changes over years of service, the consequences and probabilities resulting from the proposed change is considered minimal.

The proposed change does not impose or eliminate any testing requirements. This change is only a change to the frequency (testing interval) for measuring the seat leakage through the PIVs. The PIVs will continue to be tested in accordance with ASME Code Section XI. This change does not affect any of the parameters or conditions that could contribute to the initiation of any accidents previously evaluated and therefore cannot increase the consequences or probabilities of any accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that could contribute to the initiation of any accidents. This change only involves the lengthening of the PIVs' testing frequency from 18 months to 24 months. The method for performing the actual tests are not changed. No new accident scenarios are created by extending the testing intervals. No safety-related equipment or safety functions are altered as a result of this change. Therefore, extending the test frequency does not create the possibility of a new or different kind of accident or malfunction from those previously analyzed.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed change only affects the frequency of the PIVs' seat leakage tests. The frequency is proposed to be extended to reflect the ASME Section XI, 1980 Edition, Winter 1980 Addenda, Section IWV–3422 seat leakage testing periodicity requirement of 24 months. No other testing methodology is being changed. The allowable leakage limits will not be affected by this change. The margin of safety as defined in the bases of any Technical Specification will, therefore, not be reduced by extending the testing periodicity of the subject valves.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Cynthia A. Carpenter.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: January 28, 1998 (NRC–98–0008).

Description of amendment request: The proposed amendment would revise the technical specifications (TSs) by modifying the ''#'' footnote to Table 1.2 and the ''*'' footnote to surveillance requirements 4.9.1.2 and 4.9.1.3 to permit the Reactor Mode Switch to be placed in the Run or Startup/Hot Standby positions to test switch interlock functions provided that all control rods are verified to remain fully inserted in core cells containing one or more fuel assemblies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would permit the Reactor Mode Switch to be placed in the Run or Startup/Hot Standby positions to test the switch interlock functions provided that all control rods are verified to remain inserted in core cells containing one or more fuel assemblies. The existing TS requires that all control rods be verified to remain inserted regardless of whether core cells are defueled. The reactor mode switch refuel position interlocks restrict the operation of refueling equipment or withdrawal of control rods to reinforce unit procedures that prevent the reactor from achieving criticality during refueling operations. As such, the refueling equipment interlocks preserve the assumptions for the analyses of a control rod withdrawal event or loading of a fuel assembly into an uncontrolled cell during refueling operations. The reactor mode switch refuel position interlocks are not initiators of any previously evaluated accident. The revised footnote requires that all control rods remain fully inserted in core cells containing one or more fuel assemblies while the mode switch is moved to support interlock testing. Additionally, when the reactor mode switch is unlocked to support interlock testing, TS 3.9.1 prohibits core alterations. With all control rods fully inserted in core cells containing one or more fuel assemblies and no core alterations in progress, there are no credible mechanisms to initiate a reactivity excursion during the interlock

testing. Therefore, the proposed change does not involve a significant increase in the probability of a previously evaluated accident.

The proposed change accommodates reactor mode switch refuel position interlock testing with one or more control rods removed as permitted by TS 3.9.10.1 and 3.9.10.2. In addition to requiring all fuel assemblies to be removed from core cells associated with removed control rods, TS 3.9.10.1 and 3.9.10.2 require minimum shutdown margin to be maintained in accordance with TS 3/4.1.1. Under these conditions, it is not possible for criticality to occur in the event of a withdrawal of a single control rod or loading of fuel assemblies into a single core cell with no control rod inserted. Therefore, the proposed change does not involve a significant increase in the consequences of a previously evaluated accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Repositioning of the reactor mode switch to test refueling position interlocks is permitted by both the existing and proposed TS. The proposed change affects only the conditions under which the mode switch can be repositioned. The proposed changes do not change underlying principles affecting the way in which the plant is operated and no new or different failure modes are introduced by the proposed change for any plant system or component. No new limiting single failure has been identified as a result of the proposed changes. Therefore, no new or different types of failures or accident initiators are introduced by the proposed changes.

3. The change does not involve a significant reduction in the margin of safety.

The proposed change described above affects the conditions under which the reactor mode switch can be repositioned to accommodate refuel position interlock testing. The proposed change in combination with existing restrictions within the TS provide assurance that there is no credible mechanism to initiate a reactivity excursion during interlock testing. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Cynthia A. Carpenter.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: January 28, 1998 (NRC–98–0011).

Description of amendment request: The proposed amendment would revise technical specification (TS) 3.4.2.1 by changing the tolerance for the as-found setpoints of the safety/relief valves (SRVs) from [plus or minus] 1 percent to [plus or minus] 3 percent of the nominal setpoint. The revised tolerance would be used when evaluating whether setpoint test results were acceptable. However, after initial testing, the as-left setpoints of the SRVs would be adjusted to within [plus or minus] 1 percent of the nominal setpoint.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does this change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change allows an increase in the SRV setpoint tolerance, determined by test after the valves have been removed from service, from [plus or minus] 1% to [plus or minus] 3%. The proposed change does not alter the SRV lift setpoints, the SRV lift setpoint test frequency, or the number of SRVs required to be operable. This change does not involve physical changes to the SRVs, nor does it change the operating characteristics or safety function of the SRVs. This change requires that the SRVs be adjusted to within [plus or minus] 1% of their nominal lift setpoints following testing and prior to installation in the plant.

The only change, other than the change in setpoint tolerance, will be to increase the maximum rated speed of the RCIC [reactor core isolation cooling] turbine and pump. The increased speed is within the design limits of the system and the overspeed trip function retains adequate margin; therefore, RCIC operability is not affected by this change. Additionally, SRV actuation is not a precursor to any design basis accident analyzed for the Fermi 2 plant. Therefore, this change will not significantly increase the probability of an accident previously evaluated.

Generic considerations related to the change in setpoint tolerance were addressed in NEDC–31753P, ''BWROG In-Service Pressure Relief Technical Specification Revision Licensing Topical Report,'' and were reviewed and approved by the NRC. The plant specific evaluations identified in the NRC[']s Safety Evaluation for NEDC–31753P were performed in order to support the proposed change (Cycle 6 reload licensing report, Power Uprate Safety Analysis, and NEDC–32788P, ''Safety Review for Enrico Fermi Energy Center Unit 2 Safety/Relief Valve Setpoint Tolerance Relaxation Analyses''). These evaluations included transient analysis of the anticipated operational occurrences (AOOs); analysis of the design basis overpressurization event; evaluation of the performance of high pressure systems, motor operated valves, and vessel instrumentation and associated piping; and evaluation of the containment response during LOCA [loss of coolant accident] and the hydrodynamic loads on the SRV discharge lines and containment. Although not specified in the generic topical report NEDC–31753P, an analysis of the short term pressurization phase of an ATWS [anticipated transient without scram] event was also performed. These analyses show that there is adequate margin to the design core thermal limits and to the reactor vessel pressure limits using a [plus or minus] 3% SRV setpoint tolerance. They also show that operation of the high pressure injection systems will not be adversely affected; and the containment response during LOCA will be acceptable. Therefore, this change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does this change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to allow an increase in the SRV setpoint tolerance from [plus or minus] 1% to [plus or minus] 3% does not alter the SRV lift setpoints, the minimum SRV lift setpoint test frequency, or the number of SRVs required to be operable. This change does not involve physical changes to the SRVs, nor does it change the operating characteristics or the safety function of the SRVs. The only change to plant equipment will be to increase the RCIC turbine/pump maximum rated speed from 4550 rpm to 4600 rpm. The RCIC pump and turbine

have been verified to be capable of operating at the increased speed, pressure and temperature associated with this increase in maximum rated speed. These changes do not result in any changed component interactions. The SRVs and the RCIC System will continue to function as designed. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

While the calculated peak vessel pressures for the ASME [American Society of Mechanical Engineers] overpressure event and the ATWS MSIVC [main steam isolation valve closure] event are higher than those calculated without the setpoint tolerance relaxation, both are still within the respective licensing acceptance limits associated with these events. Similarly, although the loads associated with SRV blowdown could increase slightly, containment loadings have been determined to remain within acceptance limits. These licensing acceptance limits have been determined by the NRC to provide a sufficient margin of safety. Additionally, the increased setpoint tolerances have been determined to have a negligible effect on the other accidents and transients analyzed. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Cynthia A. Carpenter.

Duquesne Light Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: January 17, 1998.

Description of amendment request: The proposed amendment would revise the waste gas system line break accident analysis. The proposed changes would affect Beaver Valley Power Station, Unit No. 1 Updated Final Safety Analysis Report (UFSAR) Tables 11.3–7, ''Postulated Control Room Accident Dose,'' and 14.2–8, ''Parameters Used In Control Room Habitability Analysis Of The Waste Gas System Failure Analysis.'' The analysis references on Tables 11.3–7 and 14.2–8 would be revised due to the reanalysis of the waste gas system line break accident. In Table 11.3–7, the waste gas system line break accident gamma dose value would be revised from 0.0031 Rem to less than 0.01 Rem and the beta dose value would be revised from 0.013 Rem to less than 1.0 Rem.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change has no effect on the probability of an accident previously evaluated. The proposed change results from the correction of values and change to assumptions utilized in the original calculation to address resultant dose to Control Room operators in the event of the postulated Waste Gas System line break.

The proposed change also corrects an error in UFSAR Table 14.2–8 whereby the fraction of fuel with defects was assumed to be one percent, not 0.0026. This correction reflects the value used in the calculation and does not alter the results.

The proposed change does not significantly increase the consequences of an accident previously analyzed. Although the correction to the calculation and revision to the assumptions used result in an insignificant increase to the postulated dose to the Control Room operators, the results remain below the acceptance limit of other postulated accidents presented in the UFSAR (Table 11.3–7) and the acceptance approved by the NRC in the NRC Safety Evaluation Report, Section 15.1, dated October 1974. The proposed change does not alter the currently approved Technical Specification. The proposed change does not affect the dose to the public.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not alter the physical plant or modify the modes of operation. The proposed change does not involve modifications to plant equipment nor does it alter operation of plant systems. Therefore operation of the facility with the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change does not reduce the margin of safety. The proposed change does not affect any plant systems or equipment. Therefore, the response of the plant to any actual events will not be affected, and the change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Attorney for Licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3 (Waterford 3), St. Charles Parish, Louisiana

Date of amendment request: November 13, 1997.

Description of amendment request: The proposed change will modify Technical Specification (TS) 6.8.4.a, ''Primary Coolant Sources Outside Containment,'' to add portions of the containment vacuum relief (CVR) system and the primary sampling system to the program at Waterford 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adds the containment vacuum relief (CVR) system and the primary sampling system to the Primary Coolant Sources Outside Containment Program in the Technical Specifications. The program will require preventative maintenance

and periodic visual inspection, and leak rate testing on appropriate portions of these systems to ensure leakage of radioactive fluids are as low as practicable. The addition of these two systems to the program will not affect the probability of an accident. Neither the CVR system nor the primary sampling system are initiators of any analyzed event. The consequences of an accident are not affected by this change. The maximum allowed leakage limits are not being increased due to the addition of these two systems. Any leakage from the CVR system will be factored into the overall leakage limits and any leakage from the primary sampling system will be kept to a minimum by performing required maintenance. This change does not affect the mitigation capabilities of any component or system nor does it affect the assumptions relative to the mitigation of accidents or transients. The addition of these systems to the program also helps ensure that the systems will perform their intended function. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: No.

The proposed change adds the CVR system and the primary sampling system to the Primary Coolant Sources Outside Containment Program in the Technical Specifications. The program will require preventative maintenance and periodic visual inspection, and leak rate testing on appropriate portions of these systems to ensure leakage of radioactive fluids are as low as practical. Neither the design nor configuration of the plant is being changed due to the addition of the CVR system to the program. Also, as a result of the CVR system being added to the program, there has been no physical change to plant systems, structures or components nor will the addition of the CVR system reduce the ability of any of the safety-related equipment required to mitigate anticipated operational occurrences (AOOs) or accidents.

Although the addition of the primary sampling system to the program was a result of a change to the configuration of the plant, it does not reduce the ability of any safety-related equipment required to mitigate AOOs or accidents. Any leakage from the primary sampling system will be kept to a minimum by performing required maintenance.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change adds the CVR system and the primary sampling system to the Primary Coolant Sources Outside Containment Program in the Technical Specifications. The program will require preventative maintenance and periodic visual inspection, and leak rate testing on appropriate portions of these systems to ensure leakage of radioactive fluids are as low as practical. This change will not affect the maximum containment leakage allowed in the Technical Specifications. The leakage from the CVR system will be added to the overall containment leakage rate. Any leakage from the primary sampling system will be kept to a minimum by performing required maintenance. The overall containment leakage requirement is required to be met and therefore, this change will not result in an increase in the analyzed dose consequences assumed in the Waterford 3 safety analysis. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005–3502.

NRC Project Director: John N. Hannon.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: December 31, 1997.

Description of amendment request: The proposed amendment will revise Technical Specification 5.6.1 and associated Figure 5.6–1, and Specification 5.6.3, to permit an increase in the allowed Spent Fuel Pool (SFP) storage capacity. The analyses supporting this request, in part, assume credit for up to 1266 ppm boron concentration existing in the SFP.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Analyses to support the proposed fuel pool capacity increase have been developed using conservative methodology. The analysis of the potential accidents summarized below has shown that there is no significant increase in the consequences of any accident previously analyzed. A review of relevant plant operations has also demonstrated that there is no significant increase in the probability of occurrence of any accident previously analyzed. This conclusion is also discussed below.

Previously evaluated accidents that were examined for this proposed license amendment include: Fuel Handling Accident, Spent Fuel Cask Drop Accident, and Loss of all Fuel Pool Cooling.

There will be no change in the mode of plant operation or in the availability of plant systems as a result of this proposed change; the systems interfacing with the spent fuel pool have previously encountered borated pool water and are designed to interact with irradiated spent fuel and remove the residual heat load generated by isotopic decay. The proposed amendment does not require a change in the maintenance interval or maintenance scope for the fuel pool cooling system or for the spent fuel cask crane. The frequency of cask handling operations and the maximum weight carried by the crane is not increased as a result of the proposed license amendment. Thus, there will be no increase in the probability of a loss of fuel pool cooling or in the probability of a failure of the cask crane as a result of the proposed amendment.

There will not be a significant increase in the frequency of handling discharged assemblies in the fuel pool as a result of this change; any handling of fuel in the spent fuel pool will continue to be performed in borated water. If the license amendment is approved, there will be a one-time repositioning of certain discharged assemblies stored in the fuel pool to comply with the revised positioning requirements, but the increased pool storage capacity will permit the deferral of spent fuel handling associated with cask loading operations. Fuel manipulation during the repositioning activity will be performed in the same

manner as for fuel placed in the spent fuel pool during refueling outages. There will be no changes in the manner of handling fuel discharged from the core as a result of refueling; administrative controls will continue to be used to specify fuel assembly placement requirements. The relative positions of Region I and Region II storage locations will remain the same within the fuel pool. Therefore, the probability of a fuel handling accident has not been significantly increased.

The consequences of a fuel handling accident have been evaluated. The radioactive release consequences of a dropped fuel assembly are not affected by the proposed increase in fuel pool storage capacity. They remain bounded by the results of calculations performed to justify the existing St. Lucie Unit 2 fuel storage racks and burnup limits. At the limiting fuel assembly burnup, radioactive releases from a dropped assembly would be only a small fraction of NRC guidelines. The input parameters employed in analyzing this event are consistent with the current values of fuel enrichment, discharge burnup and uranium content used at St. Lucie Unit 2 and with future use of the ''value-added'' fuel pellet design. Thus, the consequences of the fuel assembly drop accident would not be significantly increased from those previously evaluated.

The capability of the fuel pool cooling system to handle the increased number of discharged assemblies has been examined. The impact of a total loss of spent fuel pool cooling flow on available equipment recovery time and on fuel cladding integrity has also been evaluated. For the limiting full core discharge, sufficient time remains available to restore cooling flow or to provide an alternate makeup source before boiloff results in a fuel pool water level less than that needed to maintain acceptable radiation dose levels. Analysis has shown that in the event of a total loss of fuel pool cooling fuel cladding integrity is maintained. Therefore, the consequences of a loss of fuel pool cooling event, including the effect of the proposed increase in fuel pool storage capacity, have not been significantly increased from previously analyzed results for this type of accident.

The analysis of record pertaining to the radiological consequences of the hypothetical drop of a loaded spent fuel cask just outside the Fuel Handling Building was examined to determine the impact of the increased fuel storage capacity on this accident's results. The results of the previously performed analysis were determined to bound the conditions described by the proposed license amendment, thus the consequences of the cask drop accident would not be significantly increased as a result of this change.

It is concluded that the proposed amendment to increase the storage capacity of the St. Lucie Unit 2 spent fuel pool will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different type of accident from any accident previously evaluated.

In this license amendment FPL proposes to credit the negative reactivity associated with a portion of the soluble boron present in the spent fuel pool. Soluble boron has always been present in the St. Lucie Unit 2 spent fuel pool; as such the possibility of an inadvertent fuel pool dilution has always existed. However, the spent fuel pool dilution analysis demonstrates that a dilution of the Unit 2 spent fuel pool which could increase the pool k_{eff} to greater than 0.95 is not a credible event. Neither implementation of credit for the reactivity of fuel pool soluble boron nor the proposed increase in the fuel pool storage capacity will create the possibility of a new or different type of accident at St. Lucie Unit 2.

An examination of the limiting fuel assembly misload has determined that this would not represent a new or different type of accident. None of the other accidents examined as a part of this license submittal represent a new or different type of accident; each of these situations has been previously analyzed and determined to produce acceptable results.

The proposed license amendment will not result in any other changes in the mode of spent fuel pool operation at St. Lucie Unit 2 or in the method of handling irradiated nuclear fuel. The spatial relationship between the fuel storage racks and the cask crane range of motion is not affected by the proposed change.

As a result of the evaluation and supporting analyses, FPL has determined that the proposed fuel pool capacity increase does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

FPL has determined, based on the nature of the proposed license amendment that the issue of margin of safety, when applied to this fuel pool capacity increase, should address the following areas:

(1) Fuel Pool reactivity considerations
(2) Fuel Pool boron dilution considerations
(3) Thermal-Hydraulic considerations
(4) Structural loading and seismic considerations

The Technical Specification changes proposed by this license amendment, the proposed spent fuel pool storage configuration and the existing Technical Specification limits on fuel pool soluble boron concentration provide sufficient safety margin to ensure that the array of fuel assemblies stored in the spent fuel pool will always remain subcritical. The revised spent fuel storage configuration is based on a Unit 2 specific criticality analysis performed using methodology consistent with that approved by the NRC. Additionally, the soluble boron concentration required by current Technical Specifications ensures that the fuel pool k_{eff} will always be maintained substantially less than 0.95.

The Unit 2 criticality analysis established that the k_{eff} of the spent fuel pool storage racks will be less than 1.0 with no soluble boron in the fuel pool water, including the effect of all uncertainties and tolerances. Credit for the soluble boron actually present is used to offset uncertainties, tolerances, off-normal conditions and to provide margin such that the spent fuel pool k_{eff} is maintained less than or equal to 0.95. FPL has also demonstrated that a decrease in the fuel pool boron concentration such that k_{eff} exceeds 0.95 is not a credible event.

Current Technical Specifications require that the fuel pool boron concentration be maintained greater than or equal to 1720 ppm. This boron value is substantially in excess of the 520 ppm required by the uncertainty and reactivity equivalencing analyses discussed in this evaluation and the 1266 ppm value required to maintain k_{eff} less than or equal to 0.95 in the presence of the most adverse mispositioned fuel assembly.

The St. Lucie Unit 2 fuel pool boron concentration will continue to be maintained significantly in excess of 1266 ppm; the proposed license amendment will not result in changes in the mode of operation of the refueling water tank (RWT) or in its use for makeup to the fuel pool. Thus, operation of the spent fuel pool following the proposed change, combined with the existing fuel pool boron concentration Technical Specification limit of 1720 ppm, will continue to ensure that k_{eff} of the fuel pool will be substantially less than 0.95.

Even if this not-credible dilution event was to occur, no radiation would be released; the only consequence would be a reduction of shutdown margin in the fuel pool. The volume of unborated water required to dilute the fuel pool to a k_{eff} of 0.95 is so large (in excess of 358,900 gallons to dilute the fuel pool to 520 ppm boron) that only a limited number of water sources could be considered potential dilution sources. The likelihood that this level of water use could remain undetected by plant personnel is extremely remote.

In meeting the acceptance criteria for fuel pool reactivity, the proposed amendment to increase the storage capacity of the existing fuel pool racks does not involve a significant reduction in the margin of safety for nuclear criticality.

Calculations of the spent fuel pool heat load with an increased fuel pool inventory were performed using ANSI/ANS–5.1–1979 methodology. This method was demonstrated to produce conservative results through benchmarking to actual St. Lucie Unit 2 fuel pool conditions and by comparison of its results to those generated by a calculation using Auxiliary Systems Branch Technical Position 9–2 methodology. Conservative methods were also used to demonstrate fuel cladding integrity is maintained in the absence of cooling system forced flow. The results of these calculations demonstrate that, for the limiting case, the existing fuel pool cooling system can maintain fuel pool conditions within acceptable limits with the increased inventory of discharged assemblies. Therefore, the proposed change does not result in a significant reduction in the margin of safety with respect to thermal-hydraulic or spent fuel cooling considerations.

The primary safety function of the spent fuel pool and the fuel storage racks is to maintain discharged fuel assemblies in a safe configuration for all environments and abnormal loadings, such as an earthquake, a loss of pool cooling or a drop of a spent fuel assembly during routine spent fuel handling. The proposed increase in spent fuel inventory on the fuel pool and the existing storage racks have been evaluated and show that relevant criteria for fuel rack stresses and floor loadings have been met and that there has been no significant reduction in the margin of safety for these criteria.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Director: Frederick J. Hebdon.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: November 22, 1996, as revised and replaced on February 2, 1998.

Description of amendment request: The licensee proposed to change the Technical Specifications (TS) to allow the use of a temporary fuel oil storage system for up to 10 days in order to perform a surveillance requirement on the Unit 3 fuel oil storage tank with Unit 3 in Modes 5, 6, or defueled.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Question 1 Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed amendment will allow the installation of a temporary fuel oil storage and transfer system for up to 10 days, once every 10 years. EDGs [emergency diesel generators] are designed as backup AC power sources for essential safety systems in the event of a loss of offsite power. Since the EDGs are not accident initiators, the probability of occurrence of accidents previously analyzed has not been increased.

The temporary fuel oil storage tanks will be located greater than fifty (50) feet from safety related or safe shutdown components or circuits. This does not produce any threat to fire protection or safe shutdown capability and therefore represents a configuration that is bounded by existing fire hazards analysis.

The proposed amendment will not change the condition or minimum amount of operating equipment assumed in the plant safety analyses for accident mitigation. The temporary fuel storage and transfer system provides a reliable means of performing the required delivery support function for the Unit 3 EDGs.

An insignificant increase in the consequences of an accident previously evaluated is possible since the temporary storage and transfer system will not meet requirements for Seismic Category I or Class 1E. However, the probability of a seismic event will be very low due to the limited time that the temporary storage system will be in use.

The increase in the consequences of an accident previously evaluated is insignificant due to the following:

Manual actions required to provide a 7 day supply of fuel to the EDGs can easily be accomplished in the 17 hours of EDG operation provided by the 3880 gallon capacity of a single EDG day and skid tank. The location of the temporary fuel oil supply inside the protected area security fence by the Central Receiving Facility provides multiple access routes to transfer fuel to the Unit 3 EDGs and is in close proximity to a severe weather shelter for the mobile tanker.

Additionally, more than 17 hours will be available to manually transfer fuel from the temporary fuel storage tanks located inside the protected area, by filling the Unit 4 EDG storage tanks with approximately 8600 gallons of fuel oil above that required for Unit 4 EDG operability. This extra capacity will be available to the Unit 3 EDGs prior to taking the permanent Unit 3 storage tank out of service. This will be done by filling the Unit 4 fuel tanks to 39,000 gallons, which is just below the high level alarm. This gives a capacity of 4300 gallons in each tank above the Unit 4 Technical Specification minimum required volume of 34,700 gallons. The Unit 4 tanks are contained within a Seismic Class 1 structure and protected by installed fire protection equipment.

Combining the excess available fuel from the Unit 4 storage tanks and the nominal volume of the Unit 3 day and skid tanks gives a total of 12,480 gallons (4300×2+3880) of available fuel to either of the Unit 3 EDGs. This allows a run time for a Unit 3 EDG of 55 hours (assuming fuel oil transfer from Unit 4) prior to reaching the Technical Specification minimum volume for the Unit 4 fuel oil storage tanks. Manual actions to replenish the Unit 4 or Unit 3 fuel oil storage tanks from the temporary storage tanks, via the mobile tanker, can easily be accomplished within the 55 hours. Procedures currently exist for the transfer of fuel from (1) the mobile tanker to the auxiliary fill station at the Unit 3 EDGs, and (2) from the Unit 4 EDG storage tanks to the Unit 3 day tanks by using either of the Unit 4 transfer pumps. The

Unit 4 transfer pumps are powered from redundant Class 1E power supplies.

The temporary storage tanks will be located inside the protected area in the vicinity of the Nuclear Plant Central Receiving Facility. The temporary tanks will be located greater than fifty (50) feet from safety related or safe shutdown components or circuits. This does not produce any threat to fire protection or safe shutdown capability and therefore represents a configuration that is bounded by existing fire hazards analysis.

A dedicated mobile tanker staged inside the protected area to transfer fuel from the temporary storage tanks to the permanent day/skid tank system. The mobile tanker will have an integral transfer pump to facilitate movement of fuel to either of the two truck fills at the Unit 4 EDG building or day tank truck fills (auxiliary fill station) at the Unit 3 EDGs. One truck fill at the Unit 4 EDG building supplies fuel to the 4A and 4B storage tanks, the other truck fill at the Unit 4 EDG building can provide fuel directly to the Unit 3 day tanks. This fuel supply will provide continued operation for 7 days. The temporary storage and transfer system will not meet requirements for Seismic Category I or Class 1E.

The capability to operate an Unit 3 EDG for 7 days during the tank cleaning evolution will be assured by an approved plant procedure that controls the following:

- A minimum fuel supply of 3880 gallons from the Unit 3 day and skid tank. This provides 17 hours of operation.
- The extra fuel supply of 8600 gallons in the Unit 4 EDG tanks which will be transferred by using one of the installed Unit 4 transfer pumps. This provides an additional 38 hours of operation.
- Three temporary tanks containing a minimum fuel supply of 38,000 gallons. This fuel supply will provide continued operation for 7 days.

Consequently, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Question 2 Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment will not change the physical plant or modes of plant operation defined in the Turkey Point Units 3 and 4 operating license. The change will not involve addition or modification of equipment for Unit 3 EDG fuel storage and transfer. The temporary fuel supply system provides a reliable means of performing the required fuel delivery support function for the Unit 3 EDGs.

Consequently, operation of either unit in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Question 3 Does the proposed amendment involve a significant reduction in the margin of safety?

The proposed amendment is designed to provide flexibility to schedule and perform required surveillance activities. Surveillance intervals or operating requirements are not changed by the proposal; only the method of fuel oil storage on a temporary basis for a single operable EDG is addressed. The proposed change will not alter the basis for any Technical Specification that is related to the establishment of, or maintenance of, a nuclear safety margin.

Consequently, operation of Turkey Point Units 3 and 4 in accordance with this proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Director: Frederick J. Hebdon.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: January 9, 1998.

Description of amendment request: The licensee proposed to change the Technical Specifications (TS) to allow the use of ZIRLO™ fuel rod clad material.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Question 1 Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Implementation of ZIRLO™ fuel rod cladding will have no impact on the probability or consequences of any Design Basis Event occurrences which were previously evaluated. The determination that fuel design limits are met will continue to be performed using NRC approved fuel performance analysis methodology. Changing to ZIRLO™ fuel rod cladding poses no significant increase in the probability or consequences of any accident previously evaluated.

No new performance requirements are being imposed on any system or component in order to support implementation of ZIRLO™ fuel rod cladding. Since the LOCA and Non-LOCA analysis results will remain within design limits, the inputs to the radiation dose analysis do not change. Therefore, the consequences to the public resulting from any accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR) is not increased.

Fuel rod design criteria will be evaluated every cycle to ensure proper compliance with fuel rod design limits and therefore the UFSAR. The evaluation of the fuel design against fuel design limits will be performed in accordance with 10 CFR 50.59, which ensures that the reload will not involve an increase in the probability or consequence of an accident previously evaluated.

Question 2 Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Implementation of ZIRLO™ fuel rod cladding will have no impact, nor does it contribute in any way to the probability or consequences of an accident.

No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of using ZIRLO™ fuel rod cladding. The institution of ZIRLO™ fuel rod cladding will have no adverse effect on, and does not challenge the performance of, any safety related system.

The determination that the fuel rod design limits are met will be performed using NRC approved methodology. Therefore, the proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

Question 3 Does the proposed amendment involve a significant reduction in the margin of safety?

The margin of safety is not affected by the implementation of ZIRLO™ fuel rod cladding. Use of ZIRLO™ fuel rod cladding has been approved by the NRC and does not constitute a significant reduction in the margin of safety.

The margin of safety provided in the fuel design limits is acceptable and will be maintained and not reduced.

In addition, each future reload will involve a 10 CFR 50.59 review to assure that operation of the units within the cycle specific limits will not involve a reduction in the margin of safety. Therefore, the proposed amendment does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Director: Frederick J. Hebdon.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: January 22, 1998.

Description of amendment request: The amendment would incorporate the proposed revision into Chapter 9 of the Millstone Unit 3 Final Safety Analysis Report. The proposed revision to the Millstone Unit 3 licensing basis would accept the existing use of epoxy coatings on safety-related components.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed revision in accordance with 10CFR50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not satisfied. The proposed revision does not involve [an] SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

Past experience indicates that failure of previous ARCOR applications may have degraded the performance of SWS [service water system] heat exchangers within one train, but there is no indication that failure of multiple heat exchangers on both trains is feasible. Furthermore, the likelihood of ARCOR material being released has been reduced by improving the application procedure and performing destructive testing to detect disbondment. In addition, the completion of normal heat exchanger performance surveillance's and periodic visual inspections minimizes the potential for disbonded ARCOR to degrade SWS components.

Therefore, the presence of ARCOR coating material within the SWS does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The application of ARCOR material may lead to the degradation of SWS heat exchangers. However, multiple ARCOR application failures occurring simultaneously either instantaneously or gradually resulting in failure of all SWS heat exchangers in both trains is not considered feasible. An instantaneous failure is discounted by analysis which concludes that normal system operations are more likely to cause the release of degraded ARCOR than what might be expected following a seismic event. Gradual degradation is not expected since normal SWS heat exchanger performance surveillance's will identify heat exchanger tubesheet fouling and thus, provide early detection of coating failures. Therefore, the use of ARCOR coating material within the SWS does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

Although the gradual release of ARCOR material creates the potential to simultaneously degrade the performance of mitigating equipment in both trains of safety systems, it is determined to be unrealistic due to normal heat exchanger performance surveillance's. These surveillance's are expected to identify heat exchanger tubesheet fouling and provide early detection and mitigation of a problem with the pipe coatings. Therefore, the application of ARCOR coating within the SWS does not involve a significant reduction in the margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Deputy Director: Phillip F. McKee.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: July 26, 1996, as supplemented September 5 and December 4, 1997.

Description of amendment request: The proposed amendment would, as part of the licensee's power rerate program, increase the maximum power level to 1775 megawatts thermal (MWt). This change is approximately 6.3 percent above the current maximum power level of 1670 MWt.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment will not involve a significant increase In the probability or consequences of an accident previously evaluated.

The probability of occurrence and consequences of an [accident] previously evaluated have been evaluated for MNGP [Monticello Nuclear Generating Plant] Power Rerate. This evaluation has concluded that MNGP Power Rerate will not involve a significant increase in the probability of occurrence or consequences of previously evaluated accidents.

1. Evaluation of Accident Consequences

(a) ECCS–LOCA Analysis

The Emergency Core Cooling System Loss of Coolant Accident (ECCS–LOCA)

performance analysis has been evaluated for MNGP Power Rerate using methodology which has been approved by the NRC for LOCA 10CFR50.46 analyses [requirements]. The current ECCS performance requirements were used in the power rerate analysis; no further parameter relaxations were included in the analysis. The ECCS–LOCA analysis was performed for MNGP Power Rerate for the existing licensed rated thermal power and at a bounding thermal power level of 1880 MWt that is approximately 6% greater than the proposed power rerate to 1775 MWt [megawatts thermal]. In addition, the bounding thermal power level was increased by an additional 2% in accordance with regulatory guidance. The licensing peak clad temperature for the bounding analyzed thermal power level remains below the 10CFR50.46 required limit of 2,200'F. Therefore the analysis demonstrates that MNGP will continue to comply with 10CFR50.46 and 10CFR50, Appendix K at rerated conditions thus the consequences of a LOCA is not significantly increased for the proposed power rerate.

(b) Abnormal Operating Transient Analysis

An evaluation of the Updated Safety Analysis Report (USAR) and reload transients has been performed for MNGP Power Rerate to demonstrate that the proposed power rerate has no adverse effect on plant safety. This evaluation was performed for a power level of 1775 MWt, with the exception that certain event evaluations were performed at 102% of the rerate power level. The transient analysis performed to demonstrate the acceptability of MNGP Power Rerate used the NRC approved methods identified in the MNGP Technical Specifications.

The limiting transient events at the power rerate conditions have been analyzed. This includes all events that establish the core thermal operating limits and the events that bound other transient acceptance criteria. These limiting transients were benchmarked against the existing rated thermal power level by performance of the event analysis at both the proposed rerate power level and the existing rated power level. In addition, an expanded group of transient events was evaluated to confirm that these events were less severe with the power rerate than the most limiting transients. The events included in the expanded group of transient events were chosen based on those events which have been demonstrated to be sensitive to initial power level. This evaluation confirmed that the existing set of limiting transient events remains valid for MNGP Power Rerate. The evaluation was performed for a representative core and demonstrated the overall capability to meet all transient safety criteria for the power rerate. Cycle specific analysis will continue to be performed for each fuel reload to demonstrate compliance with the applicable transient criteria and to establish cycle specific operating limits.

The results of the evaluation of transients demonstrate that the power rerate can be accomplished without a significant increase in the consequences of the transients evaluated. The fuel thermal-mechanical limits at the power rerate conditions are within the specific design criteria for the GE [General Electric] fuels currently loaded in the MNGP core. Also, the power-dependent and flow-dependent MCPR [minimum critical power ratio] and Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) methods developed as part of the core performance improvement program remain applicable to rerate conditions. The transient event evaluation confirmed that MNGP Power Rerate has no significant effect on the power-dependent and flow-dependent MCPR and MAPLHGR limits. The peak reactor pressure vessel bottom head pressure remains within the ASME [American Society of Mechanical Engineers] requirement for reactor pressure vessel overpressure protection.

The effects of plant transients were evaluated by assessing a number of disturbances of process variables and malfunctions or failures of equipment consistent with USAR. The transient events were evaluated against the Safety Limit Minimum Critical Power Ratio, (SLMCPR). The SLMCPR is determined using NRC-approved methods. The limiting transient events are slightly more severe when initiated from the rerate power level. The power rerate transient evaluation results show a slightly more limiting event initial CPR [critical power ratio] (less than or equal to 0.02) than that initiated from the present rated power level for the near limiting transients. However, for the most limiting transient, the evaluation of a representative core showed that no change is required to the Operating Limit MCPR for the power rerate and that the integrity of the SLMCPR is maintained. The margin of safety established by the SLMCPR is not affected and the event consequences are not significantly affected by the proposed power rerate to 1775 MWt. Cycle specific analysis will continue to be performed for each fuel reload to demonstrate compliance with the applicable transient criteria and to establish cycle specific operating limits.

The results demonstrate that the MNGP core thermal power output can be safely increased to the power rerate level without significant effect on the consequences of previously evaluated postulated transient events. The results of the rerate transient analysis are summarized as follows.

(1) Events Resulting in a Nuclear System Pressure Increase

(a) Main Generator Load Rejection with No Steam Bypass

At rerated conditions, the fuel transient thermal and mechanical overpower results remain below the NRC accepted design criteria.

(b) Main Turbine Trip with No Steam Bypass

At rerate conditions, the fuel transient thermal and mechanical overpower results remain below the NRC accepted design criteria.

(c) Main Steam Isolation Valve Closure, Flux Scram

The peak reactor pressure vessel bottom head pressure for rerate conditions is slightly higher than the reactor pressure vessel bottom head pressure at current conditions. However, the resultant pressure is still below the ASME overpressure limit of 1,375 psig [pounds per square inch].

(d) Slow Closure of a Single Turbine Control Valve

The results of this transient for the power rerate remain non-limiting as compared with other more severe pressurization events.

(2) Event Resulting in a Reactor Vessel Water Temperature Decrease

(a) Feedwater Controller Failure-Maximum Demand

The delta CPR calculated for this event at rerate conditions is about 0.01 higher than the corresponding value for the current rated power when the impact of the new condensate pumps is factored in. The trend for the Feedwater Controller Failure-Maximum Demand event is consistent with the analysis for the current rated power. The fuel thermal margin results are within the acceptable limits for the fuel types analyzed.

(b) Loss of Feedwater Heating

This event at the rerate conditions remains significantly less than the cycle operating MCPR limit. The results at low core flow conditions are actually slightly higher than for the high core

flow condition because of increased inlet coolant subcooling into the reactor core. The calculated thermal and mechanical overpower limits at the power rerate conditions for this event also meet the fuel design criteria.

(c) Inadvertent HPCI [high-pressure coolant injection] Actuation

For the limiting condition analyzed, both the high water level setpoint and the high reactor pressure vessel steam dome pressure scram setpoints are not reached. Based on the peak average fuel surface heat flux results, the HPCI actuation event will be bounded by the limiting pressurization event with respect to delta Critical Power Ratio ([delta] CPR) considerations. In addition, the fuel transient thermal and mechanical overpower limits remain within the NRC accepted design values.

(3) Event Resulting in a Positive Reactivity Insertion

(a) Rod Withdrawal Error (RWE)

The current Rod Block Monitor (RBM) system for MNGP with power dependent setpoints was analyzed for the rod withdrawal error event at the power rerate conditions using a statistical approach consistent with NRC approved methods. The analysis concluded that the transient is slightly more severe with a greater delta Critical Power Ratio ([delta] CPR) from the initial most limiting CPR. However, the fuel and mechanical overpower results remain within the NRC accepted design criteria.

(4) Event Resulting in a Reactor Vessel Coolant Inventory Decrease

(a) Pressure Regulator Failure to Full Open

The results of this transient for the power rerate remain non-limiting as compared with other more severe pressurization events.

(b) Loss of Feedwater Flow

This transient event does not pose any direct threat to the fuel in terms of a power increase from the initial conditions. Water level declines rapidly and a low level causes a reactor scram. The closure of the main steam isolation valves and the actuation of High Pressure Coolant Injection and Reactor Core Isolation Cooling terminate the event. This event was included in the power rerate evaluation to provide assurance that sufficient water makeup capability is available to keep the core covered when all normal feedwater is lost. The generic analysis performed in support of the extended power uprate program shows that at the power rerate conditions a large amount of water remains above the top of the active fuel. These sequences of events do not require any new operator actions or shorter operator response times. Therefore, the operator actions for the event do not significantly change for the power rerate.

(5) Event Resulting in a Core Coolant Flow Decrease

(a) Recirculation Pump Seizure

The recirculation pump seizure assumes instantaneous stoppage of the pump motor shaft of one recirculation pump. As a result, the core flow decreases rapidly. The heat flux decline lags core power and flow and could result in a degradation of core heat transfer. At the power rerate conditions, the transient results confirmed that the consequences of the pump seizure event remain non-limiting.

(6) Event Resulting in a Core Coolant Flow Increase

(a) Recirculation Flow Controller Failure Increasing Flow

The results of this transient for the power rerate remain non-limiting as compared with other more severe pressurization events.

(c) Design Basis Accident Challenges to the Containment

The primary containment response to the limiting design basis accident was evaluated for a bounding reactor power level approximately 6% greater than the proposed power rerate to 1775 MWt. In addition, the bounding reactor power level was increased by an additional 2% in accordance with regulatory guidance. The effect of the power rerate on the short term containment response (peak values) as well as the long term containment response for containment pressure and temperature confirms the suitability of the plant for operation at the bounding power level, thus the proposed power rerate to 1775 MWt is acceptable. Factors of safety provided in the ASME Code are maintained and safety margin is not affected for the power rerate to 1775 MWt.

Short-term containment response analyses were performed for the limiting design basis LOCA consisting of a double-ended guillotine break of a recirculation suction line, to demonstrate that operation at a bounding reactor power will not result in exceeding the containment design limits. This limiting design basis LOCA event results in the highest short-term containment pressures and dynamic loads. The analysis determined that for a bounding reactor power the maximum drywell pressure values are bounded by the current USAR analysis value and by the containment design pressure. The power rerate to 1775 MWt has no adverse effect on the containment structural design pressure.

Because there will be more residual heat with increased thermal power, the containment long term response will have slightly higher temperatures. Long term suppression chamber temperatures remain within the design temperature of the structure, thus factors of safety provided in the ASME code are maintained and safety margin is not affected. Analysis confirmed that ECCS pump NPSH is adequate for this temperature response. It was confirmed that the long term response does not adversely affect the containment structure or the environmental qualification (EQ) of equipment located in the drywell or suppression chamber room. The drywell long term temperature response is not adversely affected for a bounding reactor power. An analytical power level of 1880 MWt bounds the decay heat associated with the 1775 MWt power level with a one sided confidence interval of 95%. The containment long term response is therefore acceptable for the power rerate to 1775 MWt.

The impact of a reactor power increase on the containment dynamic loads have been determined, evaluated and found to have no adverse effects for conditions which well bound the proposed power rerate. Thus the containment dynamic loads were found to be acceptable for the power rerate to 1775 MWt.

The MNGP Power Rerate evaluation of the primary containment response to the design basis accident confirmed that the power rerate does not result in a significant increase in consequences for a bounding reactor power approximately 6% greater than the proposed power rerate to 1775 MWt.

(d) Radiological Consequences of Design Basis Accidents

For MNGP Power Rerate, the radiological consequences of the limiting design basis accidents were re-evaluated. These evaluations included the effect of the power rerate on the radiological consequences of accidents presented in USAR Section 14.7.

This evaluation was performed using inputs and evaluation techniques consistent with the current regulatory guidance, the current GE analysis methods, and the appropriate plant design basis. The inputs and analysis methods used for MNGP Power Rerate differ from those utilized in the current licensing basis evaluation presented in

the USAR and the AEC [Atomic Energy Commission] safety evaluation supporting plant initial licensing. The MNGP Power Rerate evaluations used the more contemporary staff approved methods. The inputs used in the MNGP Power Rerate evaluation provide a conservative assessment of the potential radiological consequences. The conclusions of these evaluations are consistent with the original licensing basis evaluations. The radiological consequences of the limiting design basis accidents remain well within 10CFR100 guidelines for a bounding thermal power approximately 6% greater than the proposed power rerate of 1775 MWt. In addition the bounding thermal power level was increased by an additional 2% in accordance with regulatory guidance.

To conservatively analyze the change in consequences, the evaluation of radiological consequences using the analysis inputs and methods was performed for the existing licensed rated thermal power and a thermal power bounding the proposed power rerate. This provides a conservative bounding change in consequences for the requested power rerate to 1775 MWt.

The MNGP Power Rerate evaluation of the radiological consequences of design basis accidents confirmed that the power rerate does not result in a significant increase in consequences for a bounding power level approximately 6% greater than the proposed power rerate. The results remain below the 10CFR100 guideline values as well as the licensing basis established in the March 18, 1970 AEC safety evaluation. Therefore, the postulated radiological consequences do not represent a significant change in accident consequences and are clearly within the regulatory guidelines for the proposed power rerate to 1775 MWt.

(e) Other Evaluations

(1) Performance Improvements

The MNGP Power Rerate safety analysis has been performed taking into account the implementation of the following previously approved special operational features.

(a) Maximum Extended Load Line Limit/Increase Core Flow (MELLL/ICF)

The safety analysis for rerate conditions shows that the extended operating domain as analyzed by MELLL/ICF remains valid for the power rerate conditions.

(b) Average Power Range Monitor/Rod Block Monitor Technical Specification (ARTS) Improvements

The safety analysis for rerate conditions shows that the ARTS improvements remain valid for the power rerate conditions.

(c) Single Loop Operation (SLO)

The safety analysis for rerate conditions shows that the single loop operating mode remains valid for the power rerate conditions. The MELLLA trip setpoints determined for two-loop operation were confirmed to be acceptable for single loop operation with a correction applied to account for the actual effective drive flow applied when operating in single loop. The single loop settings have been conservatively established to be consistent with the two loop settings while ensuring the appropriate corrections are applied to the MAPLHGR and the operating limit MCPR to account for single loop operation.

(2) Effect of Power Rerate on Support Systems

An evaluation was performed to address the effect of MNGP Power Rerate on accident mitigation features, structures, systems, and components within the balance of plant. The results are as follows:

Auxiliary systems such as, building heating, Ventilation and Air Conditioning (HVAC) systems, reactor building closed cooling water, service water and emergency service water, spent fuel pool cooling, process auxiliaries such as instrument air and makeup water and the post-accident sampling system were confirmed to operate acceptably under normal and accident conditions at rerate conditions.

The secondary containment and standby gas treatment system were confirmed to be able to adequately contain, process, and control the release of normal and post-accident levels of radioactivity at rerate conditions.

Instrumentation was reviewed and confirmed to be capable of performing its control and monitoring functions under rerate conditions. As required, analyses were performed to determine the need for setpoint changes for various functions (*e.g.*, APRM [average power range monitor] neutron flux scram setpoints). In general, setpoints are to be changed only to maintain adequate difference between plant operating parameters and trip setpoints, while ensuring safety performance is demonstrated. The revised setpoints have been established using the NRC reviewed methodology as guidance.

Electric power systems including the turbine generator and switchgear components were verified as being capable of providing the electrical load as a result of the rerate power levels. An evaluation of the auxiliary power system for the power rerate conditions confirmed that the system has sufficient capacity with the changes identified in Exhibit I [of the 12/4/97 submittal] to support all required loads for safe shutdown, to maintain a safe shutdown condition, and to operate the required engineered safeguards equipment following postulated accidents. No safety-related electrical loads were affected which would adversely impact the emergency diesel generators.

Piping systems were evaluated for the effect of operation at higher power levels, including transient loading. The evaluation confirmed that, with few exceptions, piping and supports are adequate to accommodate the increased loading resulting from operation at rerate power conditions. In a few cases, piping supports will be modified to accept higher forces due to rerate conditions.

The effect of rerate conditions on high energy line break (HELB) was evaluated. The evaluation confirmed structures, systems, and components important to safety are capable of accommodating the effects of jet impingement and blowdown forces and the environmental effects resulting from HELB events at rerate conditions.

Control room habitability was evaluated. With the implementation of minor hardware and non-hardware changes to the control room ventilation system, Post-accident Control Room and Technical Support Center doses at rerate conditions were confirmed to be within the guidelines of General Design Criterion 19 of 10CFR50, Appendix A.

The environmental qualification of equipment important to safety was evaluated for the effect on normal and accident operating conditions at rerate power levels. The equipment remains qualified for the new conditions. Minor adjustments will reflect some changes to maintenance frequencies. The preventative maintenance program will continue to provide for equipment maintenance or replacement to ensure equipment environmental qualification at rerate power conditions.

(3) Effect on Special Events

The consequences of special events (*i.e.*, ATWS [anticipated transient without scram], 10CFR50, Appendix R, and Station Blackout) remain within NRC accepted criteria for rerate conditions. Concurrent malfunctions assumed to occur during accidents have

been accounted for in the safety analyses for rerate conditions. The consequences of these equipment malfunctions does not change with implementation of the MNGP Power Rerate program. The generic ATWS analysis for operation at rerate conditions is being revised. The revision is not expected to affect MNGP compliance with NRC acceptance criteria.

(f) Conclusion

The evaluation of the Emergency Core Cooling System performance has demonstrated the criteria of 10CFR50.46 are satisfied, thus the margin of safety established by the criteria is maintained. The analysis demonstrated that the ECCS will function with the most limiting single failure to mitigate the consequences of the accidents and maintain fuel integrity. The system will continue to perform as required under rerate conditions to mitigate the consequences of accidents and thus the power rerate does not adversely affect ECCS performance in a manner to increase the severity of consequences. Challenges to the containment have been evaluated and the integrity of the fission product barrier has been confirmed. The radiological consequences of design basis accidents have been evaluated and it was found that the effect of the proposed power rerate on postulated radiological consequences does not result in a significant increase in accident consequences. These evaluations have been performed for a bounding reactor power approximately 6% greater than the proposed power rerate. In addition the bounding reactor power level was increased by an additional 2% in accordance with regulatory guidance. Thus the evaluations provide conservative bounding results for the proposed power rerate to 1775 MWt and demonstrate that the proposed power rerate does not result in significant increase in accident consequences.

The abnormal transients have been analyzed under the power rerate conditions, and the analysis has confirmed that the power rerate to 1775 MWt has only a minor effect on the minimum critical power ratio and that no change to the safety limit critical power ratio results, thus the margin of safety as assured by the safety limit critical power ratio is maintained. The effect of the power rerate on the consequences of abnormal transients which result from potential component malfunctions has been shown to be acceptable, thus the power rerate does not result in a significant increase in transient event consequences.

The spectrum of analyzed postulated accidents and transients has been investigated, and has been determined to meet the current regulatory criteria for the MNGP at rerate conditions. In the area of core design, the fuel operating limits will still be met at the rerate power level, and fuel reload analyses will show plant transients meet the criteria accepted by the NRC as specified in the plant Technical Specifications. The evaluation of transient and accident consequences was performed consistent with the proposed changes to the plant Technical Specifications. Therefore, the proposed Operating License and Technical Specification changes will not cause a significant increase in the consequences of an accident previously evaluated for the Monticello plant.

2. Evaluation of the Probability of Previously Evaluated Accidents

The proposed power rerate imposes only minor increases in the plant operating conditions. No changes are required to the rated core flow, rated reactor pressure, or turbine throttle pressure. The power rerate will result in moderate flow increases in those system[s] associated with the turbine cycle (*i.e.,* condensate, feedwater, main steam, etc.). For MNGP Power Rerate, the small increase in operating temperatures for balance of plant support systems has no significant effect on LOCA or other accident probabilities.

The increase in flow rates in balance of plant systems is addressed by compliance with NRC Generic Letter 89–08, ''Erosion/Corrosion in Piping.'' The MNGP Power Rerate evaluations have confirmed that the power rerate has no significant effect on flow induced erosion/corrosion. The worst case limiting feedwater and main steam piping flow increases were evaluated to be approximately proportional to the power increase. The affected systems are currently monitored by the MNGP Erosion/Corrosion program. Continued monitoring of the systems provides a high level of confidence in the integrity of potentially susceptible high energy piping systems.

The occurrence frequency of accident precursors and transients [has] been addressed when required by applying the guidance of NRC reviewed setpoint methodology to insure that acceptable trip avoidance is provided during operational transients subsequent to implementation of rerate. The setpoint evaluation has confirmed that MNGP Power Rerate does not result in any increase in challenges to the plant protective instrumentation.

Plant systems, components, and structures have been verified to be capable of performing their intended functions under rerate conditions with a few minor exceptions. Where necessary, some components will be modified prior to implementation of the MNGP Power Rerate Program to accommodate the revised operating conditions (*e.g.,* a limited number of pipe supports changes, instrumentation setpoint changes, control room habitability improvements). MNGP Power Rerate does not significantly affect the reliability of plant equipment. Where reliability effects have been identified, modifications and administrative controls will be implemented prior to the power rerate to adequately compensate. No new components or system interactions that could lead to an increase in accident probability are created due to the power rerate.

The probability (*i.e.,* frequency of occurrence) of design basis accidents occurring is not affected by the increased power level, as the applicable criteria established for plant equipment (*e.g.,* ANSI Standard B31.1, ASME Code,) will still be followed as the plant is operated at the rerate power level. The MNGP Power Rerate analysis basis assures that the power dependent margin prescribed by the Code of Federal Regulations (CFR) will be maintained by meeting the appropriate regulatory criteria. Similarly, factors of safety specified by application of the Code design rules have been demonstrated to be maintained, as have other margin-assuring acceptance criteria used to judge the acceptability of the plant. Reactor scram setpoints as established are such that there is no significant increase in scram frequency due to rerate conditions. No new challenges to safety-related equipment will result from the power rerate. Therefore, the proposed Operating License and Technical Specifications changes do not involve a significant increase in the probability of an accident previously evaluated.

B. The proposed Operating License changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The basic Boiling Water Reactor configuration, operation and event response is unchanged by the power rerate. Analysis of transient events has confirmed that the same transients remain limiting and that no transient events result in a new sequence of events which could lead to a new accident scenario. The MNGP Power Rerate analyses confirmed that the accident progression is basically unchanged by the power rerate.

An increase in power level will not create a new fission product release path, or result in a new fission product barrier failure mode. The same fission product barriers such as the fuel cladding, the reactor coolant pressure boundary and the reactor containment, remain in place. Fuel rod cladding integrity is ensured by operating within thermal, mechanical, and exposure design limits and is demonstrated by the MNGP Power Rerate transient analysis and accident analysis. Similarly, analysis of the reactor coolant pressure boundary and primary containment have demonstrated that the power rerate has no adverse effect on these fission product barriers. The proposed changes to the plant Technical Specifications to support the power rerate implementation are consistent with the MNGP Power Rerate analyses and assure transient and accident mitigation capability in compliance with regulatory requirements.

The effect of MNGP Power Rerate on plant equipment has been evaluated. No new operating mode, safety-related equipment lineup, accident scenario, or equipment failure mode resulting from the power rerate was identified. The full spectrum of accident considerations defined in the USAR have been evaluated and no new or different kind of accident resulting from the power rerate has been identified. MNGP Power Rerate uses already developed technology and applies it within the capabilities of already existing plant equipment in accordance with presently existing regulatory criteria which includes accepted codes, standards, and methods. GE has designed BWRs of higher power levels than the rerate power of any of the currently operating BWR fleet and no new power dependent accidents have been identified. In addition, MNGP Power Rerate does not create any new sequence of events or failure modes that lead to a new type of accident.

All actions to ensure that safety-related structures, systems, and components will remain within their design allowable values and ensure they can perform their intended functions under rerate conditions will be taken prior to implementation of the power rerate. MNGP Power Rerate does not increase challenges to or create any new challenge to safety-related equipment or other equipment whose failure could cause an accident. Plant modifications required to support implementation of MNGP Power Rerate will be made to existing systems (*e.g.*, a limited number of pipe supports, instrumentation setpoints, control room habitability improvements), rather than by adding new systems of a different design which might introduce new failure modes or accident sequences. The Technical Specification changes required to implement the power rerate require little change to the plant's configuration, and all changes have been evaluated and are acceptable.

Therefore, the proposed Operating License and Technical Specification changes do not create the possibility of a new or different kind of accident from any previously evaluated.

C. The proposed Operating License changes do not involve a significant reduction in a margin of safety.

The accident analysis, as well as a majority of the plant specific evaluations performed in support of MNGP Power Rerate have been performed assuming a bounding steady state power level 112.6% of the existing licensed limit of 1670 MWt, and approximately 6% above the licensed maximum thermal power level of 1775 MWt proposed by MNGP Power Rerate. In addition, the bounding reactor power level was increased by an additional 2% in accordance with regulatory guidance when applicable for the evaluation of accidents and transients. For plant conditions associated with a bounding analysis power level, the analyses demonstrated operating margin to criteria establishing margins of safety, thus additional operating margin is demonstrated and assured for the proposed power rerate to 1775 MWt and added confidence is established in the integrity of criteria establishing margin to safety.

The cycle specific transient analysis, as well as the analysis to establish plant instrumentation set points have been performed assuming a plant steady state power level of 1775 MWt. This analysis approach was taken in order to demonstrate safety and equipment margins while ensuring appropriate cycle specific operating limits. The evaluation of transient events and instrument setpoints demonstrated operating margin to criteria establishing margins of safety for the proposed power rerate conditions.

The MNGP Power Rerate analysis basis assures that the power dependent safety margin assuring criteria prescribed by the Code of Federal Regulations (CFR) will be maintained by meeting the appropriate regulatory criteria. Similarly, factors of safety specified by application of the code design rules have been maintained, as have other margin-assuring acceptance criteria used to judge the acceptability of the plant.

1. Fuel Thermal Limits

No change is required in the basic fuel design to achieve the rerate power levels or to maintain the margins as discussed above. No increase in the allowable peak bundle power is requested for the power rerate. The abnormal transients have been evaluated under the power rerate conditions for a representative core configuration. The analysis has confirmed that the power rerate has no adverse effect on the operating limit Minimum Critical Power Ratio (MCPR) and that no change to the safety limit MCPR results, thus the margin of safety as assured by the safety limit MCPR is maintained. The fuel operating limits such as Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) and the operating limit MCPR will still be met at the rerate power level. The MNGP Power Rerate analyses have confirmed the acceptability of these operating limits for the power rerate without an adverse effect on margins to safety. Cycle specific analysis will continue to be performed for each fuel reload to demonstrate compliance with the applicable transient criteria and to establish cycle specific operating limits.

2. Design Basis Accidents Challenges to Fuel

The evaluation of the Emergency Core Cooling System performance has demonstrated the criteria of 10CFR50.46 are satisfied, thus the margin of safety established by the criteria is maintained. This evaluation was performed for a bounding reactor power level approximately 6% greater than the proposed power rerate. In addition the bounding reactor power level was increased by an additional 2% in accordance with regulatory guidance. The analysis demonstrates that MNGP will continue to comply [with] the 10 CFR 50.46 at the rerate conditions and that the margin of safety established by the regulation is maintained for the proposed power rerate.

3. Design Basis Accident Challenges to Containment

The primary containment response to the limiting design basis accident was evaluated for a bounding reactor power level approximately 6% greater than the proposed power rerate to 1775 MWt. In addition, the bounding reactor power level was increased by an additional 2% in accordance with regulatory guidance. The effect of the power rerate on the short term containment response (peak values) as well as the long term containment response for containment pressure and temperature confirms the

suitability of the plant for operation at the bounding power level, thus the proposed power rerate to 1775 MWt is acceptable. Factors of safety provided in the ASME Code are maintained and safety margin is not affected for the power rerate to 1775 MWt.

Short-term containment response analyses were performed for the limiting design basis LOCA consisting of a double-ended guillotine break of a recirculation suction line, to demonstrate that operation at a bounding reactor power will not result in exceeding the containment design limits. The analysis determined that for a bounding reactor power the maximum drywell pressure values are bounded by the current USAR analysis value and by the containment design pressure. The power rerate to 1775 MWt has no adverse effect on the containment structural design pressure.

Long term suppression chamber temperatures remain within the design temperature of the structure, thus factors of safety provided in the ASME code are maintained and safety margin is not affected. An analytical power level of 1880 MWt bounds the decay heat associated with the 1775 MWt power level with a one sided confidence interval of 95%. Analysis confirmed that ECCS pump NPSH is not adversely affected with this temperature response. It was confirmed that the long term response does not significantly affect the containment structure or the environmental qualification (EQ) of equipment located in the drywell or suppression chamber room.

The impact of a reactor power increase on the containment dynamic loads [has] been determined, evaluated and found to have no adverse effects for conditions which well bound the proposed power rerate. Thus the containment dynamic loads were found to be acceptable for the power rerate to 1775 MWt.

The MNGP Power Rerate evaluation of the primary containment response to the design basis accident confirmed that the power rerate does not result in a reduction in margins of safety for a bounding reactor power approximately 6% greater than the proposed power rerate to 1775 MWt.

4. Design Basis Accident Radiological Consequences

The Updated Safety Analysis Report (USAR) provides the radiological consequences for each of the design basis accidents. The magnitude of the potential consequences is dependent upon the quantity of fission products released to the environment, the atmospheric dispersion factors and the dose exposure pathways. For power rerate, the atmospheric dispersion factors and the dose exposure pathways do not change. Therefore, the only factor which will influence the magnitude of the consequences is the quantity of activity released to the environment. This quantity is a product of the activity released from the core and the transport mechanisms between the core and the effluent release point.

The radiological consequences of design basis accidents have been evaluated, and it was found that the consequences did not result in a significant increase in consequences for a bounding reactor power level approximately 6% greater than the proposed power rerate. In addition, the bounding reactor power level was increased by an additional 2% in accordance with regulatory guidance. The results remain below the 10CFR100 guideline values as well as the licensing basis established in the March 18, 1970 AEC safety evaluation. Therefore, the postulated radiological consequences are clearly within the regulatory guidelines and all radiological safety margins are maintained for the power rerate to 1775 MWt.

5. Transient Evaluations

The effects of plant transients were evaluated by assessing a number of disturbances of process variables and malfunctions or failures of equipment consistent with USAR. The transient events were evaluated against the Safety Limit Minimum Critical Power Ratio, (SLMCPR). The SLMCPR is determined using NRC-approved methods. The Power Rerate transient analyses were performed using the approved methodology specified in the plant Technical Specifications. The limiting transient events are slightly more severe when initiated from the rerate power level. The power rerate transient evaluation results show a slightly more limiting transient initial CPR (less than or equal to 0.02) than that initiated from the present rated power level for the near limiting transients. However, for the most limiting transient, the evaluation of a representative core showed that no change is required to the Operating Limit MCPR for the power rerate and that the integrity of the SLMCPR is maintained. Cycle specific analysis will continue to be performed for each fuel reload to demonstrate compliance with the applicable transient criteria and to establish cycle specific operating limits.

The fuel thermal-mechanical limits at the power rerate conditions are within the specific design criteria for the GE fuels currently loaded in the MNGP core. Also, the power-dependent and flow-dependent MCPR and Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) methods developed as part of the core performance improvement program remain applicable to rerate conditions. The transient event evaluation confirmed that MNGP Power Rerate has no significant effect on the power-dependent and flow-dependent MCPR and MAPLHGR limits. The peak reactor pressure vessel bottom head pressure remains within the ASME requirement for reactor pressure vessel over pressure protection.

The margin of safety established by the SLMCPR is not affected by the proposed power rerate to 1775 MWt.

6. Technical Specification Changes

The Technical Specifications ensure that the plant and system performance parameters are maintained at the values assumed in the safety analysis. The Technical Specification (setpoints, trip settings, etc.) are selected such that the actual equipment is maintained equal to or conservative with respect to the inputs used in the safety analysis. Proper account is taken of inaccuracies introduced by instrument drift, instrument accuracy, and calibration accuracy. The Technical Specifications address equipment availability and limit equipment out-of-service to assure that the plant can be expected to have at least the complement of equipment available to deal with plant transients as that assumed in the safety analysis. The evaluations and analyses performed to demonstrate the acceptability of MNGP Power Rerate were performed using inputs consistent with the proposed changes to the plant Technical Specifications.

The events that form the Technical Specification Bases were evaluated for the power rerate conditions using inputs and initial conditions consistent with the proposed Technical Specification changes. Although some changes to the Technical Specifications are required for the power rerate, no NRC acceptance limit will be exceeded. Therefore, the margins of safety assured by safety limits and other Technical Specification limits will be maintained. The changes to the Technical Specification Bases proposed by this submittal are consistent with the evaluations which demonstrated acceptability of the power rerate.

7. Conclusion

The spectrum of postulated accidents, transients, and special events has been investigated and [has] been determined to meet the current regulatory criteria

for the MNGP at the power rerate conditions. In the area of core design, the fuel operating limits will still be met at the rerate power level, and fuel reload analyses will show plant transients meet the criteria accepted by the NRC as specified in the plant Technical Specifications. Challenges to fuel or ECCS performance were evaluated and shown to meet the criteria of 10 CFR 50.46 and 10 CFR 50, Appendix K. Challenges to the containment have been evaluated and the integrity of the fission product barrier has been confirmed. Radiological release events have been evaluated and shown to meet the guidelines of 10 CFR 100. The proposed Operating License and Technical Specification changes are consistent with the MNGP Power Rerate evaluation performed. The evaluations demonstrated compliance with the margin assuring acceptance criteria contained in applicable codes and regulations. Therefore, the proposed Operating License and Technical Specifications changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: Cynthia A. Carpenter

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station (LGS), Unit 1, Montgomery County, Pennsylvania

Date of amendment request: February 9, 1998.

Description of amendment request: The amendment request proposes to revise the LGS, Unit 1 Technical Specifications (TS) Section 2.1 and its associated TS Basis to reflect the change in the minimum critical power ratio (MCPR) safety limit due to the plant-specific evaluation performed by General Electric Company (GE) for LGS, Unit 1, Cycle 8.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The revised MCPR Safety Limits for LGS Unit 1 Technical Specifications, and their use to determine cycle-specific thermal limits, have been calculated using NRC-approved methods (*i.e.*, GESTAR–II, Rev. 13) and are based on LGS Unit 1 Cycle 8 specific inputs. The use of these methods assures that the [safety limit for minimum critical power ratio] SLMCPR value is within the existing design and licensing basis, and cannot increase the probability or severity of an accident.

The basis of the MCPR Safety Limit calculation is to ensure that greater than 99.9% of all fuel rods in the core avoid transition boiling if the limit is not violated. The MCPR Safety limit preserves the existing margin to transition boiling and fuel damage in the event of a postulated accident. The probability of fuel damage is not increased.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The MCPR Safety Limit is a Technical Specification numerical value designed to ensure that fuel damage from transition boiling does not occur as a result of the limiting postulated accident. The MCPR Safety Limit is not an accident initiator; therefore, it cannot create the possibility of any new type of accident. The new MCPR Safety Limits are calculated using NRC-approved methods (*i.e.*, GESTAR–II, Rev. 13) and are based on LGS Unit 1, Cycle 8 specific inputs.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in the margin of safety.

The margin of safety as defined in the TS Bases will remain the same. The new MCPR Safety Limits are calculated using NRC-approved methods (*i.e.*, GESTAR–II, Rev. 13), which are in accordance with the current fuel design and licensing criteria, and are based on LGS Unit 1 Cycle 8 specific inputs. The MCPR Safety Limit remains high enough to ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity.

Therefore, the proposed TS change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Project Director: John F. Stolz.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: October 14, 1997.

Description of amendment request: The proposed changes would correct the maximum exposure dependent, infinite lattice multiplication factor for fuel bundles and provide for installation of additional storage racks to increase spent fuel capacity.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because:

A change in the infinite lattice neutron multiplication factor for a fuel bundle in the reactor core geometry which ensures the criticality limit for fuel in the spent fuel pool [SFP] geometry is met does not affect initiation of any accident.

Operation in accordance with the revised limit ensures the consequences of previously analyzed accidents are not changed. Storage of additional fuel assemblies in the pool does not affect the probability or consequences of dropping a fuel assembly, since this accident is localized to a small area of the storage array. Likewise, addition of

specifications containing details presently in plant design documents and editorial changes do not change the probability or consequences of a previously analyzed accident.

2. Create the possibility of a new or different kind of accident for any accident previously evaluated because:

A change in the infinite lattice neutron multiplication factor for a fuel bundle in the reactor core geometry which ensures the criticality limit for fuel in the spent fuel pool geometry is met does not affect the types of reactivity accidents which may occur. Therefore changing the limit will not [create the possibility of] a new or different type of accident. Maintenance of available decay heat removal systems ensures that no new type of loss of cooling accident associated with the SFP will occur as a result of storing additional irradiated fuel assemblies. Likewise, addition of specifications containing details presently in plant design documents and editorial changes do not create the possibility of a new or different type of accident.

3. Involve a significant reduction in a margin of safety because:

The revised limit on infinite lattice neutron multiplication factor for a fuel bundle in the reactor core geometry ensures maintenance of the same margin of safety with respect to criticality as presently exists for storage of fuel in the SFP. Storing additional irradiated fuel assemblies in the pool does not affect the margin of safety with regard to pool cooling since sufficient heat removal systems will be maintained available to ensure maintenance of acceptable pool temperatures. Addition of specifications containing details presently in other design documents and editorial changes have no effect on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Project Director: S. Singh Bajwa.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: February 9, 1998.

Description of amendment request: The proposed amendment would revise the Virgil C. Summer Nuclear Station Technical Specifications (TS) to remove emergency diesel generator (1) accelerated testing requirements (TS 3/4.8.1, Table 4.8–1), and (2) special reporting requirements (TS Surveillance Requirement 4.8.1.1.3) in accordance with NRC Generic Letter (GL) 94–01, ''Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change will provide flexibility to structure the emergency diesel generator maintenance program based on the risk significance of the structures, systems, and components that are within the scope of the maintenance rule. The removal of the diesel generator accelerated testing is acceptable as the maintenance rule applies system and train specific performance criteria to monitor diesel generator performance. These criteria include a running availability and reliability measure. The performance criteria for the diesel generator reliability and unavailability established by the maintenance rule, and the causal determinations and corrective actions required for functional failures and/or exceeding performance criteria, is considered to be an acceptable method for monitoring diesel generator performance.

As the diesel generator performance will [continue] to be assured by the maintenance rule, the proposed changes do not affect any of the initiators for an accident previously evaluated. The changes do not impact the diesel's design sources, operating characteristics, system functions, or system interrelationships. The failure mechanisms for the accidents previously analyzed are not affected, and no additional failure modes are created that could cause an accident previously evaluated. Since the changes are administrative in nature, and the diesel generator performance and reliability will continue to be assured by the maintenance rule, the proposed changes cannot involve a significant increase in the probability or consequences of an accident previously evaluated.

2. This request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that could contribute to the initiation of any accidents. The proposed changes only affect the methods used to monitor and assure diesel generator performance. The performance criteria for both the diesel generator reliability and unavailability established by the maintenance rule, and the causal determinations and corrective actions required for functional failures and/or exceeding performance criteria, is considered by GL 94–01 to be an acceptable method for monitoring diesel generator performance.

No SSC [structure, system, or component], method of operating, or system interface is altered by this change. The changes do not impact the diesel's design sources, operating characteristics, system functions, or system interrelationships. The failure mechanisms for the accidents are not affected, and no additional failure modes are created. Because the proposed changes are administrative in nature, and the diesel generator performance and reliability will continue to be assured by the maintenance rule, the proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. This request does not involve a significant reduction in a margin [of] safety.

The proposed changes only affect the methods used to monitor and assure diesel generator performance. The performance criteria for both the diesel generator reliability and unavailability established by the maintenance rule, and the causal determinations and corrective actions required for functional failures and/or exceeding performance criteria, is considered by GL 94–01 to be an acceptable method for monitoring diesel generator performance. No margin [of] safety as defined in the basis for any technical specification is impacted by these changes. This change does not impact any uncertainty in the design, construction, or operation of any SSC.

Diesel generator response to accident initiators is unchanged. No SSC, method of operating, or system interface is altered by this change. The changes do not impact the diesel's design sources, operating characteristics, system functions, or system interrelationships. Because the proposed changes are administrative in nature, and the diesel generator performance and reliability will continue to be assured by the maintenance rule, the proposed changes cannot involve a significant reduction in the margin [of] safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Project Director: William M. Dean.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: January 28, 1998.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Sections 6.3 and 6.12 to reflect the merger of the positions of Superintendent Radiation Protection and Superintendent Chemistry into one new position, Manager Chemistry/Radiation Protection.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a significant increase in the probability of consequences of an accident previously evaluated. These changes involve administrative changes to the WCNOC organization.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This change is administrative in nature and does not involve a change to the installed plant systems or the overall operating philosophy of Wolf Creek Generating Station.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not involve a significant reduction in a margin of safety. This change does not involve any changes in overall organizational commitments and will not affect qualification requirements of any unit staff personnel. A position and title change alone does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: William H. Bateman.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Northern States Power Company, Docket No. 50–282, Prairie Island Nuclear Generating Plant, Unit 1, Goodhue County, Minnesota

Date of amendment request: January 15, 1998.

Description of amendment request: The proposed amendment would initiate a one-time only change for Prairie Island Unit 1 Cycle 19 that would allow the use of the moveable incore detector system for measurement of the core peaking factors with less than 75% and greater than or equal to 50% of the detector thimbles available.

Date of individual notice in the **Federal Register**: January 30, 1998 (63 FR 4676).

Expiration date of individual notice: March 2, 1998.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Cynthia A. Carpenter.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances

provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of application for amendment: May 16, 1997, as supplemented November 14, 1997.

Brief description of amendment: The amendment involves replacing the service water (SRW) heater exchangers with new plate and frame heat exchangers (PHEs), having increased thermal performance capability. The Saltwater (SW) and SRW piping configuration will be modified as necessary to allow proper fit-up to the new components. A flow control scheme to throttle saltwater flow to the heat exchangers and the associated bypass lines will be added. Saltwater strainers with an automatic flushing arrangement will be added upstream of each heat exchanger. The majority of the physical work associated with this modification is restricted to the SRW pump room. The amendment is partially denied to the extent that the licensee is not authorized to operate with one PHE secured, and removing one containment air cooler from service to enable the affected subsystem to remain operable while the one PHE is secured.

Date of issuance: February 10, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 225.

Facility Operating License No. DPR–53: Amendment revised the Updated Final Safety Analysis Report.

Date of initial notice in **Federal Register**: June 18, 1997 (62 FR 33118).

The November 14, 1997, letter provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 10, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: November 6, 1997, as supplemented by letter dated January 28, 1998.

Brief Description of amendments: The amendments to Technical Specification (TS) Limiting Conditions for Operation (LCO) 3.3.5.5, Instrumentation for Control Room Emergency Ventilation System (CREVS) and 3.7.2, Control Room Emergency Ventilation System, and associated Bases for the Brunswick Steam Electric Plant (BSEP) Units 1 and 2 will be limited in duration (approximately 3 months) and will allow operation of both BSEP units to continue while upgrades to the control building ventilation system, including new air conditioning (AC) units and improved ductwork supports, are being installed. Part of the planned work requires opening the ductwork at the evaporative (i.e. cooling) coils. Temporary barriers will be constructed to preserve the leakage integrity of the control room pressure boundary; however, the temporary barriers will not be seismically qualified. While the permanent AC units are out of service, temporary AC units will be utilized. During the upgrade installation, the AC for the control room will not be protected from certain external events (e.g., seismic events, environmental hazards such as tornadoes and hurricanes, radiological sabotage, and missile hazards), as required by the system design and licensing basis, and will not fully meet single failure criteria.

Date of issuance: February 6, 1998.

Effective date: February 6, 1998.

Amendment Nos.: 191 and 222.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments authorize changes to the facility's Technical Specifications.

Date of initial notice in **Federal Register**: December 3, 1997 (62 FR 63973).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 6, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: February 28, 1997. Information related to the proposed restoration of the primary coolant dose equivalent iodine-131 (DEI) to their original licensing basis had been previously submitted in Commonwealth Edison Company's (ComEd) letter dated November 13, 1996, which was supplemented in subsequent letters dated March 20, June 24, August 19 and November 3, 1997.

Brief description of amendments: The amendments revise the technical specifications (TS) to reflect the forthcoming replacement of the original steam generators (OSG) in Byron, Unit 1, and Braidwood, Unit 1, which are Westinghouse Model D4 steam generators (SG), with the replacement steam generators (RSG) which are Babcock and Wilcox, International (BWI) SG. The present revisions to the TS remove the interim plugging criteria (IPC) related to outer diameter stress corrosion cracking (ODSCC) in the OSG as well as the F* alternative repair criteria and two separate SG tube sleeving methodologies which are not needed for the RSG.

Date of issuance: February 3, 1998

Effective date: This license amendment is effective as of the date of its issuance and shall be implemented in the first operating cycle after installation of the BWI replacement steam generators

Amendment Nos.: 101, 101, 92 and 92.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 17, 1997 (62 FR 66134). The November 13, 1996, and March 20, June 24, August 19 and November 3, 1997, submittals provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 3, 1998.

No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for

Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: November 6, 1995, and March 11, 1996, as supplemented June 5, 1997. The June 5, 1997, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment request beyond the scope of the December 20, 1995, and April 10, 1996, **Federal Register** notices.

Brief description of amendments: These amendments revise the alarm setpoints for the effluent radiation and in-containment area radiation monitors listed in Technical Specification (TS) Table 3.3–6. These revisions make these alarm setpoints consistent with criteria for the Emergency Action Levels (EALs) approved by the Nuclear Regulatory Commission in August 1994. The EALs use these monitors as an indication of fission product barrier challenges or failures. These amendments also revise Action Statement 36 of TS Table 3.3–6 to reflect a previously approved change (License Amendment Nos. 188 and 70) in reporting frequency (change from semi-annual to annual) for effluent releases. The revision to Action Statement 36 makes it consistent with the previously approved change. These amendments include several editorial changes to the TSs which do not change the intent of the TSs.

Date of issuance: February 9, 1998.

Effective date: Both units, as of date of issuance, to be implemented within 60 days.

Amendment Nos.: 211 and 89.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Dates of initial notice in **Federal Register**: December 20, 1995 (60 FR 65677) and April 10, 1996 (61 FR 15988). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 9, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Duquesne Light Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: November 4, 1997.

Brief description of amendment: The amendment revises Item 6.a.2, ''4.16kV Emergency Bus (Start Diesel),'' of Table 3.3–4 of Technical Specification 3.3.2.1. The change reduces the trip setpoint for starting the emergency diesel generators on emergency bus undervoltage from a trip setpoint of greater than or equal to 83 percent with a 12-cycle delay time to a setpoint of greater than or equal to 75 percent of nominal bus voltage with a time delay of less than 0.9 seconds including auxiliary relay times. The amendment also revises the allowable value from greater than or equal to 81 percent of nominal bus voltage to greater than or equal to 74 percent of nominal bus voltage with a time delay of less than 0.9 seconds including auxiliary relay times.

Date of issuance: February 11, 1998.

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment No: 212.

Facility Operating License No. DPR–66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 3, 1997 (62 FR 63976).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: August 6, 1997.

Brief description of amendment: The amendment eliminated the provisions in Technical Specification 3.8.1, ''AC Sources—Operating,'' for accelerated testing of the emergency diesel generators (DG). The changes are the following: (1) the frequency of verifying DG starts and operation in Surveillance Requirements (SRs) 3.8.1.2 and 3.8.1.3, respectively, are changed to 31 days, from the present reference to Table 3.8.1–1, and (2) Table 3.8.1–1, ''Diesel Generator Test Schedule,'' is deleted. The emergency diesel generators provide emergency AC power to the site with the loss of offsite AC power.

Date of issuance: February 9, 1998.

Effective date: February 9, 1998.

Amendment No: 134.

Facility Operating License No. NPF–29: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: September 24, 1997 (62 FR 50003).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 9, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit 2, New London County, Connecticut

Date of application for amendment: September 3, 1997.

Brief description of amendment: The amendment authorizes Northeast Nuclear Energy Company, through a license condition, to incorporate changes to the description of the facility in the Updated Final Safety Analysis Report (UFSAR). This change revises the UFSAR by modifying the operation of the onsite emergency diesel generators and their associated fuel oil supplies.

Date of issuance: January 23, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 212.

Facility Operating License No. DPR–65: Amendment revised the Updated Final Safety Analysis Report.

Date of initial notice in **Federal Register**: September 24, 1997 (62 FR 50009).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311. Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: October 24, 1997.

Brief description of amendments: The amendments revise the containment hydrogen analyzer Technical Specifications (TSs) surveillance requirements of TS 4.6.4.1 to increase the calibration frequency from once per refueling outage to quarterly.

Date of issuance: January 29, 1998.

Effective date: As of the date of issuance.

Amendment Nos. 204 and 186.

Facility Operating License Nos. DPR–70 and DPR–75. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 17, 1997 (62 FR 66140).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 29, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: June 13, 1997, as supplemented by letter dated January 7, 1998.

Brief Description of amendments: The amendments change Technical Specification (TS) 3.9.13 by adding a footnote to clarify the required electrical power sources for the penetration room filtration system when it is aligned to the spent fuel pool room during refueling operations. In addition, the associated Bases section of the TS will be modified to provide additional details concerning the proposed TS change.

Date of issuance: February 5, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1–134; Unit 2–126.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: July 16, 1997 (62 FR 38138).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 5, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: October 16, 1997.

Brief Description of amendments: The amendments change the Farley Units 1 and 2 TS by revising the number of allowable charging pumps capable of injecting into the reactor coolant system (RCS) when the temperature of one or more of the RCS cold legs is equal to or less than 180° F.

Date of issuance: February 5, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1–135; Unit 2–127.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: December 3, 1997 (62 FR 63983).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 5, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: October 28, 1996, as supplemented by letters dated August 19, 1997, and October 16, 1997.

Brief description of amendment: This amendment revises TS Section 3/4.8.1, ''A.C. Sources,'' TS Section 3/4.8.2, ''Onsite Power Distribution Systems,'' TS Table 4.8.1, ''Battery Surveillance Requirements,'' and the associated bases. Surveillance requirements have been modified to account for the increase in the fuel cycle. Administrative changes were also made.

Date of issuance: February 3, 1998.

Effective date: February 3, 1998.

Amendment No.: 219.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 2, 1997 (62 FR 132).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 3, 1998.

No significant hazards consideration comments received: No. The supplemental information provided by the Licensees did not affect the proposed no significant hazards consideration determination.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Dated at Rockville, Maryland, this 18th day of February 1998.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–4620 Filed 2–24–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Complete Management, Inc., Common Shares, $.001 Par Value; 8% Convertible Subordinated Debentures Due 2003; 8% Convertible Subordinated Debentures Due December 15, 2003) File No. 1–12848

February 17, 1998.

Complete Management, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the American Stock Exchange (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Securities also are listed for trading on the New York Stock Exchange, Inc. (''NYSE'') pursuant to a Registration Statement on Form 8–A that became effective on September 5, 1997. Trading in the Securities on the NYSE commenced at the opening of business on September 8, 1997.

The Company has complied with Amex Rule 18 by filing with the Exchange a certified copy of the regulations adopted by the Company's Board of Directors authorizing the withdrawal of the Securities from listing and registration on the Amex, and by

setting forth in detail to the Exchange the reasons and facts supporting the proposed withdrawal. In making the decision to withdraw its Securities from listing and registration on the Amex, the Company considered the need for a unified market in the trading of its Securities.

By letter dated September 5, 1997, the Exchange informed the Company that it would not object to the withdrawal of the Company's Securities from listing on the Amex.

By reason of Section 12(b) of the Act and the rules thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before March 10, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–4575 Filed 2–24–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Pennsylvania Real Estate Investment Trust, Shares of Beneficial Interest, $1.00 Par Value) File No. 1–6300

February 19, 1998.

Pennsylvania Real Estate Investment Trust (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security also is listed for trading on the New York Stock Exchange, Inc. (''NYSE'') pursuant to a Registration Statement on Form 8–A that became effective on November 13, 1997. Trading in the Security on the NYSE commenced at the opening of business on November 14, 1997.

The Company has complied with Amex Rule 18 by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of the Security from listing and registration on the Amex, and by setting forth in detail to the Exchange the reasons and facts supporting the proposed withdrawal. In making the decision to withdraw the Security from listing on the Exchange, the Company considered the direct and indirect costs, and the division of the market for its Security resulting from the dual-listing of the Security on the Amex and the NYSE.

By letter dated October 30, 1997, the Exchange informed the Company that it would not object to the withdrawal of the Security from listing and registration on the Exchange.

By reason of Section 12(b) of the Act and the rules thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before March 12, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–4713 Filed 2–24–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Rigel Energy Corporation, Common Shares, No Par Value) File No. 1–10750

February 19, 1998.

Rigel Energy Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security also has been listed for trading on the Toronto Stock Exchange and the Montreal Exchange since June, 1991. The Company has represented that it will maintain such listings so that holders of the Security are provided with accessible and liquid markets.

The Company has complied with Amex Rule 18 by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Director's authorizing the withdrawal of the Security from listing and registration on the Amex, and by setting forth in detail to the Exchange the reasons and facts supporting the proposed withdrawal. In making the decision to withdraw the Security from listing on the Exchange, the Company considered the volume of trading in the Security transacted on the Exchange (less than one percent of the aggregate trading volume in the Security since 1995); the relative liquidity provided by the Amex versus other securities exchanges; the trading pattern of shareholders based in the United States; and the costs associated with maintaining a multiple listing of the Security.

By letter dated June 3, 1997, the Exchange informed the Company that it would not object to the withdrawal of the Security from listing and registration on the Exchange.

By reason of Section 12(g) of the Act and the rules thereunder, the Company shall continue to file reports under Section 13 of the Act with the Commission.

Any interested person may, on or before March 12, 1998, submit by letter to the Secretary of the Securities and

Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–4712 Filed 2–24–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39679; International Series No. 1119; File No. SR–AMEX–98–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Adoption of a Definition of ''Foreign Broker-Dealer''

February 18, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 3, 1998, the American Stock Exchange, Inc. (the ''Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt a definition of ''foreign broker-dealer'' for use in certain of its rules and policies for the trading of option contracts. The text of the proposed rule change is available at the Office of Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the placed specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange has currently in place certain rules and policies for the trading of option contracts that distinguish between orders for broker-dealers and orders for customers who are not broker-dealers. Specifically, Exchange Rule 958A provides that only non-broker-dealers are eligible for the guaranteed minimum execution of ten contracts at the displayed bid or offer; Rule 950(c) allows a Registered Options Trader who is establishing or increasing a position to retain priority over or have parity with an off-floor order for the account of a broker-dealer; and Exchange policy (as codified in Exchange Rule 933 pursuant to this proposal) allows only non-broker-dealer orders to be executed through its automatic execution system. The Exchange therefore proposes to adopt a definition of foreign broker-dealer substantially to ensure that foreign broker-dealer orders under the above-mentioned rules shall receive the same treatment as U.S. broker-dealer orders, as opposed to customer treatment. The definition has been designed to provide an objective standard for the enforcement of applicable option rules and to substantially resemble the definition adopted by the Pacific Exchange (''PCX''), Philadelphia Stock Exchange (''Phlx''), and Chicago Board Options Exchange (''CBOE'').[2]

In light of the current globalization of the securities market, Amex believes that Exchange rules which treat broker-dealers in a different manner than other market participants should be applied consistently so that foreign broker-dealers trading options on the Amex do not have an unfair competitive advantage over U.S. broker-dealers. Moreover, regulating all broker-dealers equally helps to ensure that the specialist's volume guarantees pursuant to Rule 958A and the use of automatic execution systems are not exhausted by broker-dealer competitors to the detriment of public customers. Similarly, allowing Registered Options Traders to retain priority over or have parity with foreign as well as domestic broker-dealers will enhance their ability to fulfill their market-making responsibilities.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5)[3] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The 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 proposed 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 February 3, 1998, the date on which it is filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.[4] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] Exchange Act Release No. 38420 (March 19, 1997), 62 FR 14488 (March 26, 1997) (PCX); Exchange Act Release No. 39382 (December 2, 1997), 62 FR 64903 (December 9, 1997) (Phlx); and Exchange Act Release No. 39604 (January 30, 1998), 63 FR 6247 (February 6, 1998) (CBOE).

[3] 15 U.S.C. 78f(b)(5).

[4] 17 CFR 240.19b–4(e)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–AMEX–98–05 and should be submitted by March 18, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4759 Filed 2–24–98; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39684; File No. SR–DCC–98–01]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing of a Proposed Rule Change to Permit the Use of Mortgage Backed Securities as Margin Collateral

February 19, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 5, 1998, Delta Clearing Corp. (''Delta'') filed with the Securities Exchange Commission (''Commission'') the proposed rule change (File No. SR–DCC–98–01) as described in Items I, II, and III below, which items have been prepared primarily by Delta. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Delta proposes to modify its procedures in order to accept mortgage backed securities as margin collateral.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Delta 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. Delta has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Delta only accepts federal funds[3] or treasury securities as margin collateral. Delta proposes revisions to its procedures which would authorized Delta to accept mortgage backed securities as margin collateral.[4]

Delta's participants may clear and settle repurchase and reverse repurchase agreements in treasury securities (''treasury repos'') and repurchase and reverse repurchase agreements in mortgage backed securities (''mortgage repos'') through Delta's system. Some participants have chosen to clear and to settle only mortgage repos through Delta. For those participants, there is an additional cost associated with obtaining treasury securities for purposes of supplying margin collateral. Because those participants already possess mortgage backed securities related to the transactions they are clearing through Delta, it is a more straightforward process for them to honor their margin obligations with these mortgage backed securities.

Delta believes that, with the appropriate haircuts, the provision of margin in the form of mortgage backed securities poses no additional risk to the system. Delta notes that the Commission under its uniform net capital rule generally applies the same haircuts to treasury securities and mortgage backed securities.[5] Consistent with Delta's treatment of treasury securities used for margin collateral, Delta proposes that mortgage backed securities should be valued in accordance with the schedule of applicable haircuts found in Rule 15c3–1(c)(2)(vi)(A)(*1*) under the Act.[6] Delta also notes that its clearing bank, The Bank of New York, will accept mortgage backed securities in accordance with Delta's proposal without further haircuts.

Delta believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to Delta and in particular with Section 17A(b)(3)(F) of the Act[7] which requires that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. Delta believes the proposed rule changes will permit wider use of its system by providing participants with the opportunity to efficiently meet margin requirements consistent with Delta's obligation to safeguard funds and securities.

[2] The Commission has modified the text of the summaries prepared by Delta.

[3] Federal funds are defined in Delta's procedures as cash balances available for immediate withdrawal in accounts maintained at banks that are members of the Federal Reserve System.

[4] Mortgage backed securities are defined in Delta's procedures as book entry securities directly issued by the Federal National Mortgage Association (''FNMA'') or the Federal Home Loan Mortgage Corporation (''FHLMC'') whose underlying value is represented by a pool of mortgages. These may be fixed rate or adjustable rate mortgage backed securities backed by fixed rate or adjustable rate mortgage loans, respectively. Such securities must be transferable through the federal reserve system. Delta is not authorized to clear mortgage backed securities that have underlying assets that are mortgage backed securities rather than a pool of mortgage loans. Delta also is not authorized to clear notional, interest only, principal only, accrual and partial accrual securities, or floaters and inverse floaters, as such terms are defined in Schedule A to Delta's procedures. Securities Exchange Act Release No. 39241 (October 14, 1997), 62 FR 54663 (order approving proposed rule change authorizing Delta to clear mortgage repos).

[5] Rule 15c3–1(c)(2)(vi)(A)(*1*), 17 CFR 240.15c3–1(c)(2)(vi)(A)(*1*).

[6] Section 3(a)(42)(B) of the Act defines government securities to include securities which are issued or guaranteed by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors. The Department of Treasury has designated securities issued by FNMA and by FHLMC as exempt. Notice issued by the Department of Treasury (October 7, 1987), 52 FR 38559.

[7] 15 U.S.C. 78q–1(b)(3)(F).

(B) Self-Regulatory Organization's Statement on Burden on Competition

Delta does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Delta consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Delta. All submissions should refer to the file number SR–DCC–98–01 and should be submitted by March 18, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4756 Filed 2–24–98; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39680; File No. SR–PCX–97–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Margin and Net Capital Requirements for Joint Back Office Participants and Clearing Firms

February 18, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 18, 1997, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Exchange Rule 2.16(c)(5) and adopt a new Exchange Rule 2.16(c)(6) to establish margin and net capital requirements for joint Back Office (''JBO'') participants and clearing firms.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, 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 Exchange 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to revise Exchange Rule 2.16(c)(5) and adopt a new Exchange Rule 2.16(c)(6) to establish margin and net capital requirements for JBO participants and clearing firms. JBO arrangements permit a participating broker-dealer to be deemed self-clearing for margin purposes and entitle the participating broker-dealer to good faith credit. Pursuant to Regulation T, a JBO participant must maintain an ownership interest in the JBO clearing firm.[2]

In recent amendments to Regulation T, the Board of Governors of the Federal Reserve System (''FRB'') placed its reliance on the authority of self-regulatory organizations (''SROs'') to ensure that reasonableness of JBO arrangements.[3] When the provision permitting JBO arrangements was first adopted, the FRB assumed there would be a reasonable relationship between the good faith credit extended to a JBO participant and its ownership interest in the clearing firm. However, because Regulation T does not provide an ownership standard, good faith credit has been extended to ''owners'' maintaining only a nominal interest in a clearing firm.

In conjunction with other SROs and representatives from the securities industry, the Exchange has established standards for JBO participants and clearing firms. These standards will permit the extension of good faith credit to clearing firm ''owners'' only when the owners maintain meaningful assets on deposit with the JBO clearing firm, and the clearing firm maintains sufficient net capital and risk control procedures to carry such accounts. The Exchange's proposed rule change would establish the following requirements:

(a) *Broker-Dealer Accounts.* The Exchange proposes to adopt a new Exchange Rule 2.16(c)(6)(A) that would permit a member organization to carry the proprietary account of another broker-dealer that is registered with the

[2] Regulation T, ''Credit by Brokers and Dealers,'' requires that a JBO clearing firm be ''a clearing and servicing broker or dealer owned jointly or individually by other [broker-dealers].'' 12 CFR 220.11(a)(2). The Board of Governors of the Federal Reserve System issued Regulation T pursuant to the Act.

[3] See Board of Governors of the Federal Reserve System Docket No. R–0772 (Apr. 26, 1996), 61 FR 20386 (May 6, 1996).

Commission, upon a margin basis that is satisfactory to both parties, provided the requirements of Regulation T are adhered to and the account is not carried in a deficit equity condition. The rule would specify that the amount of any deficiency between the equity maintained in the account and the haircut requirements of Commission Rule 15c3–1 (''Rule 15c3–1'') shall be deducted in computing the net capital of the member organization under the Exchange's capital requirements.

(b) *JBO Arrangements.* The Exchange also proposes to adopt a new Exchange Rule 2.16(c)(6)(B) which will provide that an arrangement may be established between two or more registered broker-dealers pursuant to Regulation T to form a JBO arrangement for carrying and clearing, or carrying accounts of participating broker-dealers. Member organizations must provide written notification to the Exchange prior to establishing a JBO.

The proposed rule change also sets forth certain requirements that a carrying and clearing, or carrying member organization must satisfy. First, the member organization must maintain a minimum tentative net capital [4] of $25 million as computed pursuant to Rule 15c3–1, except that a member organization whose primary business consists of the clearance of options market-maker accounts, may carry JBO accounts provided that it maintains a minimum net capital of $10 million as computed pursuant to Rule 15c3–1. Second, the member organization must include in its ration of gross options market maker deductions to net capital required by the provisions of Rule 15c3–1, gross deductions for JBO participant accounts. Clearance of options market maker accounts shall be deemed to be a broker-dealer's primary business if a minimum of 60% of the aggregate deductions in the above ratio are options market maker deductions. Third, the member organization must maintain a written risk analysis methodology for assessing the amount of credit extended to participating broker-dealers which shall be made available to the Exchange upon request. Fourth, the member organization must deduct from net capital haircut requirements pursuant to Rule 15c3–1 in excess of the equity maintained in the accounts of participating broker-dealers.

In addition, the proposed rule change specifies that a participating broker-dealer must: (a) Be a registered broker-dealer subject to Rule 15c3–1; (b) maintain an ownership interest in the carrying/clearing member organization pursuant to Regulation T, Section 220.11; and (c) maintain a minimum liquidating equity of $1 million in the JBO arrangement exclusive of the ownership interest established in (b) above. When the minimum liquidating equity decreases below the $1 million requirement, the participant must deposit an amount sufficient to eliminate this deficiency within 5 business days or become subject to margin requirements pursuant to the other provisions of Exchange Rule 2.16, ''Margin Requirements.''

(c) *Specialist's Accounts.* The proposed rule change also modifies Exchange Rule 2.16(c)(5)(A) to revise the manner in which debit items to a carrying member firm's net capital are calculated. Currently, the amount of any deficiency between the margin deposited by a specialist and the margin required by Exchange Rule 2.16 is considered as debit item in the computation of the net capital of the carrying member firm. Under the proposed rule change, the debit item would consist of the amount of any deficiency between the margin deposited by a specialist and the haircut requirements of Rule 15c3–1. The proposed rule change would make the identical modification to Exchange Rule 2.16(c)(5)(B) to apply to the situation where joint accounts are carried by a member firm for specialists, and the member firm participates in such joint accounts.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does no believe the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, 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 persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–97–49 and should be submitted by March 18, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4758 Filed 2–24–98; 8:45 am]

BILLING CODE 8010–01–M

[4] The term ''tentative net capital'' generally refers to a member firm's net capital before the application of haircuts and undue concentration deductions.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Electronics and Instrumentation (ISAC–5)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee on Electronics and Instrumentation (ISAC–5) will hold a meeting on February 26, 1998 from 8:30 a.m. to 2:30 p.m. The meeting will be open to the public from 1:30 p.m. to 2:30 p.m. and closed to the public from 8:30 a.m. to 1:30 a.m.

DATES: The meeting is scheduled for February 26, 1998, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce in Room 1412, located at 14th Street and Constitution Avenue, N.W., Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Duaine A. Priestley, Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, (202) 482–2410 or Bill Daley, Office of the United States Trade Representative, 600 17th St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC 5 will hold a meeting on February 26, 1998 from 8:30 a.m. to 1:30 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 8:30 a.m. to 1:30 p.m. The meeting will be open to the public and press from 1:30 p.m. to 2:30 p.m. when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

Pate Felts,

Acting Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 98–4780 Filed 2–24–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending February 13, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department's Procedural Regulations (See 14 CFR 302.170 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each Application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1997–3218.
Date Filed: February 9, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 9, 1998.
Description: Supplement to the Application of Delta Air Lines, Inc. submitting Request for Frequency Allocation and Request for Pendente Lite Authority.

Docket Number: OST–1996–1091.
Date Filed: February 10, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 17, 1998.
Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. 41108, applies for long-term U.S-Japan certificate authority, frequency allocation, and same-country codesharing to provide scheduled foreign air transportation of persons, property, and mail.

Docket Number: OST–1996–1121.
Date Filed: February 10, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 17, 1998.
Description: Application of Trans World Airlines, Inc. pursuant to the Department's Notice, dated February 3, 1998, request a St. Louis-Japan certificate of public convenience and necessity service, and applies for a frequency allocation of seven weekly frequencies to conduct the service.

Docket Number: OST–1996–1126.
Date Filed: February 10, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 17, 1998.
Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. 41108, applies for long-term U.S-Japan certificate authority, frequency allocation, and same-country codesharing to provide scheduled foreign air transportation of persons, property, and mail, as listed.

Docket Number: OST–1996–1213.
Date Filed: February 10, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 17, 1998.
Description: Supplement of Continental Airlines to its application for Houston-Tokyo, Newark-Tokyo and Newark-Osaka authority to comply with the requirements of the U.S.-Japan Combination Service Notice and seeks 21 weekly U.S.-Japan frequencies for operation of these proposed services.

Docket Number: OST–1997–2913.
Date Filed: February 10, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 17, 1998.
Description: Amendment No. 1 to the Application Delta Air Lines, Inc. pursuant to 49 U.S.C. 41102 and 41108 and the Department's Notice dated February 3, 1998, (1) requests that its application in OST–97–2913 for U.S.-Japan Authority be consolidated into the 1998 U.S.-Japan Combination Service Proceeding, OST–98–3419 (2) amends and supplements its application requesting certificate authority to engage in scheduled foreign air transportation of persons, property and mail between the terminal points:

1. Atlanta, Georgia and Tokyo, Japan;
2. Portland, Oregon and Osaka, Japan;
3. Portland, Oregon and Fukuoka, Japan;
4. New York, New York (JFK) and Tokyo, Japan;
5. Atlanta, Georgia and Osaka, Japan; and
6. Cincinnati, Ohio and Tokyo, Japan; and

Allocation of one weekly frequency to increase its nonstop service between Los Angeles, California and Tokyo, Japan from six weekly flights to daily service;

Allocation of twenty-one weekly frequencies to provide daily nonstop service commencing in 1998 between: (1) Atlanta and Tokyo, (2) Portland and Osaka, and (3) Portland and Fukuoka; Allocation of twenty-one weekly frequencies to provide daily nonstop

sevice after January 1, 1999, between: (1) Atlanta and Osaka, (2) Cincinnati and Tokyo; and (3) New York (JFK) and Tokyo.

Docket Number: OST–98–3419.
Date Filed: February 10, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 17, 1998.
Description: Application of Continental Micronesia, Inc. pursuant to 49 U.S.C. 41108 and 41102, and Subpart Q and the Department's Notice dated February 3, 1998, applies for an amendment to its certificates of public convenience and necessity for Route 171 to provide scheduled foreign air transportation of persons, property and mail between Honolulu, Hawaii, and Osaka, Japan.

Docket Number: OST–98–3419.
Date Filed: February 10, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 17, 1998.
Description: Application of Hawaiian Airlines, Inc. pursuant to the Department's Notice dated February 3, 1998, requests a certificate of public convenience and necessity to authorize nonstop scheduled air service of persons, property and mail between Maui, Hawaii and Narita, Japan, commencing January 1, 2000.

Docket Number: OST–98–3419.
Date Filed: February 10, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 17, 1998.
Description: Application of US airways, Inc., pursuant to 49 U.S.C. 41101, 41102, 41108 and the Department's Notice of February 3, 1998, applies for a certificate of public convenience and necessity to operate Philadelphia-Tokyo (Narita), Pittsburgh-Tokyo (Narita), Charlotte-Tokyo (Narita) and Philadelphia-Osaka, Japan.

Docket Number: OST–98–3419.
Date Filed: February 11, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 17, 1998.
Description: Amended Application of Trans World Airlines, Inc., pursuant to the Department's Notice, dated February 3, 1998, requests an allocation of 28 weekly code share frequencies in order to conduct code share service with Delta Air Lines on Portland-Osaka-Nagoya-Fukuoka routes and Los Angeles-Tokyo route. TWA requests leave to file this amended application one day late.

Docket Number: OST–1998–3464.
Date Filed: February 10, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 10, 1998.
Description: Application of All Nippon Airways Co., Ltd., pursuant to 49 U.S.C. 41301, applies for an amendment to its foreign air carrier permit to engage in the foreign air transportation of persons, property and mail, between any point or points behind Japan and any point or points in Japan, via any intermediate point or points, and any point or points in the United States, and beyond the United States to any point or points, with full traffic rights.

Docket Number: OST–1998–3475.
Date Filed: February 12, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 12, 1998.
Description: Application of Nippon Cargo Airlines Co., Ltd., pursuant to 49 U.S.C. 41301 and Subpart Q of the Regulations, applies for an amendment to its foreign air carrier permit to engage in foreign air transportation, between any point or points in Japan, via any intermediate point or points, and any point or points in the United States, and beyond the United States to any point or points, with full traffic rights.

Docket Number: OST–1998–3477.
Date Filed: February 12, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 12, 1998.
Description: Application of United Parcel Service Co., pursuant to 49 U.S.C. 41102, 41108, and Subpart Q of the Regulations, requests a certificate of public convenience and necessity authorizing it to engage in the foreign air transportation of cargo (property and mail) between a point or points in the United States and two points in Japan and beyond each of those two points to two points with full traffic rights between all points on the route.

Docket Number: OST–98–3479.
Date Filed: February 12, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 12, 1998.
Description: Application of Asia Pacific Airlines, Inc., pursuant to 49 U.S.C. 41102, and Subpart Q of the Department's Economic Regulations, requests a Certificate of Public Convenience and Necessity to authorize it to engage in foreign charter air transportation of property and mail.

Docket Number: OST–98–3484.
Date Filed: February 13, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 13, 1998.
Description: Application of Japan Airlines Company, Ltd., pursuant to 49 U.S.C. 41304(a) and Subpart Q of the Regulations, applies to amend its foreign air carrier permit to authorize JAL to (i) engage in, in addition to operations permitted by its existing permit authority, both combination and all-cargo services between any point or points behind Japan, any point or points in Japan, any intermediate point or points, any point or points in the territory of the United States, and any point or points beyond the United States, without any limitation on frequency or capacity, consistent with the provisions of Tab F (''Operational Flexibility'') and Tab G (''Change of Gauge'') of the Memorandum of Consultations between the United States and Japan, signed January 30, 1998.

Paulette V. Twine,
Federal Register Liaison.

[FR Doc. 98–4795 Filed 2–24–98; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3471]

Commercial Fishing Industry Vessel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) and its Subcommittee will meet to discuss various issues relating to commercial vessel safety in the fishing industry. The meetings are open to the public.

DATES: The meetings of the subcommittees of CFIVAC will be held on Wednesday, March 18, 1998, from 9 a.m. to 4:30 p.m. The general CFIVAC meeting will be held on March 19, 1998. from 9 a.m. to 4:30 p.m. Written material and requests to make oral presentations should reach the Coast Guard on or before March 11, 1998.

ADDRESSES: The meeting of the Subcommittee on Voluntary Standards for U.S. Uninspected Commercial Fishing Vessels by Utilizing the Application of Prevention Through People (PTP) Principles will be held in Room 3328, Department of Transportation Headquarters (NASSIF Building), 400 7th Street, SW., Washington, DC. The meeting of the Subcommittee on Stability Standards for Commercial Fishing Industry Vessels will be held in Room 324A at the same address. The CFIVAC meeting will be held in Room 324A at the same address.

Written material and requests to make oral presentations should be sent to Commander John J. Davin, Jr.,

Commandant (G–MSO–2), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Commander John J. Davin, Jr., Executive Director of CFIVAC, or Lieutenant Commander Randy Clark, Assistant to the Executive Director, telephone (202) 267–0214, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meetings on March 18, 1998

Subcommittee on Voluntary Standards Utilizing PTP

(1) Review Voluntary Standards of Uninspected Commercial Fishing Vessels found in Navigation and Vessel Inspection Circular (NVIC) 5–86 to ascertain which standards should be continued as voluntary in light of the regulations in 46 CFR part 28.

(2) Assist the commercial fishing community by developing voluntary standards which minimize casualties and injuries through application of the principles of PTP.

(3) Review possible methods to develop these voluntary standards.

Subcommittee on Stability Standards

(1) Review existing stability standards for Uninspected Commercial Fishing Vessels less than 79 feet in length.

(2) Review possible stability standards to increase the safe operation of these vessels.

Agenda of Meetings of CFIVAC on March 19, 1998

(1) Update on the International Convention on Standards of Training, Certification, and Watchkeeping (STCW) and Standards of Training, Certification, and Watchkeeping for Fishing Vessels (STCW–F).

(2) Review of commercial fishing industry vessel casualty statistics.

(3) Report on various Fishing Vessel Safety initiatives under the purview of other agencies and Coast Guard Groups.

Procedural

All meetings are open to the public. Because of new security procedures at government buildings, each visitor should have a current picture ID to enter the NASSIF building. At the Chairperson's discretion, members of the public may make oral presentations during the meetings. Persons wishing to make oral presentations at the meetings should notify the Executive Director no later than March 11, 1998. Written material for distribution at a meeting should reach the Coast Guard no later than March 11, 1998. If a person submitting material would like a copy distributed to each member of a subcommittee in advance of a meeting, that person should submit 20 copies to the Executive Director no later than March 4, 1998.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: February 18, 1998.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–4833 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Jackson International Airport, Jackson, Mississippi

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jackson International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 27, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306.

n addition, one copy of any comments submitted to the FAA must be mailed or delivered to Dirk Vanderleest, Executive Director of the Jackson Municipal Airport Authority at the following address: Post Office Box 98109, Jackson, MS 39298–8109.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Jackson Municipal Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: David Shumate, Project Manager, FAA Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306, telephone number 601–965–4628. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jackson International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 18, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by Jackson Municipal Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 11, 1998.

The following is a brief overview of the application.

PFC Application Number: 98–02–C–00–JAN.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1998.

Proposed charge expiration date: December 31, 1999.

Total estimated PFC revenue: $2,828,000.

Brief description of proposed project(s): (1) Terminal roadway roundabout, (2) Rehabilitate airport roadway signage, (3) Airport communication & security system update, (4) Rehabilitate existing public roadways, and (5) Airport master plan/part 150 update.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the office of the Jackson Municipal Airport Authority.

Issued in Jackson, Mississippi, on February 18, 1998.

Wayne Atkinson,

Manager, Airports District Office, Southern Region, Jackson, Mississippi.

[FR Doc. 98–4766 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application #98–04–I–00–STL To Impose a Passenger Facility Charge (PFC) at Lambert-St. Louis International Airport, St. Louis, Missouri

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Lambert-St. Louis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 27, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Leonard L. Griggs, Jr., Director of Airports, Lambert-St. Louis International Airport, at the following address: St. Louis Airport Authority, P.O. Box 10212, St. Louis, Missouri 63145.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the St. Louis Airport Authority, Lambert-St. Louis International Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna K. Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at the Lambert-St. Louis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 11, 198, the FAA determined that the application to impose a PFC submitted by the St. Louis Airport Authority, St. Louis, Missouri, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 13, 1998.

The following is a brief overview of the application.

Level of the PFC: $3.00.

Proposed charge effective date: June, 1998.

Estimated charge expiration date: September, 2001.

Total estimated PFC revenue: $135,000,000.

Brief description of proposed projects: Phase I and II of property and business acquisition for Natural Bridge Road relocation; land acquisition for new Runway 12R/30L and site preparation work; early road work; design fees for roads and Runway 12R/30L.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lambert-St. Louis International Airport.

Issued in Kansas City, Missouri on February 13, 1998.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 98–4773 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement Number ANM–98–1]

Notice Policy Statement; Request for Comments

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice policy statement, request for comments.

SUMMARY: This notice announces an FAA policy statement applicable to the type certification of transport category airplanes. This notice advises the public, in particular manufacturers of certain transport category airplanes, that the FAA intends to evaluate the airplanes' wake vortex characteristics as part of the type certification process. This notice is necessary to advise the public of FAA policy and give all interested persons an opportunity to present their views on the policy statement.

DATES: Comments must be received on or before March 27, 1998.

ADDRESSES: Send all comments on this policy statement to the individual identified under **FOR FURTHER INFORMATION CONTACT** at Federal Aviation Administration, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056.

FOR FURTHER INFORMATION CONTACT: Colin Fender, ANM–111, telephone (425) 227–2191, facsimile (425) 227–1320, or email: Colin.Fender@faa.dot.gov

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this policy statement by submitting such written data, views, or arguments as they may desire. Commenters should identify the Policy Statement Number of this policy statement, and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff.

Background

Wake vortices, masses of rotating air trailing an airplane, can have serious consequences for following airplanes. According to the National Transportation Safety Board (NTSB), between 1983 and 1993 there were at least 51 accidents and incidents in the United States that resulted from probable encounters with wake vortices. In these 51 encounters, 27 occupants were killed, 8 occupants were seriously injured, and 40 airplanes were substantially damaged or destroyed.

One of the primary means the FAA uses to reduce the potential of a wake vortex upset is to specify minimum separation distances between airplanes. The relative risk of an upset from a wake vortex encounter is a function of the strength of the vortex generated by the leading airplane, the distance between airplanes, and the roll moment inertia of the trailing airplane. In general, both the strength of a vortex that can be generated by an airplane and an airplane's roll moment inertia are a function of the airplane's weight. Therefore, the FAA specifies minimum separation distances in terms of the

weights of the leading and trailing airplanes. These minimum separation distances are prescribed in FAA Order 7110.65, ''Air Traffic Control.'' In Order 7110.65, airplane weights are specified in terms of three weight classifications—''small,'' ''large,''or ''heavy.''

The fatal accidents noted above have generally been the result of ''small'' airplanes following ''large'' or ''heavy'' airplanes (as defined in Order 7110.65) in Visual Flight Rules (VFR) meteorological conditions at less than the minimum separation distances prescribed by Order 7110.65. During the time period quoted, the separation standards of Order 7110.65 were only applied during Instrument Flight Rules (IFR) meteorological conditions where prolonged visual contact with the lead airplane may not be possible.

In 1996, the FAA revised Order 7110.65 to change the weight ranges used to define each weight classification and to acquire air traffic controllers to notify pilots of any aircraft trailing a ''heavy'' aircraft of that ''heavy'' aircraft's type, position, altitude, and direction when in VFR conditions. The new weight ranges resulted from a recent review of existing wake vortex evaluation test data, from which the following general relationship between an airplane's weight and its wake vortex strength was developed:

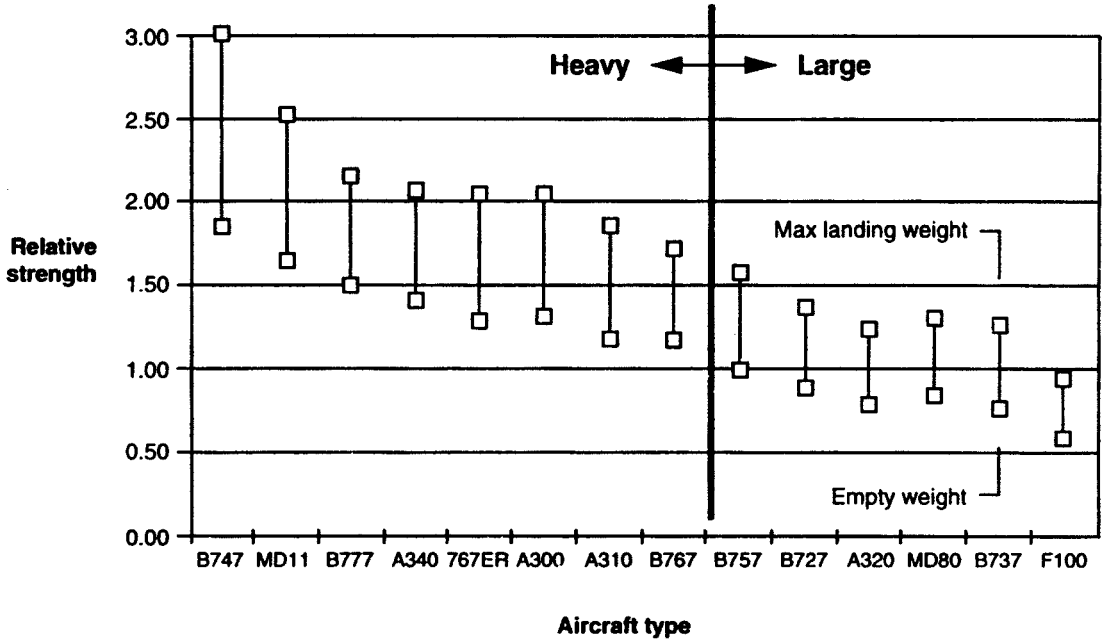

Figure 1. Wake Vortex Relative Strength

This relationship was developed from tests of conventional transport category airplanes with separate wing and fuselage elements, a midfuselage wing location with an aft-mounted horizontal stabilizer, wing lite generated by ambient airflow over airfoil surfaces (i.e., no forced blowing of wing surfaces or high lift devices), and turbojet/turbofan powerplants.

The NTSB has expressed a concern, however, that the design of future airplanes could result in wake vortices that are unusually strong or persistent for the weight of the airplane. Also, due to the wide range of weights covered by the weight classifications, this method of defining minimum separation distances may inappropriately place a new airplane near the top of one weight category when its vortex strength characteristics are more representative of the next higher weight category.

Following a wake vortex-related fatal accident in December 1994, the NTSB's attention was again drawn to the methods used to determine aircraft separation distances. This led to the NTSB issuing Safety Recommendation No. A–94–056 that recommended the FAA, ''Require manufacturers of turbojet-powered transport category airplanes to determine, by flight test or other suitable means, the characteristics of the airplanes' wake vortices during certification.''

In response to Safety Recommendation No. A–94–056, the FAA proposes to establish the following general policy for addressing the potential for mis-categorization of new transport category airplanes relative to minimum separation distance for wake vortex avoidance:

Policy Statement

1. Airplanes that are of a ''conventional'' configuration (transport category airplanes with separate wing and fuselage elements, a midfuselage wing location with an aft-mounted horizontal stabilizer, wing lift generated by ambient airflow over airfoil surfaces, i.e., no forced blowing of wing surfaces or high lift devices, and turbojet/turbofan powerplants) can be placed into the existing weight classification system for determining the minimum separation distances for trailing aircraft. However, if an airplane would be near the maximum weight for a particular classification, the FAA Aircraft Certification Office (ACO) reviewing the application should ensure that the classification is appropriate. The ACO may request the assistance of the applicant in making this determination.

2. For airplanes that do not fit the ''conventional'' configuration description, the ACO reviewing the application should ensure that the classification is appropriate, either by conservatively estimating wake vortex characteristics or, with the assistance of the applicant, by determining the wake vortex characteristics of the airplane, through flight test or other means, as part of the type certification process.

In addition to requesting comments on this policy statement, the FAA requests comments on the means of determining the appropriate classification, when necessary, for new or derivative airplane types. The FAA expects that advisory material will be necessary to provide specific guidance for evaluating wake vortex characteristics. Until new methods are developed and validated, the FAA intends to use the test methods and procedures previously used to develop the current weight classification scheme, illustrated in Figure 1, for transport category airplanes of conventional design. An example of these test methods and procedures can be found in FAA Report No. FAA–AEQ–75–1, ''Investigation of the Vortex Wake Characteristics of Jet Transports During Climbout and Turning Flight,'' May 1975 (available through the National Technical Information System, Springfield, Virginia 22151).

Issued in Renton, Washington, on February 18, 1998.

Gilbert L. Thompson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 98–4765 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 1:30 p.m., on Monday, March 2, 1998, at the Intercontinental Hotel, 100 Chopin Plaza, Miami, Florida. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than February 26, 1998, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W., Washington, D.C. 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, D.C. on February 19, 1998.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 98–4751 Filed 2–24–98; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE TREASURY

Commission to Study Capital Budgeting

AGENCY: Advisory Commission to the President of the United States.

ACTION: Notice of meetings.

SUMMARY: The agenda for the next meetings of the Commission to Study Capital Budgeting includes discussions and hearing of testimony on capital budgeting issues on Friday, March 6. On Saturday morning, March 7, the Commission will hear reports from its working groups studying different aspects of capital budgeting and discuss the next steps to be taken in preparation of its report. The Commission's final report on capital budgeting is due on December 13, 1998. Meetings are open to the public. Limited seating capacity is available.

Dates, Times and Places of the Next Commission Meetings

March 6, 1998, 9:00 a.m. to 5:00 p.m.

House Budget Committee Hearing Room, Room 210, Cannon House Office Building, Independence Avenue and C Street, SE, Washington, DC 20515

March 7, 1998, 9:00 a.m. to 1:00 p.m.

White House Conference Center, Truman Room 726 Jackson Place, NW, Washington, DC 20503.

The Commission is seeking all views on capital budgeting. Interested parties may submit their views to: Barry Anderson, Executive Director, President's Commission to Study Capital Budgeting, Old Executive Office Building (Room 258), Washington, DC 20503, Voice: (202) 395–4630, Fax: (202) 395–6170, E-Mail: capital__budget@oa.eop.gov Website: http://www.whitehouse.gov/wh/eop/omb/pcscb/

FOR FURTHER INFORMATION CONTACT: E. William Dinkelacker, Senior Economist, Room 4456 Main Treasury, Washington, DC 20220, Voice: (202) 622–1285, Fax: (202) 622–1294, E-Mail: william.dinkelacker@treas.sprint.com.

E. William Dinkelacker,

Designated Federal Official.

[FR Doc. 98–4714 Filed 2–24–98; 8:45 am]

BILLING CODE 4810–25–P

United States Information Agency

Culturally Significant Objects Imported for Exhibition Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit ''Gifts of the Nile: Ancient Egyptian Faience'' (see list [1]), imported from the Petrie Museum of Egyptian Archaeology, England for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit objects at The Cleveland Museum of Art, Cleveland, Ohio from on or about May 10, 1998, to on or about July 5, 1998, and Museum of Art, Rhode Island School of Design, Providence, Rhode Island from on or about August 24, 1998, to on or about January 3, 1999, and Kimbell Art Museum, Fort Worth, Texas from on or about January 31, 1999, to on or about April 25, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: February 19, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–4839 Filed 2–24–98; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning, Assistant General Counsel, at 202/619–5997, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, DC 20547–0001.

federal register

Wednesday
February 25, 1998

Part II

Securities and Exchange Commission

17 CFR Parts 228, et al.

Offshore Offers and Sales; Final Rule

Registration of Securities on Form S–8; Proposed Rule

Publication or Submission of Quotations Without Specified Information; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 249

[Release No. 33–7505; 34–39668; File No. S7–8–97; International Series Release No. 1118]

RIN 3235–AG34

Offshore Offers and Sales

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting amendments to the Regulation S safe harbor procedures for offshore sales of equity securities of U.S. issuers and the reporting requirements applicable to those transactions. The amendments are designed to stop abusive practices in connection with offerings of equity securities purportedly made in reliance on Regulation S.

EFFECTIVE DATES: April 27, 1998 except §§ 249.308, 249.308a, 249.308b, 249.310 and 249.310b (the amendments to Forms 8–K, 10–Q, 10–QSB, 10–K and 10–KSB) will become effective on January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Office of International Corporate Finance, Division of Corporation Finance, at (202) 942–2990.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the ''Commission'') is adopting amendments to Rule 903[1] of Regulation S,[2] the issuer safe harbor under the Securities Act of 1933[3] for offshore offerings of securities, to address abusive practices that have developed. The amendments apply to the offshore sales of equity securities of domestic issuers. The Commission is also adopting amendments to Rule 144(a)(3)[4] and a new Rule 905[5] that classify these equity securities as ''restricted securities,'' as defined in Rule 144 under the Securities Act. In addition, Rule 905 makes clear that offshore resales under Rule 904[6] of restricted equity securities of domestic issuers will not alter the status of these securities as restricted securities after the resale. The Commission also is replacing the current requirement that reporting issuers file a Form 8–K to disclose Regulation S sales of equity securities within 15 days of the transaction with a requirement that these sales be reported on Forms 10–Q, 10–QSB, 10–K or 10–KSB, as appropriate. In addition to these changes, the Commission is adopting other technical amendments to Regulation S to make the rule clearer and more concise.

I. Executive Summary

The Commission adopted Regulation S in 1990 as a safe harbor from the registration requirements of the Securities Act for offshore offers and sales of securities. Although the regulation has proved successful for many types of offerings, abuses in connection with sales of domestic equity securities have been common.

Regulation S has been used as a means of perpetrating fraudulent and manipulative schemes, especially schemes involving the securities of thinly capitalized or ''microcap'' companies. These types of securities are particularly vulnerable to fraud and manipulation because little information about them is available to investors.

The Commission is seeking to enhance investor protection with respect to microcap securities through various initiatives, including amendments to Regulation S. The changes to the regulation adopted today should prevent further abuses of this rule, but also allow continued reliance on Regulation S in legitimate offshore offerings.

The Regulation S amendments adopted today are as follows:

- Equity securities placed offshore by domestic issuers under Regulation S will be classified as ''restricted securities'' within the meaning of Rule 144, so that resales without registration or an exemption from registration will be restricted;[7]
- To avoid confusion between the holding period for ''restricted securities'' under Rule 144 and the ''restricted period'' under Regulation S, the term ''restricted period'' will be renamed the ''distribution compliance period'';
- The distribution compliance period for these securities will be lengthened from 40 days to one year;
- Certification, legending and other requirements, which currently are applicable only to sales of equity securities by non-reporting issuers, will be imposed on these equity securities;
- As a means to alert purchasers of these equity securities to potential restrictions on hedging their positions in these securities, purchasers will be required to agree that their hedging transactions with respect to such securities will be conducted in compliance with the Securities Act, such as Rule 144 thereunder; and
- Offshore resales under Rule 901[8] or 904 of equity securities of domestic issuers that are ''restricted securities,'' as defined in Rule 144, will not affect the restricted status of these securities.

The amendments are substantially as proposed with some important differences. To avoid undue interference with offshore offering practices of foreign companies, the amendments will apply to the equity securities of U.S. issuers, but not to the equity securities of foreign issuers. The distribution compliance period applicable to issuers and distributors under Rule 903 will be extended to one year, rather than the proposed two years, to align Regulation S more precisely with the Rule 144 resale restrictions. In addition, promissory notes will not be prohibited in Regulation S transactions; rather, the notes must satisfy certain conditions set forth in Rule 144 before the purchaser can resell pursuant to that rule. These conditions should ensure that promissory notes are not used as a means to distribute securities into the United States. This refined approach will still forestall abuses related to the use of promissory notes in Regulation S transactions. Finally, the change from Form 8–K reporting to quarterly reporting will be delayed to allow the Commission staff to monitor developments under the amended rule.

II. Background of Proposals and Commenters' Concerns

The Commission has acted to stem abuses of Regulation S by issuers, affiliates and others involved in the distribution process who were using Regulation S as a guise for distributing securities into the U.S. markets without the protections to investors of registration of the securities under the Securities Act. The Commission first stated its position about these abuses in a June 1995 interpretive release that described certain problematic practices under Regulation S.[9] The Commission also has instituted enforcement proceedings against participants in abusive Regulation S transactions.[10]

[1] 17 CFR 230.903.

[2] 17 CFR 230.901–230.905 and Preliminary Notes.

[3] 15 U.S.C. 77a *et seq.*

[4] 17 CFR 230.144(a)(3).

[5] 17 CFR 230.905.

[6] 17 CFR 230.904.

[7] Rule 905, which classifies these securities as ''restricted,'' will not be applied retroactively. See *infra* Section III.C.3.

[8] 17 CFR 230.901.

[9] Securities Act Release No. 7190 (June 27, 1995) [60 FR 35663 (July 10, 1995)] (the ''Interpretive Release'').

[10] See *SEC* v. *Schiffer*, Litigation Release No, 15435 (Aug. 7, 1997); *In re GFL Ultra Fund Ltd.*, Securities Act Release No. 7423 (June 18, 1997);

As a result of the continuation of certain of these abusive practices and in response to the comment letters received on the Interpretive Release, the Commission on February 20, 1997, proposed new restrictions to Regulation S to stop these abusive practices for placements of equity securities by domestic companies.[11] In addition, the Commission proposed to make these restrictions apply to foreign companies where the principal trading market for their securities is in the United States because of concerns that abusive practices might develop in the future. The Commission proposed to classify these equity securities of domestic and foreign companies placed offshore under Regulation S as ''restricted securities'' within the meaning of Rule 144, and to revise the applicable offering restrictions to ensure that these equity securities could not be sold or resold to U.S. persons (unless pursuant to registration or an exemption).[12]

The comments on the proposals were mixed.[13] A number of commenters supported the proposed amendments as necessary and appropriate to curb abusive practices and to facilitate legitimate offshore capital raising by U.S. companies. Others believed the proposals would severely restrict the ability of U.S. companies to access alternative offshore sources of capital. Several commenters objected to the extension of the revisions in the rule to foreign private issuers that have their principal market in the United States. These commenters urged that the application of the new resale restrictions, including the legending and stop transfer requirements, would be inconsistent with the requirements of offshore trading markets and public offering practices.

III. Amendments Adopted Today

A. Scope of the Amendments

1. Will Not Apply to Foreign Issuers for Which the United States Is the Principal Market

Although abusive practices under Regulation S have not been evident in offerings by foreign issuers, the Commission was concerned that abusive practices might develop in the future since the economic incentives for indirect distributions and resales into the United States are the same for equity offerings of both domestic companies and foreign companies where the principal market for their securities is in the United States.[14] Therefore, the Commission proposed that the Regulation S changes would treat these offerings similarly both with respect to the new Regulation S requirements, as well as the ''restricted securities'' classification under Rule 144.

The commenters strongly opposed this approach. They pointed out that subjecting foreign issuer securities to these restrictions was unnecessary in light of the absence of abuses with respect to those securities. They also asserted that there should be no presumption that a foreign issuer offering securities overseas is doing so to avoid the registration and disclosure requirements of the U.S. federal securities laws, even when it has a substantial trading market for its securities in the United States. Moreover, in the view of some these commenters, there is no reason to assume that indirect unregistered distributions into the United States will occur when these foreign issuers' securities are sold offshore.

The commenters also noted that if equity securities issued by these foreign companies are deemed restricted securities, the issuers in essence would be applying to their offshore offerings many of the standard practices used in U.S. private placements. The certification and purchaser agreement requirements would impose a significant burden on foreign issuers that wish to conduct public offerings in their home jurisdictions. In addition, many foreign stock exchanges will not permit trading of legended securities. The commenters asserted that the legending and stop transfer restrictions, as well as to a lesser extent the disclosure and certification requirements that would be imposed by the rule, would impede both public offerings and trading in those securities on offshore public markets that do not accept legended stock for trading.[15] As a result, the classification of foreign equity securities as ''restricted'' could create a strong disincentive for foreign companies to list their securities on U.S. markets.

While the Commission remains concerned with the potential for abuse, it has determined not to extend, at this time, the new requirements to the securities of foreign private issuers, regardless of the relative size of their U.S. markets to their worldwide trading.[16] The Commission agrees that absent a showing of abuse, imposing significant new restrictions on the offshore offering practices of foreign companies is not warranted. However, the Commission will monitor practices in this area, and will revisit the issue if abuses occur. Meanwhile, purchasers of these securities are reminded that Regulation S does not provide a safe harbor for resales of securities into the United States, and any resales must be made pursuant to a registration statement or an exemption from the Securities Act. Regardless of the foreign issuer's compliance with the Regulation

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SEC v. *PanWorld Minerals Int'l, Inc.,* Litigation Release No. 15380 (June 2, 1997); *SEC* v. *Members Service Corp.,* Litigation Release No. 15371 (May 22, 1997); *SEC* v. *Rosenfeld,* Litigation Release No. 15274 (Mar. 5, 1997); *United States* v. *Sung and Feher,* Litigation Release No. 14901 (May 6, 1996); *In re Candie's Inc.,* Securities Act Release No. 7263 (Feb. 21, 1996); *SEC* v. *Scorpion Technologies, Inc.,* Litigation Release No. 14814 (Feb. 9, 1996); *SEC* v. *Sarivola;* Litigation Release No. 14704 (Oct. 31, 1995); *SEC* v. *EnvirOmint Holdings, Inc.,* Litigation Release No. 14683 (Oct. 6, 1995); *SEC* v. *Softpoint, Inc.,* Litigation Release No. 14480 (Apr. 27, 1995); *SEC* v. *Rehtorik,* Litigation Release No. 13975 (Feb. 23, 1994); *SEC* v. *Westdon Holding & Inv., Inc.,* Litigation Release No. 13263 (June 5, 1992).

[11] Securities Act Release No. 7392 (Feb. 20, 1997) [62 FR 9258 (Feb. 28, 1997)] (the ''Proposing Release'').

[12] The Commission proposed to revise the offering restrictions imposed by Regulation S by: (1) Aligning the Regulation S restricted period for these equity securities with the Rule 144 holding periods by lengthening the restricted period from 40 days or one year, as applicable, to two years; (2) by imposing certification, legending and other requirements; (3) by requiring purchasers of these securities to agree not to engage in hedging transactions unless the transactions comply with the Securities Act; (4) by prohibiting the use of promissory notes to pay for these securities; and (5) by clarifying that offshore resales of equity securities that are ''restricted securities,'' as defined in Rule 144, will not ''wash off'' the restricted status of these securities.

[13] The 47 comment letters received are available for inspection and copying in the Commission's public reference room. Refer to file number S7–8–97. The twelve comment letters that were submitted via electronic mail may be viewed at the Commission's web site: http://www.sec.gov.

[14] The Commission proposed defining ''principal market in the United States'' for a security as when more than 50% of all trading in such class of securities took place in, on or through the facilities of securities exchanges and inter-dealer quotation systems in the United States in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation. This definition differs from the ''substantial U.S. market interest'' test that is used to determine whether a foreign issuer qualifies for less restrictive treatment under Category 1 of Rule 903. See Proposing Release at Section II.

[15] A number of commenters also noted that the 50% threshold for determining the principal market as being in the United States that was proposed by the Commission was too low and would make the restrictions applicable to a large number of foreign issuers. One commenter noted that even if the standard were 100% of the reported trading volume, 10% of the foreign companies listed in the United States are traded solely in the United States and would be subject to the new requirements. See generally, ''U.S. Investors Look Across the Atlantic,'' The Washington Post, Aug. 31, 1997, at H2 (because of U.S. investor interest in foreign stocks, the New York Stock Exchange may be the principal market for many leading European companies).

[16] The Commission currently is considering other alternatives to prevent fraudulent practices that may occur in connection with the securities of foreign issuers. See Securities Exchange Act Release No. 34–39670 (Feb. 17, 1998).

S requirements, purchasers cannot purchase securities and resell them into the United States under circumstances in which they would be deemed statutory underwriters unless they register those resales.[17]

2. Will Apply to Public Offerings

Several commenters expressed the view that the proposed restrictions, including the designation of equity securities issued under Regulation S as restricted securities, were inconsistent with offshore public offering practices and the requirements of foreign trading markets. These commenters urged the Commission to adopt a distinction based on whether there was or will be a public trading market for the securities offshore following the offer, or whether the offering was subject to a foreign regulatory scheme governing public offerings.

Since most of the concerns in this respect were raised with regard to the extension of the requirements to foreign private issuers, those concerns are substantially addressed by the Commission's decision to limit the applicability of the new restrictions to domestic issuers. As discussed below,[18] the Commission believes that offering practices can be adopted to allow the new restrictions to be applied in the context of a public offering by domestic issuers, including share acquisitions. The existence of an offshore trading market would not eliminate the potential for abuse; for example, an offering could be made at a discount to purchasers offshore who may engage in an illegal distribution back into the United States. The Commission also is concerned that otherwise limited distributions to a small group of offshore investors easily could be structured as underwritten public offerings to avoid any additional restrictions on resales by those investors back into the United States. Accordingly, the amendments do not incorporate a distinction based upon whether a public trading market for the securities exists offshore, or whether the securities were issued in a public offering.

3. Will Apply to All Equity Securities of Domestic Companies, including Convertible Securities

Consistent with the proposal, the new procedures and restrictions and the ''restricted securities'' classification will apply only to offerings of equity securities. Rule 405 of Regulation C under the Securities Act defines the term ''equity security'' to include stock, securities convertible or exchangeable into stock, warrants, options, rights to purchase stock, and other types of equity-related securities.[19] The Commission is not applying the new restrictions to offerings of straight debt securities because the nature of the trading markets for debt securities appears not to have facilitated similar abusive practices. However, the new restrictions will apply to offerings of convertible debt securities because Regulation S abuses have involved the use of convertible or exchangeable securities and warrants.[20]

Commenters addressing the issue of whether the restrictions should apply to convertible securities urged the Commission to adopt the approach incorporated into Rule 144A. Under that approach, a convertible security is *not* treated as the same class as the underlying equity security if it has a conversion premium exceeding a specified percentage threshold over the market price of the underlying securities at the time of issuance.[21] If this approach were used in Regulation S, convertible securities with a sufficient conversion premium would not be subject to the new restrictions applicable to equity.

The new rules and restrictions will apply to all equity securities of U.S. issuers, including exchangeable or convertible securities and warrants, without regard to the conversion or exercise premium or other factors. It is clear that these securities can and have been used in abusive transactions. The potential for abuse exists whenever a domestic issuer can create offshore, in a transaction not subject to the registration provisions of the U.S. securities laws, pools of equity securities that appear to be immediately tradeable back into the United States because of their unrestricted status. The Commission is reluctant to specify a conversion premium and thus possibly be viewed as condoning abusive practices in securities set above that threshold. In any event, given the volatility of the markets for the types of small capitalization companies in which the Commission has witnessed abuses, it would be difficult to set an appropriate threshold for all types of issuers. Finally, as discussed below, even with application of the new restrictions to convertible securities, the Commission does not believe that Regulation S will eliminate the use of these securities as a means to lower a U.S. issuer's cost of capital. Many issuers do not need to rely on Regulation S with respect to their sales of convertible securities because they can use Form S–3 to register the securities.

4. Will Apply to Securities in Employee Benefit Plans

Equity securities offered and sold to non-U.S. resident employees through an employee benefit plan governed by foreign law have not been subject to a distribution compliance period regardless of the domicile of the issuer or U.S. market interest in its securities. Since new Rule 905 would extend to all equity securities of domestic issuers, however, the proposals would classify those equity securities as restricted securities within the meaning of Rule 144 when issued to the employee.

Several commenters believed that it was inappropriate to require non-U.S. resident employees to accept restricted securities pursuant to their employee benefit plans. To the extent reporting U.S. issuers believe it is necessary to give their non-U.S. resident employees immediate access to the U.S. public markets in order to sell the security, Form S–8, which is effective immediately upon filing, is available to permit the issuer to register the securities on a streamlined basis. Consequently, the Commission has determined to apply Rule 905 to these securities as proposed.

B. Distribution Compliance Periods

As explained in greater detail in the Proposing Release,[22] the issuer safe harbor distinguishes three categories of securities offerings, based upon factors such as the jurisdiction of incorporation of the company whose securities are being sold, the company's reporting status under the Securities Exchange Act of 1934 (''Exchange Act''),[23] and the degree of U.S. market interest in the issuer's securities.[24] The Commission proposed shifting U.S. reporting companies to ''Category 3'' and

[17] See Interpretive Release at n. 17; Proposing Release at n. 41.

[18] See *infra* Section III. C. 1.

[19] 17 CFR 230.405. Under the amendments adopted today, non-participating preferred stock and asset-backed securities would continue to be treated in the same manner as debt securities for purposes of the Regulation S safe harbors and the restricted security classification. See Rule 902(a)[17 CFR 230.902(a)], (formally Rule 903(c)(4)).

[20] See ''Pirates' Play?'', BARRON'S Jan. 7, 1997, at 17.

[21] See Rule 144A(d)(3)(i) [17 CFR 230.144A(d)(3)(i)]. See also Securities Act Release No. 6862 (Apr. 23, 1990) [55 FR 17933 (April 30, 1990)] at nn.25 and 26 for a discussion of how the conversion or exercise premium is determined for purposes of Rule 144A.

[22] See Proposing Release at Section II.

[23] 15 U.S.C. 78a *et seq.*

[24] See discussion at nn. 13–16 of the Proposing Release.

lengthening the distribution compliance period applicable to domestic equity securities. The effect of the proposals would have been to lengthen the distribution compliance period for U.S. reporting companies from 40 days to two years. Issuers previously subject to Category 3 for their equity offerings—non-reporting domestic issuers and foreign issuers with a significant U.S. market interest for their securities—would have had their distribution compliance period extended from one to two years. During this period, issuers, distributors, and their affiliates would have been required to comply with the documentation and disclosure requirements imposed by Rule 903, and any offers and sales during this period could not be made to a U.S. person and still qualify for the safe harbor. In response to concerns raised by commenters, the Commission is adopting a modified version of these proposals.

In addition, to further avoid confusion between the requirements applicable to issuers and distributors as a condition to perfecting their Rule 903 safe harbor and the Rule 144 safe harbor applicable to resales of the securities into the United States by the purchasers of those securities, the restricted period has been renamed the ''distribution compliance period.'' This should clarify that the availability of the safe harbor to the issuer and distributors has no bearing on whether purchasers of Regulation S securities may be acting as statutory underwriters if they purchase with a view to reselling into the U.S. markets.

1. Extension of the Distribution Compliance Period

A distribution compliance period is required for Category 2 and Category 3 offerings under the issuer safe harbors because there is a greater likelihood that the securities will flow back into the United States. The purpose of the distribution compliance period is to ensure that during the offering period and the subsequent aftermarket trading that takes place offshore, the persons relying on the safe harbor—issuers, distributors and their affiliates—are not engaged in an unregistered, non-exempt distribution into the United States capital markets.[25] In addition to the prohibition against selling to U.S. persons during the distribution compliance period, these persons are subject to special requirements designed to provide assurance that the securities will come to rest offshore.

The Commission proposed the two-year distribution compliance period to make the restrictions on issuers and distributors consistent with the Rule 144 holding periods applicable to purchasers of the Regulation S securities under new Rule 905 and the amendments to Rule 144. The commenters generally agreed that the current 40-day distribution compliance period was insufficient to protect against use of an offshore offering to make an indirect offering into the United States, at least with respect to equity securities of domestic issuers. Some commenters argued, however, that the two-year period was not necessary and that a 90-day period, like that originally proposed when Regulation S was first formulated, would be sufficient.[26]

Consideration was given to eliminating the distribution compliance period altogether, on the premise that since the equity securities issued under Regulation S could not be sold back into the U.S. markets for a period of two years unless sold in a manner consistent with the Rule 144 requirements, the additional requirements of the distribution compliance period were unnecessary. However, the documentation, disclosure and certification requirements linked to the distribution compliance period, as well as the prohibition against offers and sales to a U.S. person during the distribution compliance period, provide important additional protections and assurance that, at least from the perspective of the distribution participants, the securities have come to rest offshore. Extending those requirements for a period of time after the closing of the offering is necessary, particularly with respect to distributors of those securities who may immediately make a market for the securities offshore. The purposes of the protections would be defeated if the requirements are applied only to the initial purchasers.

The Commission has decided to extend the distribution compliance period substantially beyond 40 days to one year. The expiration of the one-year period will coincide with the period when limited resales may begin under Rule 144. At that point, the distribution compliance period is unnecessary. A two-year distribution compliance period, as originally proposed, could be confusing to apply because the distribution compliance period under Regulation S would cover a longer period than the holding period under Rule 144.

2. Offering Restrictions

Category 2 and Category 3 of Rule 903 require that ''offering restrictions''[27] be implemented during the distribution compliance period. For offerings classified as Category 3, these offering restrictions include agreements by distributors that the securities will only be sold in accordance with the Securities Act or Regulation S, and a requirement for disclosure in all offering materials to the same effect. The amendments adopted today do not affect these requirements other than to:

- Lengthen the period during which they must be implemented, as a result of the lengthening of the distribution compliance period; and
- Require that additional language be provided in the mandated agreements and on the securities themselves, so that purchasers have notice that hedging transactions not in compliance with the Securities Act are prohibited.

3. Purchaser Agreements and Certifications

Category 3 imposes additional requirements not included in Category 2 relating to purchaser certifications and agreements. Those requirements will be imposed on equity offerings of domestic reporting companies for the first time under the amendments. In addition, the issuer and distributors will be subject to the additional requirements for a longer period, as a result of the longer distribution compliance period.

In keeping with a more restrictive approach to the types of Regulation S offerings where the Commission has observed the greatest potential for abuse, the Commission is adopting amendments that will require purchasers of equity securities in Category 3 offerings to agree to resell the securities, or to engage in hedging transactions, only in accordance with the registration or exemptive provisions of the Securities Act, or in accordance with Regulation S.[28] This agreement by

[25] See Securities Act Release No. 6863 (Apr. 24, 1990)[55 FR 18306 (May 2, 1990)] the ''Adopting Release'') at Section III.B.

[26] The longer distribution compliance periods also extend the time during which the issuer and distributors could not engage in directed selling efforts in the United States. See Adopting Release at Sectio'n III.B.1.b One commenter expressed concern that the two-year distribution compliance period places an unworkable ''black-out'' restriction on publication of research regarding the issuer's securities.

[27] The term ''offering restrictions,'' as amended, is defined in Rule 902(g) [17 CFR 230.902(g)].

[28] Issuers, however, would be free to require purchasers to agree not to engage in any hedging transactions, even if the transaction would be consistent with the Securities Act. The amendments do not impose any new restrictions on hedging

Continued

purchasers of the covered equity securities should help ensure that purchasers have notice of the resale restrictions applicable to the securities.

Purchasers of domestic equity securities of reporting companies also will now be required to certify that they are not U.S. persons and are not acquiring the securities for the account or benefit of a U.S. person, or that they are U.S. persons who purchased securities in a transaction that did not require registration under the Securities Act. This certification procedure should make it clear to all parties involved in the Regulation S offering that the rule may not be used to circumvent the registration requirements of the Securities Act. This should prevent some of the ''sham'' transactions described in the Interpretive Release where issuers or distributors ''park'' securities offshore with affiliates or shell entities that are actually owned by U.S. persons.

4. Legending and Stop Transfer Requirements

Under the amendments, Category 3 will now require all domestic issuers of equity securities to place a legend on the securities sold offshore under Regulation S. This legend will advise that transfer of such securities is prohibited other than in accordance with Regulation S, pursuant to registration under the Securities Act, or pursuant to an available exemption from registration. The legend requirement will provide notice to any subsequent purchasers of the resale restrictions applicable to the securities. Legending equity securities of domestic reporting issuers until the expiration of the current 40-day distribution compliance period appears to be a common practice under Regulation S. The extension of the express legending requirement to reporting companies, when limited to domestic issuers, should not impose a different or new burden. In addition, as proposed, the current legending requirement is being amended, so that purchasers are aware that hedging transactions may not be conducted except in compliance with the Securities Act.

Category 3 also requires an issuer, by contract or a provision in its bylaws, articles, charter or comparable document, to refuse to register any transfer of securities unless made in accordance with the registration or exemptive provisions of the Securities Act, or in accordance with Regulation S. This requirement imposes on issuers a monitoring role similar to that which is often imposed in connection with unregistered private placements. In light of the abuses in this area, domestic reporting issuers should be held more accountable for compliance in these offerings.

Commenters were concerned that these procedures—which have existed under Category 3 since before the adoption of Regulation S [29] and now are merely being extended to a broader class of issuers—are inconsistent with public offering practices and that imposing these requirements will prevent the issuer from engaging in offshore public offerings or listings. Since these concerns were raised principally with respect to foreign issuers, they have been addressed by the decision not to extend Category 3 to reporting foreign issuers that have their principal market in the United States.[30] With respect to domestic issuers, although these requirements will not be complied with easily in an offshore public offering, the need to develop mechanisms to prevent abuse is clear. Absent measures like those required in Category 3, the Commission is concerned that abusive practices will continue.[31] Domestic reporting companies that find it too cumbersome to take advantage of the Regulation S safe harbor when conducting a public offering would simply register under the Securities Act or resort to other exempt offerings.

C. New Rule 905—Restricted Securities

Because some of the abusive practices under Regulation S have involved activities by persons other than issuers, distributors and their affiliates (investors who purchase Regulation S securities with a view to distributing those securities into the U.S. markets at the end of the 40-day distribution compliance period), the Commission believes that it is appropriate to clarify the legal obligations of purchasers of securities under Regulation S. The Commission proposed new Rule 905, and amendments to Rule 144(a)(3), to classify covered equity securities (of both reporting and non-reporting issuers) placed offshore under Regulation S as ''restricted securities'' within the meaning of Rule 144. By expressly defining these Regulation S securities as falling within the definition of ''restricted securities'' under the Rule 144 resale safe harbor, purchasers of those securities are provided with clear guidance regarding when and how those securities may be resold in the United States without registration under the Securities Act.

Several commenters believed that subjecting offshore purchasers of Regulation S securities to the Rule 144 holding periods would impair liquidity in those securities to such an extent that the safe harbor would no longer provide an alternative source of capital for U.S. companies. Instead, U.S. issuers would either have to register the offering or rely on a separate exemption, such as Regulation D or Section 4(2) under the Securities Act for private offerings.

1. Advantages of Regulation S

Notwithstanding the concerns raised by commenters, the Commission believes Regulation S will continue to offer significant advantages over the private offering exemptions. U.S. issuers can sell securities offshore without regard to the sophistication or number of purchasers in the offering or the size of the offering. Similarly, unlike Rules 505 and 506 of Regulation D, Regulation S does not contain specific information requirements. In addition, Regulation S permits issuers and distributors to advertise an offering offshore (consistent with the prohibition against directed selling efforts and the offshore transaction requirements) in a manner that would not be consistent with the prohibition against general solicitation in a private placement in the United States. Like the private offering exemptions, Regulation S will continue to afford U.S. issuers a means to sell

practices. The Commission is considering proposed restrictions on hedging under Rule 144 that, if adopted, would be in addition to those currently applicable to restricted securities transactions under that rule. See Securities Act Release No. 7391 (Feb. 20, 1997) [62 FR 9246 (Feb. 28, 1997)] (''Rule 144 Proposing Release'') (discusses current and proposed restrictions on hedging restricted securities).

[29] See *e.g.*, InfraRed Associates, Inc., SEC No-Action Letter (Sept. 13, 1985).

[30] The Category 3 requirements, other than legending, already apply to equity offerings by non-reporting foreign issuers where there is a substantial U.S. market interest in the security. The amendments do not affect this aspect of Rule 903.

[31] As the Commission noted in the Proposing Release:

Regulation S does not require, and the Commission is not proposing, that the legend contain specific language to describe these restrictions. Issuers and distributors should prepare such legends in a form that conveys to holders the restricted nature of the securities and that they can only be resold under Regulation S, pursuant to registration under the Act, or under an exemption. Nor is the legend requirement intended to require that securities sold under Category 3 be in certificated form. Issuers whose securities are in uncertificated form may satisfy the legend requirement by any means which puts holders and subsequent purchasers on notice of the applicable resale restrictions.

Proposing Release at Section III.B.4. Depending on the circumstances, the following alternatives, among others, may be sufficient to put holders on notice and prevent a public distribution into the United States: Notices of the restrictions to investors on the confirmation or allotment telex, use of global securities held in a depository, and restrictions on trading in the United States through the use of restricted CUSIP numbers.

securities without the potential delay and ''market overhang'' caused by registering equity securities under the Securities Act.

Purchasers will continue to have several sources of liquidity in addition to reliance on Rule 144. Offshore purchasers can continue to rely upon the Rule 904 safe harbor for offshore resales. They can also resell in the United States pursuant to exemptions other than Rule 144, including Rule 144A. Finally, and perhaps most importantly, it is possible that purchasers in Regulation S offerings could insist upon registration rights as do purchasers in private placements under Section 4(2) or Regulation D as a means of obtaining liquidity in the U.S. markets.[32] Particularly in the case of reporting companies, a Regulation S offering coupled with on demand registration rights provides an issuer with ready access to foreign capital while according purchasers access to U.S. markets for liquidity.[33]

2. Resales of Restricted Securities

Rule 905 also addresses the resale of restricted securities under Rule 904. Rule 905 clarifies that the resale of restricted securities offshore under Rule 904 does not ''wash off'' the restricted status of those securities to allow them to be freely resold into the United States by the purchaser. Several commenters argued that it was impossible to keep track of the restricted status of securities trading in offshore securities markets. With the widespread adoption of uncertificated securities and rules of offshore markets that prohibit the listing of legended securities, these commenters observed that the approach simply was not practicable.

By not extending Rule 905 to securities of foreign private issuers, the principal concerns of the commenters in this respect should be addressed.[34] Although some commenters have expressed concern that the certification and legending requirements may hinder free trading on offshore securities markets, without these requirements the potential for easy evasion of Rule 144's resale limitations for domestic equity securities is high. Absent the mandatory certification and legending requirements, the purchaser would not be on notice that it is subject to any restrictions on the resale of those securities into the United States.[35] It is possible that some markets can accommodate such securities, or may adapt to accommodate them in the future. Consequently, the Commission is adopting Rule 905 as proposed for domestic equity securities.

3. Retroactive Application of Rule 905

Rule 905 will not be applied retroactively to classify domestic equity securities previously sold under Regulation S as restricted securities under Rule 144. However, the provision of Rule 905 that codifies the Commission's interpretive position that resales offshore do not ''wash off'' restrictions will apply to offerings taking place before the effective date. This position was stated in the Interpretive Release and reiterated in the Regulation S Proposing Release.

D. Promissory Notes

Under the proposal, Regulation S would have prohibited the use of promissory notes or other executory obligations as payment for domestic equity securities. The proposal was designed to address abuses where the offshore purchaser used a promissory note to pay all or a portion of the purchase price of the securities. In some cases, the notes were secured only by the Regulation S securities; in other cases, the notes were unsecured. Some notes provided recourse to the buyer if the note was not repaid; others did not. Purchasers have resold the securities into the U.S. markets upon expiration of the 40-day distribution compliance period and used the proceeds of the resale to repay the note. Under such an arrangement, the issuer and purchaser clearly expect a U.S. resale to provide the funds necessary to repay the note; in economic substance, the issuer is raising funds from the U.S. public markets.

Rather than exclude such transactions from the coverage of the safe harbor, some commenters recommended that the Commission adopt the alternative approach suggested in the Proposing Release—that is, to toll the holding period under Rule 144 until certain conditions are satisfied, similar to the tolling approach taken under Rule 144 with respect to promissory notes and other similar obligations. The Commission has decided to adopt this approach because it is persuaded that this approach will address concerns about the use of promissory notes to raise funds in the U.S. markets, since the securities purchased pursuant to Regulation S will be fully paid for before the securities can be resold into the U.S. markets pursuant to Rule 144. In that case, the resale of the securities into the U.S. markets under Rule 144 would not be used to raise funds to repay the promissory note. Under the approach adopted, promissory notes or similar obligations or contracts can be accepted as payment to purchase domestic equity securities under Regulation S. The holding period will not begin to run for the purchaser, however, unless the following conditions are satisfied: The promissory note, obligation or contract provides for full recourse against the purchaser of the securities, and is secured by collateral (other than the securities purchased) having a fair market value at least equal to the purchase price of the securities purchased. In addition, after the holding period requirement has been satisfied, the promissory note, obligation or contract must be paid in full before the resale of the securities under Rule 144. This ensures that the funds obtained through the Rule 144 resales will not be used to pay off the promissory note.

E. Reporting of Regulation S Transactions

As a result of amendments adopted by the Commission in October 1996,[36] sales of equity securities by domestic issuers under Regulation S are required to be reported on Form 8–K within 15 days of occurrence. All other unregistered sales of equity securities by domestic issuers (*e.g.*, private placements) must be reported quarterly in the issuer's Form 10–Q and in its Form 10–K (for the last fiscal quarter). At the time the Commission adopted the Form 8–K 15-day reporting requirement, the Commission stated that if it extended the distribution compliance period for sales of equity securities under

[32] Form S–3 [17 CFR 239.13] is generally available for these types of resale registration statements, even for companies that do not meet the public float requirement for primary offerings under Form S–3, if the securities are listed on a U.S. securities exchange or quoted in the Nasdaq Stock Market.

[33] The Commission proposed to amend Rule 903 to make clear that registered or exempt sales to U.S. persons during the distribution compliance period would not impair reliance on Regulation S. Language instead has been added to Preliminary Note 5 to make clear that registered offers and sales to U.S. persons, or offers and sales made pursuant to an exemption such as Rule 144A, are permitted during the distribution compliance period without jeopardizing the issuer's reliance on Regulation S for the offshore offers and sales.

[34] For example, because of its limited scope there should be no basis for a concern that Rule 905 could restrict the ability of a foreign security that was privately placed in the United States to be sold back into its home market offshore in a Rule 904 or Rule 144A transaction.

[35] The Commission is adopting the proposed amendment to Rule 144(e)(3)(vii) that codifies the Commission staff's informal position that restricted securities resold offshore pursuant to Regulation S need not be included in the amount of securities that have been resold pursuant to Rule 144 for the purposes of the volume limitations of Rule 144(e).

[36] Exchange Act Release No. 37801 (Oct. 10, 1996) [61 FR 54506 (Oct. 18, 1996)].

Regulation S, it would consider revising the reporting requirement.

The commenters generally favored dropping the Form 8–K requirement, although some thought that the Form 8–K report was important to stop abuses, and provided timely notice to shareholders and the markets of a material development concerning the issuer. Since equity securities sold under Regulation S will now be deemed restricted securities and thus cannot enter the U.S. public markets any faster than securities issued in an exempt private placement, the benefits of expedited Form 8–K reporting is minimal. Accordingly, the Form 8–K filing requirement is being eliminated, and these sales will be reported on Forms 10–Q, 10–QSB, 10–K or 10–KSB, as applicable.[37]

The Commission has determined to delay the effectiveness of this amendment, however, to allow the Commission staff to monitor closely developments under the amended Regulation S safe harbor procedures during a transition period. Accordingly, the Form 8–K report will not be required for any Regulation S sales occurring after January 1, 1999.

Following the October 1996 adoption of the Form 8–K reporting requirement, the Commission staff received inquiries regarding the need to report on Form 8–K unregistered sales of equity securities by U.S. companies to their non-U.S. resident employees pursuant to employee benefit plans. To the extent that the sales qualify for Category 1 treatment under Rule 903 of Regulation S, issuers may report the sales on an aggregated basis on the Form 10–Q, rather than on a current basis on Form 8–K, prior to January 1, 1999.

F. Technical and Clarifying Revisions

As proposed, the Commission is adopting non-substantive technical and clarifying revisions to Regulation S to make the rule more concise and understandable. The principal changes include:

- Revising the captions of the three sections of the Rule 903 issuer safe harbor to refer to them as commonly known: ''Category 1,'' ''Category 2'' and ''Category 3'';
- Revising the Rule 903 issuer safe harbor to state clearly for each category what procedures are to be followed and what securities are eligible for each category;
- Combining some definitions within Rule 902, the definition section of Regulation S, and moving certain definitions to the Rule 903 safe harbor to make the rule easier to read and understand;
- Updating the list of ''designated offshore securities markets'' in Rule 902;
- If the same terms are already defined elsewhere in the Commission's rules and regulations, deleting those definitions from Rule 902 and adding cross-references to the definitions contained elsewhere; and
- Generally editing the language in the rule to make it more understandable.

IV. Certain Findings

Section 23(a) of the Exchange Act[38] requires the Commission to consider any anti-competitive effects of any rules it adopts thereunder and the reasons for its determination that any burden on competition imposed by such rules is necessary or appropriate to further the purposes of the Exchange Act. Furthermore, Section 2[39] of the Securities Act and Section 3[40] of the Exchange Act, as amended by the National Securities Markets Improvement Act of 1996,[41] provide that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission also shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The Commission has considered the amendments discussed in this release in light of the comments received in response to the Proposing Release and the standards in Section 23(a) of the Exchange Act.[42] The Commission adopted Regulation S in 1990 to provide a safe harbor from the registration requirements of the Securities Act for offshore offers and sales of securities. Since the adoption of Regulation S, the Commission has become aware of abuses of this rule in connection with sales of domestic equity securities. The Commission is adopting the amendments to prevent further abuses of this rule.

In compliance with Section 2 of the Securities Act, which requires the Commission to consider whether the action will promote competition, it is important to note that the amendments will impose certain burdens on purchasers of equity securities issued by domestic companies, as well as on the issuers themselves, that may place domestic issuers at a competitive disadvantage in raising funds through Regulation S transactions as compared to foreign issuers. For example, purchasers of domestic equity securities sold pursuant to Regulation S may have to wait a longer period of time before they can publicly resell the securities into the United States. In addition, these purchasers will have to provide certification that they are not U.S. persons that may result in additional recordkeeping burdens on issuers and distributors who must maintain records of this compliance. Of course, any U.S. law applicable only to U.S. issuers will have some competitive effect on domestic issuers compared to foreign issuers. However, the Commission believes that such restrictions are necessary to deter abuses of the rule. Because abusive practices under Regulation S primarily have involved domestic companies, the Commission believes that it is not necessary at this time to apply additional restrictions on sales of equity securities by foreign issuers.

Although the amendments will impose certain burdens on both purchasers and issuers of equity securities issued by domestic companies, the Commission anticipates that the overall effect of the amendments will be to enhance efficient capital formation. By deterring abusive market practices, the amendments will protect investors and promote capital formation by enhancing investors' confidence in the integrity of Regulation S offerings.

The Commission is adopting amendments to relax the requirements to report unregistered sales of equity securities made pursuant to Regulation S. Such sales will now be reported on a delayed basis on Forms 10–Q, 10–QSB, 10–K and 10–KSB, rather than Form 8–K. However, investors will continue to have sufficient information regarding changes in outstanding securities of public companies. These amendments could decrease Form 8–K filing burdens for some reporting issuers, although the new requirements to report unregistered equity sales on a quarterly basis could result in an offsetting increase in reporting.

[37] The Commission is not, however, amending Item 701 of Regulation S–K [17 CFR 229.701] and Regulation S–B [17 CFR 228.701] to remove the reference to Form 8–K as proposed. To the extent an issuer chooses voluntarily to report an unregistered sale of securities on Form 8–K, in addition to Forms 10–Q, 10–QSB, 10–K or 10–KSB, the information required by Item 701 must be provided.

[38] 15 U.S.C. 78w(a).

[39] 15 U.S.C. 77b.

[40] 15 U.S.C. 78c.

[41] Pub. L. 104–290, Section 106, 110 Stat. 3416 (1996).

[42] The finding required by Section 23(a) of the Exchange Act only relates to amendments under the Exchange Act, such as amendments to Forms 8–K and 10–Q, and not to amendments under the Securities Act. In general, the Exchange Act amendments, by easing the Form 8–K reporting requirements, should not affect competition.

Nonetheless, the Commission believes the amendments will promote efficiency and capital formation, and will not unnecessarily burden competition.

V. Cost-Benefit Analysis

The Commission adopted Regulation S to enhance access to offshore securities markets for both foreign and domestic issuers. Regulation S provides a safe harbor from the registration requirements of the Securities Act for offshore offers and sales of securities. In spite of the overall success of this rule, Regulation S has been abused with respect to sales of equity securities by domestic issuers. Abuses have occurred in which these securities have inappropriately been distributed back into the United States after the Regulation S transaction in violation of U.S. laws and regulations. As a result of these abuses, fraudulent schemes involving millions of dollars have been perpetrated through the use of Regulation S.

The amendments to Regulation S will prevent further abusive practices under this rule, and will protect investors and promote capital formation by enhancing the integrity of the securities markets. At the same time, the amendments will permit continued reliance on Regulation S for legitimate offshore offerings.

The amendments will impose restrictions on purchasers of equity securities of U.S. issuers, as well as on the issuers themselves, that may make it more costly for such issuers to raise funds through Regulation S placements. For instance, some purchasers may now have to wait a longer period of time before they can publicly resell the securities into the United States. In addition, the amendments will require purchasers of domestic equity securities sold under Regulation S to provide certification that they are not U.S. persons. This may impose additional recordkeeping burdens on issuers and distributors that must maintain records of such compliance, which could make Regulation S sales of their equity securities more costly for these issuers. However, the Commission believes that these restrictions are needed to prevent abusive practices that have occurred under Regulation S. By deterring abusive market practices, the amendments will protect investors and promote capital formation by enhancing investors' confidence in the integrity of the securities markets.

Based on a review by Commission staff of Form 8–Ks filed by issuers to report equity sales made under Regulation S, the Commission estimates that approximately 500 Exchange Act reporting companies conduct approximately 550 sales pursuant to Regulation S each year and that over $5 billion in equity sales will be affected by the amendments. The total number of companies affected by the amendments is not known because non-reporting companies are not required to file Form 8–K and the Form 8–K reporting requirement only applies to sales of equity securities under Regulation S.

Although the new requirements, such as the purchaser certifications and purchaser and distributor agreements, may increase costs to issuers, the Commission believes that the increase will be negligible. According to an informal survey taken by Commission staff of attorneys in private practice whose clients could be expected to rely on these safe harbors, domestic issuers that sell equity securities under Regulation S already comply with the certification and legending requirements of Category 3 as a matter of common practice. No new costs will be imposed on domestic issuers as a result of formally extending the Category 3 requirements to sales of equity securities by domestic issuers. The new requirements with respect to hedging transactions under Regulation S are expected to have a negligible impact on costs because the amendments will only require issuers to add an additional sentence with respect to hedging on the securities, and in the purchaser agreements. Private practitioners surveyed by the Commission staff have indicated that the increased costs as a result of the amendments with respect to hedging are insignificant.

The amendments to Forms 8–K, 10–Q, 10–QSB, 10–K and 10–KSB relax the requirements to report unregistered sales of equity securities by delaying the reporting of the unregistered sale. The sufficiency of the information provided to investors about unregistered offerings made by public companies should not be affected. However, the Commission believes the reduction in burdens and costs will be negligible. As a result of these amendments, information on unregistered offerings (include private placements and Regulation S offerings) during a given time period will now be available to investors in one filing.

The Commission is amending Regulation S to clarify the legal obligations of purchasers of securities under that rule. Some of the abuses under Regulation S have involved activities by persons other than issuers, distributors and their affiliates—investors who purchased with a view to distributing the securities into the U.S. markets at the end of the distribution compliance period. The Commission is attempting to address this abuse by defining these securities as ''restricted securities'' under the Rule 144 resale safe harbor. However, the Commission does not believe that this classification will be unduly burdensome for purchasers in Regulation S offerings. The holding periods under Rule 144 were shortened [43] at the same time that the Regulation S amendments were proposed, and some purchasers of securities sold under Regulation S may be able to demand registration rights. If a purchaser decides to resell the securities under the Rule 144 safe harbor, the Commission does not believe that the requirement to file a Form 144 under those circumstances will be unduly burdensome, especially given the benefits of resale under that safe harbor. The Commission estimates that this amendment will result in approximately 750 additional filings on Form 144 per year, and an increase of approximately 1,500 hours per year in total annual reporting and recordkeeping burdens.[44] The Commission estimates that the total increase in costs as a result of this amendment will be approximately $45,000 per year.[45]

Restricted shares normally must be sold at a discount relative to the price of shares that are freely tradable in the public markets. The size of that price discount reflects, at least in part, the compensation buyers of shares receive for giving up the ability to readily sell the shares immediately in the public market. The size of the price discount is affected by a variety of factors including how long the restricted shares must be held before they can be sold in the public markets. Discounts are likely to increase with the length of the distribution compliance period. Therefore, the Commission expects discounts on Regulation S securities to increase as a result of the increase in the minimum distribution compliance period from 40 days to one year. However, it is difficult to determine how large that increase is likely to be, and no commenters provided any empirical data in this regard. The Commission's Office of Economic Analysis' study of recent sales of Regulation S shares indicates that they were sold at an average discount of approximately 22%. Studies that have measured price discounts of shares subject to the longer Rule 144 restricted periods found that the discounts

[43] Securities Act Release No. 7390 (Feb. 20, 1997) [62 FR 9242 (Feb. 28, 1997)]

[44] See Proposing Release at Section IX.

[45] This estimate assumes that each Form 144 filing requires two hours of preparation at a cost of $60 per filing.

averaged about 20% in the 1980–1987 period according to one study, and 34% in the 1981–1988 period according to another study.[46] The average price discount of more recent sales of shares subject to Rule 144 may be smaller because the restricted periods were shortened by one year.[47]

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with the Regulatory Flexibility Act[48] with respect to the amendments.

A. The Need for and Objectives of the Amendments to Regulation S

The amendments to Regulation S are designed to stop abuses under Regulation S in which domestic issuers conduct offshore placements of their securities under Regulation S that result in indirect distributions of these securities into the U.S. markets without the protection of registration under the Securities Act.

B. Summary of Significant Issues Raised by the Public Comments

The Commission requested comment with respect to the Initial Regulatory Flexibility Analysis (''IRFA'') prepared in connection with the Proposing Release, but did not receive any comments that specifically addressed the IRFA.

C. Description and Estimate of the Number of Small Entities That the Amendments Will Affect

These amendments will affect persons that are small entities, as defined by the Commission's rules, but only in the same manner as larger entities. The Commission is aware of approximately 1100 Exchange Act reporting companies that currently satisfy the definition of ''small business'' under Rule 0–10[49] of the Exchange Act. While the Commission sought comment on the number of non-reporting issuers that may be affected by the proposed changes, commenters did not provide any additional data on such number. However, there is no reliable way of determining how many non-reporting companies may be subject to Regulation S. Furthermore, there is no reliable way of determining how many small businesses may become subject to the Commission's registration and reporting obligations in the future.

Based on a review by Commission staff of a sample of the Form 8–Ks filed with the Commission to report Regulation S equity sales,[50] approximately 500 Exchange Act reporting companies conduct approximately 550 sales pursuant to Regulation S each year, and will be affected by the amendments. The Commission estimates that over 160 of these reporting companies would meet the Regulatory Flexibility Act definition of small business. However, the Commission has only been receiving data regarding offshore placements of equity securities under Regulation S since November 18, 1996, and does not have any long-term data that would enable the Commission to develop precise estimates of the number of small businesses that may actually rely on Regulation S, or that may otherwise be affected by the amendments. Commenters did not provide any additional quantitative data in that regard. In addition, the Form 8–K reporting requirement only applies to sales of equity securities by domestic reporting issuers, and does not apply at all to non-reporting companies. As a result, the total number of small entities that conduct sales under Regulation S will exceed the numbers referenced above.

D. Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Amendments

Regulation S is being amended to include new reporting, recordkeeping and other compliance requirements. In general, compliance with the new reporting and other compliance requirements will require the professional skills of attorneys and paralegals specializing in securities or corporate law. The Commission is lengthening the distribution compliance period during which persons relying on the Regulation S safe harbor may not sell to U.S. persons and must institute certain precautionary measures against such sales. The Commission also is classifying these securities as ''restricted securities'' within the meaning of Rule 144. As a result, purchasers of these securities may resell these securities under the Rule 144 safe harbor, and would be required to comply with the conditions of that safe harbor, including the Rule 144 holding periods. These amendments may reduce incentives to conduct equity placements under Regulation S due to a perceived reduction in the liquidity of these securities absent registration under the Securities Act or a valid exemption.

The amendments will impose on reporting domestic issuers certification, legending and other requirements that previously only applied to sales of equity securities by non-reporting issuers. These requirements are intended to assure that participants in the distribution, as well as the purchasers, are aware of the restricted nature of these securities. The amendments will expand the current purchaser and distributor agreement requirements to require that purchasers and distributors agree not to engage in hedging transactions with respect to these securities unless the transaction complies with the Securities Act,[51] and will ensure that participants in the Regulation S offerings are aware of and comply with these restrictions.

Because equity securities of domestic issuers placed under Regulation S will be treated as ''restricted securities'' under Rule 144, the holding period will be tolled for securities purchased with a promissory note unless certain conditions under Rule 144 are satisfied. These amendments are designed to address abuses involving hedging transactions and the use of promissory notes that result in indirect distributions of securities into the U.S. markets without the protection of registration. These additional purchaser requirements could increase recordkeeping and compliance burdens. However, they are expected to have an indirect impact on small U.S. businesses because, in most cases, the purchasers of securities sold under Regulation S would be non-U.S. persons.

The new amendments to Regulation S also will clarify that offshore resales under Rule 904 of equity securities of domestic issuers that are ''restricted securities,'' as defined in Rule 144, will not affect the restricted status of those securities. These changes clarify the requirement that holders of restricted securities may not remove the restrictions by selling the securities offshore.

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[46] See Michael Hertzel and Richard L. Smith, *Market Discounts and Shareholder Gains for Placing Equity Privately*, J. OF FIN., June 1993; William L. Silver, *Discounts on Restricted Stock: The Impact of Illiquidity on Stock Prices*, FIN. ANALYSTS J., July–Aug. 1991.

[47] See Securities Act Release No. 7390, *supra* note 43.

[48] 5 U.S.C. 604.

[49] 17 CFR 240.0–10.

[50] Since November 18, 1996, sales of equity securities by domestic issuers under Regulation S are required to be reported on Form 8–K within 15 days of occurrence. This reporting requirement does not apply to any issuer who is not subject to the periodic reporting requirements under the Exchange Act, and generally does not apply to foreign issuers. See Exchange Act Release No. 37801, *supra* note 36.

[51] No new restrictions on hedging practices are being imposed as a result of the amendments. See *supra* note 28.

The amendments to Forms 8–K, 10–Q, 10–QSB, 10–K and 10–KSB will relax the requirements to report unregistered sales of equity securities by delaying the reporting of the unregistered sale. However, the sufficiency of the information provided to investors regarding changes in outstanding securities of public companies should not be affected. The amendments to Forms 8–K, 10–QSB and 10–KSB will affect small entities, as defined by the Commission's rules. The Commission expects that the amendments will reduce Form 8–K filing burdens for some reporting companies that qualify as small businesses. However, as a result of the requirement to report unregistered sales of equity securities on Forms 10–Q, 10–QSB, 10–K and 10–KSB, there will be an offsetting increase in reporting with no net effect on overall reporting burden.

E. Description of Steps Taken To Minimize Effect on Small Entities and Consideration of Alternative Approaches

All of the amendments are being imposed on all domestic issuers. Small businesses will be able to obtain the protections of Regulation S on the same basis as larger entities. The Commission considered and rejected several alternatives to the amendments applicable to small businesses because it believes that the alternative approaches would not be consistent with the Commission's statutory mandate of investor protection. One alternative would be to establish differing compliance or reporting requirements or timetables that take into account the resources available to small entities. This alternative would not be consistent with the intent of the amendments to forestall abusive practices under Regulation S, especially because some of the abuses have involved the securities of small issuers.

Another alternative would be to clarify, consolidate or simplify the amendments with respect to small businesses. It would be difficult to further clarify, consolidate or simplify the amendments and concurrently prevent abuses under Regulation S. The Commission believes the amendments impose the minimum requirements necessary to prevent further abuses under Regulation S.

In addition to these alternatives, the Commission has considered establishing separate requirements for small businesses that are based on performance rather than design standards. However, in the context of providing a safe harbor from the Commission's registration requirements for offshore offerings, the adoption of performance standards would be inconsistent with the Commission's statutory mandate to require full and fair disclosure of material information to investors, in compliance with the federal securities laws, and would not provide the kind of legal certainty that practitioners seek in a safe harbor rule.

Finally, the Commission has considered exempting small businesses from coverage of the amendments. However, the amendments are intended to address abusive practices that have occurred under Regulation S, including abuses that have involved the securities of small issuers, such that further distinctions between companies based on size would not be appropriate.

The Commission believes that by adopting the amendments, it is balancing its objective of preventing abuses under Regulation S with its statutory mandate of maximizing investor protection in a manner that is more appropriate than other alternatives.

Although the amendments to Regulation S may affect the ability of some small businesses to access offshore capital, the amendments should be sufficient to curb abusive practices under Regulation S without entirely foreclosing the offshore market for unregistered offshore offerings of equity securities by domestic issuers. Moreover, the recent adoption of shortened holding periods under Rule 144 should help reduce any negative effect on small businesses.

VII. Paperwork Reduction Act

As set forth in the Proposing Release, the amendments to Regulation S could affect changes to collections of information within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[52] As a result of these amendments, equity securities of domestic issuers that are issued offshore under Regulation S will be deemed ''restricted securities'' as defined in Rule 144 under the Securities Act. Purchasers of these securities, and any subsequent purchasers, could resell these securities into the U.S. markets according to the conditions of Rule 144. These conditions include the requirement that these purchasers file a notice of proposed sale on Form 144 that discloses information about the issuer of the securities, the seller, the securities to be sold and the proposed manner of sale. In addition, the amendments to Forms 8–K, 10–Q, 10–QSB, 10–K and 10–KSB will relax the reporting requirements pertaining to unregistered sales of equity securities by delaying the reporting of the unregistered sale. Regulation S issuers will no longer have the burden of filing Form 8–K to report unregistered sales of equity securities. However, as a result of the requirement to report unregistered sales of equity securities on Forms 10–Q, 10–QSB, 10–K and 10–KSB, there will be an offsetting increase in reporting burden, with no net effect on the reporting burden relating to these Forms.

Under the proposed amendments, reporting foreign issuers with their primary market in the United States would have been subject to additional collections of information. Several commenters objected to this aspect of the proposals. As a result, the amendments as adopted do not apply to these foreign issuers, and the overall paperwork burden is somewhat reduced.

Regulation S provides a safe harbor from registration that is available on a voluntary basis to issuers and other parties. However, if an issuer or other person chooses to rely on the Regulation S safe harbor, it is required to provide the applicable collections of information. To the extent the required collections of information are filed with the Commission, such as Form 144 and the Exchange Act periodic reports, they will not be kept confidential.

The collection of information requirements affected by the amendments were submitted to OMB for review and were approved by OMB, which assigned the following control numbers: Form 144, control number 3235–0101; Form 8–K, control number 3235–0060; Form 10–K, control number 3235–0063; Form 10–Q, control number 3235–0070; Form 10–QSB, control number 3235–0416; and Form 10–KSB, control number 3235–0420. The collection of information requirements are in accordance with Section 3507[53] of the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a valid OMB control number. The descriptions and estimated burdens for the collection of information requirements were set forth in the Proposing Release.

VIII. Statutory Bases

The amendments to Regulation S are adopted pursuant to Sections 5 and 19 of the Securities Act, as amended, and the amendments to Rule 144 are adopted pursuant to sections 2(a)(11), 4, 5 and 19 of the Securities Act, as

[52] 44 U.S.C. 3501 *et seq.*

[53] 44 U.S.C. 3507.

amended.[1] The amendments to Forms 8–K, 10–QSB, 10–Q, 10–KSB, and 10–K are adopted pursuant to sections 3(b), 4A, 12, 13, 15, and 23 of the Securities Exchange Act.[2]

List of Subjects in 17 CFR Parts 230 and 249

Reporting and recordkeeping requirements, Securities.

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

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

1. The authority citation for part 230 continues to read in part as follows:

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

* * * * *

2. Section 230.144 is amended by revising paragraphs (a)(3) and (e)(3)(vii) to read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(a) * * *

(3) The term *restricted securities* means:

(i) Securities acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering;

(ii) Securities acquired from the issuer that are subject to the resale limitations of § 230.502(d) under Regulation D or § 230.701(c);

(iii) Securities acquired in a transaction or chain of transactions meeting the requirements of § 230.144A;

(iv) Securities acquired from the issuer in a transaction subject to the conditions of Regulation CE (§ 230.1001); and

(v) Equity securities of domestic issuers acquired in a transaction or chain of transactions subject to the conditions of § 230.901 or § 230.903 under Regulation S (§ 230.901 through § 230.905, and Preliminary Notes).

* * * * *

(e) * * *

(3) * * *

(vii) The following sales of securities need not be included in determining the amount of securities sold in reliance upon this section: securities sold pursuant to an effective registration statement under the Act; securities sold pursuant to an exemption provided by Regulation A (§ 230.251 through § 230.263) under the Act; securities sold in a transaction exempt pursuant to Section 4 of the Act (15 U.S.C. 77d) and not involving any public offering; and securities sold offshore pursuant to Regulation S (§ 230.901 through § 230.905, and Preliminary Notes) under the Act.

* * * * *

3. Preliminary Note 5 to Regulation S (§ 230.901 through § 230.905) is amended by adding a sentence at the end of the note to read as follows:

Regulation S—Rules Governing Offers and Sales Made Outside the United States Without Registration Under the Securities Act of 1933

Preliminary Notes

* * * * *

5. * * * The availability of the Regulation S safe harbor to offers and sales that occur outside of the United States will not be affected by the subsequent offer and sale of these securities into the United States or to U.S. persons during the distribution compliance period, as long as the subsequent offer and sale are made pursuant to registration or an exemption therefrom under the Act.

* * * * *

4. Section 230.902 is revised to read as follows:

§ 230.902 Definitions.

As used in Regulation S, the following terms shall have the meanings indicated.

(a) *Debt securities.* ''Debt securities'' of an issuer is defined to mean any security other than an equity security as defined in § 230.405, as well as the following:

(1) Non-participatory preferred stock, which is defined as non-convertible capital stock, the holders of which are entitled to a preference in payment of dividends and in distribution of assets on liquidation, dissolution, or winding up of the issuer, but are not entitled to participate in residual earnings or assets of the issuer; and

(2) Asset-backed securities, which are securities of a type that either:

(i) Represent an ownership interest in a pool of discrete assets, or certificates of interest or participation in such assets (including any rights designed to assure servicing, or the receipt or timeliness of receipt by holders of such assets, or certificates of interest or participation in such assets, of amounts payable thereunder), provided that the assets are not generated or originated between the issuer of the security and its affiliates; or

(ii) Are secured by one or more assets or certificates of interest or participation in such assets, and the securities, by their terms, provide for payments of principal and interest (if any) in relation to payments or reasonable projections of payments on assets meeting the requirements of paragraph (a)(2)(i) of this section, or certificates of interest or participations in assets meeting such requirements.

(iii) For purposes of paragraph (a)(2) of this section, the term ''assets'' means securities, installment sales, accounts receivable, notes, leases or other contracts, or other assets that by their terms convert into cash over a finite period of time.

(b) *Designated offshore securities market.* ''Designated offshore securities market'' means:

(1) The Eurobond market, as regulated by the International Securities Market Association; the Alberta Stock Exchange; the Amsterdam Stock Exchange; the Australian Stock Exchange Limited; the Bermuda Stock Exchange; the Bourse de Bruxelles; the Copenhagen Stock Exchange; the European Association of Securities Dealers Automated Quotation; the Frankfurt Stock Exchange; the Helsinki Stock Exchange; The Stock Exchange of Hong Kong Limited; the Irish Stock Exchange; the Istanbul Stock Exchange; the Johannesburg Stock Exchange; the London Stock Exchange; the Bourse de Luxembourg; the Mexico Stock Exchange; the Borsa Valori di Milan; the Montreal Stock Exchange; the Oslo Stock Exchange; the Bourse de Paris; the Stock Exchange of Singapore Ltd.; the Stockholm Stock Exchange; the Tokyo Stock Exchange; the Toronto Stock Exchange; the Vancouver Stock Exchange; the Warsaw Stock Exchange and the Zurich Stock Exchange; and

(2) Any foreign securities exchange or non-exchange market designated by the Commission. Attributes to be considered in determining whether to designate an offshore securities market, among others, include:

(i) Organization under foreign law;

(ii) Association with a generally recognized community of brokers, dealers, banks, or other professional intermediaries with an established operating history;

(iii) Oversight by a governmental or self-regulatory body;

(iv) Oversight standards set by an existing body of law;

(v) Reporting of securities transactions on a regular basis to a governmental or self-regulatory body;

[1] 15 U.S.C. 77b(a)(11), 77d, 77e and 77s.

[2] 15 U.S.C. 78c(b), 78d–1, 78*l*, 78m, 78*o* and 78v.

(vi) A system for exchange of price quotations through common communications media; and

(vii) An organized clearance and settlement system.

(c) *Directed selling efforts.* (1) ''Directed selling efforts'' means any activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for any of the securities being offered in reliance on this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes). Such activity includes placing an advertisement in a publication ''with a general circulation in the United States'' that refers to the offering of securities being made in reliance upon this Regulation S.

(2) Publication ''with a general circulation in the United States'':

(i) Is defined as any publication that is printed primarily for distribution in the United States, or has had, during the preceding twelve months, an average circulation in the United States of 15,000 or more copies per issue; and

(ii) Will encompass only the U.S. edition of any publication printing a separate U.S. edition if the publication, without considering its U.S. edition, would not constitute a publication with a general circulation in the United States.

(3) The following are not ''directed selling efforts'':

(i) Placing an advertisement required to be published under U.S. or foreign law, or under rules or regulations of a U.S. or foreign regulatory or self-regulatory authority, provided the advertisement contains no more information than legally required and includes a statement to the effect that the securities have not been registered under the Act and may not be offered or sold in the United States (or to a U.S. person, if the advertisement relates to an offering under Category 2 or 3 (paragraph (b)(2) or (b)(3)) in § 230.903) absent registration or an applicable exemption from the registration requirements;

(ii) Contact with persons excluded from the definition of ''U.S. person'' pursuant to paragraph (k)(2)(vi) of this section or persons holding accounts excluded from the definition of ''U.S. person'' pursuant to paragraph (k)(2)(i) of this section, solely in their capacities as holders of such accounts;

(iii) A tombstone advertisement in any publication with a general circulation in the United States, provided:

(A) The publication has less than 20% of its circulation, calculated by aggregating the circulation of its U.S. and comparable non-U.S. editions, in the United States;

(B) Such advertisement contains a legend to the effect that the securities have not been registered under the Act and may not be offered or sold in the United States (or to a U.S. person, if the advertisement relates to an offering under Category 2 or 3 (paragraph (b)(2) or (b)(3)) in § 230.903) absent registration or an applicable exemption from the registration requirements; and

(C) Such advertisement contains no more information than:

(*1*) The issuer's name;

(*2*) The amount and title of the securities being sold;

(*3*) A brief indication of the issuer's general type of business;

(*4*) The price of the securities;

(*5*) The yield of the securities, if debt securities with a fixed (non-contingent) interest provision;

(*6*) The name and address of the person placing the advertisement, and whether such person is participating in the distribution;

(*7*) The names of the managing underwriters;

(*8*) The dates, if any, upon which the sales commenced and concluded;

(*9*) Whether the securities are offered or were offered by rights issued to security holders and, if so, the class of securities that are entitled or were entitled to subscribe, the subscription ratio, the record date, the dates (if any) upon which the rights were issued and expired, and the subscription price; and

(*10*) Any legend required by law or any foreign or U.S. regulatory or self-regulatory authority;

(iv) Bona fide visits to real estate, plants or other facilities located in the United States and tours thereof conducted for a prospective investor by an issuer, a distributor, any of their respective affiliates or a person acting on behalf of any of the foregoing;

(v) Distribution in the United States of a foreign broker-dealer's quotations by a third-party system that distributes such quotations primarily in foreign countries if:

(A) Securities transactions cannot be executed between foreign broker-dealers and persons in the United States through the system; and

(B) The issuer, distributors, their respective affiliates, persons acting on behalf of any of the foregoing, foreign broker-dealers and other participants in the system do not initiate contacts with U.S. persons or persons within the United States, beyond those contacts exempted under § 240.15a–6 of this chapter; and

(vi) Publication by an issuer of a notice in accordance with § 230.135 or § 230.135c.

(vii) Providing any journalist with access to press conferences held outside of the United States, to meetings with the issuer or selling security holder representatives conducted outside the United States, or to written press-related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, if the requirements of § 230.135e are satisfied.

(d) *Distributor.* ''Distributor'' means any underwriter, dealer, or other person who participates, pursuant to a contractual arrangement, in the distribution of the securities offered or sold in reliance on this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes).

(e) *Domestic issuer/Foreign issuer.* ''Domestic issuer'' means any issuer other than a ''foreign government'' or ''foreign private issuer'' (both as defined in § 230.405). ''Foreign issuer'' means any issuer other than a ''domestic issuer.''

(f) *Distribution compliance period.* ''Distribution compliance period'' means a period that begins when the securities were first offered to persons other than distributors in reliance upon this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes) or the date of closing of the offering, whichever is later, and continues until the end of the period of time specified in the relevant provision of § 230.903, except that:

(1) All offers and sales by a distributor of an unsold allotment or subscription shall be deemed to be made during the distribution compliance period;

(2) In a continuous offering, the distribution compliance period shall commence upon completion of the distribution, as determined and certified by the managing underwriter or person performing similar functions;

(3) In a continuous offering of non-convertible debt securities offered and sold in identifiable tranches, the distribution compliance period for securities in a tranche shall commence upon completion of the distribution of such tranche, as determined and certified by the managing underwriter or person performing similar functions; and

(4) That in a continuous offering of securities to be acquired upon the exercise of warrants, the distribution compliance period shall commence upon completion of the distribution of the warrants, as determined and certified by the managing underwriter or person performing similar functions, if requirements of § 230.903(b)(5) are satisfied.

(g) *Offering restrictions.* ''Offering restrictions'' means:

(1) Each distributor agrees in writing:

(i) That all offers and sales of the securities prior to the expiration of the distribution compliance period specified in Category 2 or 3 (paragraph (b)(2) or (b)(3)) in § 230.903, as applicable, shall be made only in accordance with the provisions of § 230.903 or § 230.904; pursuant to registration of the securities under the Act; or pursuant to an available exemption from the registration requirements of the Act; and

(ii) For offers and sales of equity securities of domestic issuers, not to engage in hedging transactions with regard to such securities prior to the expiration of the distribution compliance period specified in Category 2 or 3 (paragraph (b)(2) or (b)(3)) in § 230.903, as applicable, unless in compliance with the Act; and

(2) All offering materials and documents (other than press releases) used in connection with offers and sales of the securities prior to the expiration of the distribution compliance period specified in Category 2 or 3 (paragraph (b)(2) or (b)(3)) in § 230.903, as applicable, shall include statements to the effect that the securities have not been registered under the Act and may not be offered or sold in the United States or to U.S. persons (other than distributors) unless the securities are registered under the Act, or an exemption from the registration requirements of the Act is available. For offers and sales of equity securities of domestic issuers, such offering materials and documents also must state that hedging transactions involving those securities may not be conducted unless in compliance with the Act. Such statements shall appear:

(i) On the cover or inside cover page of any prospectus or offering circular used in connection with the offer or sale of the securities;

(ii) In the underwriting section of any prospectus or offering circular used in connection with the offer or sale of the securities; and

(iii) In any advertisement made or issued by the issuer, any distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing. Such statements may appear in summary form on prospectus cover pages and in advertisements.

(h) *Offshore transaction.* (1) An offer or sale of securities is made in an ''offshore transaction'' if:

(i) The offer is not made to a person in the United States; and

(ii) Either:

(A) At the time the buy order is originated, the buyer is outside the United States, or the seller and any person acting on its behalf reasonably believe that the buyer is outside the United States; or

(B) For purposes of:

(*1*) Section 230.903, the transaction is executed in, on or through a physical trading floor of an established foreign securities exchange that is located outside the United States; or

(*2*) Section 230.904, the transaction is executed in, on or through the facilities of a designated offshore securities market described in paragraph (b) of this section, and neither the seller nor any person acting on its behalf knows that the transaction has been pre-arranged with a buyer in the United States.

(2) Notwithstanding paragraph (h)(1) of this section, offers and sales of securities specifically targeted at identifiable groups of U.S. citizens abroad, such as members of the U.S. armed forces serving overseas, shall not be deemed to be made in ''offshore transactions.''

(3) Notwithstanding paragraph (h)(1) of this section, offers and sales of securities to persons excluded from the definition of ''U.S. person'' pursuant to paragraph (k)(2)(vi) of this section or persons holding accounts excluded from the definition of ''U.S. person'' pursuant to paragraph (k)(2)(i) of this section, solely in their capacities as holders of such accounts, shall be deemed to be made in ''offshore transactions.''

(i) *Reporting issuer.* ''Reporting issuer'' means an issuer other than an investment company registered or required to register under the 1940 Act that:

(1) Has a class of securities registered pursuant to Section 12(b) or 12(g) of the Exchange Act (15 U.S.C. 78*l*(b) or 78*l*(g)) or is required to file reports pursuant to Section 15(d) of the Exchange Act (15 U.S.C. 78*o*(d)); and

(2) Has filed all the material required to be filed pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78*o*(d)) for a period of at least twelve months immediately preceding the offer or sale of securities made in reliance upon this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes) (or for such shorter period that the issuer was required to file such material).

(j) *Substantial U.S. market interest.* (1) ''Substantial U.S. market interest'' with respect to a class of an issuer's equity securities means:

(i) The securities exchanges and inter-dealer quotation systems in the United States in the aggregate constituted the single largest market for such class of securities in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation; or

(ii) 20 percent or more of all trading in such class of securities took place in, on or through the facilities of securities exchanges and inter-dealer quotation systems in the United States and less than 55 percent of such trading took place in, on or through the facilities of securities markets of a single foreign country in the shorter of the issuer's prior fiscal year or the period since the issuer's incorporation.

(2) ''Substantial U.S. market interest'' with respect to an issuer's debt securities means:

(i) Its debt securities, in the aggregate, are held of record (as that term is defined in § 240.12g5–1 of this chapter and used for purposes of paragraph (j)(2) of this section) by 300 or more U.S. persons;

(ii) $1 billion or more of: The principal amount outstanding of its debt securities, the greater of liquidation preference or par value of its securities described in § 230.902(a)(1), and the principal amount or principal balance of its securities described in § 230.902(a)(2), in the aggregate, is held of record by U.S. persons; and

(iii) 20 percent or more of: The principal amount outstanding of its debt securities, the greater of liquidation preference or par value of its securities described in § 230.902(a)(1), and the principal amount or principal balance of its securities described in § 230.902(a)(2), in the aggregate, is held of record by U.S. persons.

(3) Notwithstanding paragraph (j)(2) of this section, substantial U.S. market interest with respect to an issuer's debt securities is calculated without reference to securities that qualify for the exemption provided by Section 3(a)(3) of the Act (15 U.S.C. 77c(a)(3)).

(k) *U.S. person.* (1) ''U.S. person'' means:

(i) Any natural person resident in the United States;

(ii) Any partnership or corporation organized or incorporated under the laws of the United States;

(iii) Any estate of which any executor or administrator is a U.S. person;

(iv) Any trust of which any trustee is a U.S. person;

(v) Any agency or branch of a foreign entity located in the United States;

(vi) Any non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. person;

(vii) Any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary

organized, incorporated, or (if an individual) resident in the United States; and

(viii) Any partnership or corporation if:

(A) Organized or incorporated under the laws of any foreign jurisdiction; and

(B) Formed by a U.S. person principally for the purpose of investing in securities not registered under the Act, unless it is organized or incorporated, and owned, by accredited investors (as defined in § 230.501(a)) who are not natural persons, estates or trusts.

(2) The following are not ''U.S. persons'':

(i) Any discretionary account or similar account (other than an estate or trust) held for the benefit or account of a non-U.S. person by a dealer or other professional fiduciary organized, incorporated, or (if an individual) resident in the United States;

(ii) Any estate of which any professional fiduciary acting as executor or administrator is a U.S. person if:

(A) An executor or administrator of the estate who is not a U.S. person has sole or shared investment discretion with respect to the assets of the estate; and

(B) The estate is governed by foreign law;

(iii) Any trust of which any professional fiduciary acting as trustee is a U.S. person, if a trustee who is not a U.S. person has sole or shared investment discretion with respect to the trust assets, and no beneficiary of the trust (and no settlor if the trust is revocable) is a U.S. person;

(iv) An employee benefit plan established and administered in accordance with the law of a country other than the United States and customary practices and documentation of such country;

(v) Any agency or branch of a U.S. person located outside the United States if:

(A) The agency or branch operates for valid business reasons; and

(B) The agency or branch is engaged in the business of insurance or banking and is subject to substantive insurance or banking regulation, respectively, in the jurisdiction where located; and

(vi) The International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies, affiliates and pension plans, and any other similar international organizations, their agencies, affiliates and pension plans.

(l) *United States.* ''United States'' means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

5. Section 230.903 is revised to read as follows:

§ 230.903 Offers or sales of securities by the issuer, a distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing; conditions relating to specific securities.

(a) An offer or sale of securities by the issuer, a distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing, shall be deemed to occur outside the United States within the meaning of § 230.901 if:

(1) The offer or sale is made in an offshore transaction;

(2) No directed selling efforts are made in the United States by the issuer, a distributor, any of their respective affiliates, or any person acting on behalf of any of the foregoing; and

(3) The conditions of paragraph (b) of this section, as applicable, are satisfied.

(b) *Additional Conditions.* (1) *Category 1.* No conditions other than those set forth in § 230.903(a) apply to securities in this category. Securities are eligible for this category if:

(i) The securities are issued by a foreign issuer that reasonably believes at the commencement of the offering that:

(A) There is no substantial U.S. market interest in the class of securities to be offered or sold (if equity securities are offered or sold);

(B) There is no substantial U.S. market interest in its debt securities (if debt securities are offered or sold);

(C) There is no substantial U.S. market interest in the securities to be purchased upon exercise (if warrants are offered or sold); and

(D) There is no substantial U.S. market interest in either the convertible securities or the underlying securities (if convertible securities are offered or sold);

(ii) The securities are offered and sold in an overseas directed offering, which means:

(A) An offering of securities of a foreign issuer that is directed into a single country other than the United States to the residents thereof and that is made in accordance with the local laws and customary practices and documentation of such country; or

(B) An offering of non-convertible debt securities of a domestic issuer that is directed into a single country other than the United States to the residents thereof and that is made in accordance with the local laws and customary practices and documentation of such country, provided that the principal and interest of the securities (or par value, as applicable) are denominated in a currency other than U.S. dollars and such securities are neither convertible into U.S. dollar-denominated securities nor linked to U.S. dollars (other than through related currency or interest rate swap transactions that are commercial in nature) in a manner that in effect converts the securities to U.S. dollar-denominated securities.

(iii) The securities are backed by the full faith and credit of a foreign government; or

(iv) The securities are offered and sold to employees of the issuer or its affiliates pursuant to an employee benefit plan established and administered in accordance with the law of a country other than the United States, and customary practices and documentation of such country, provided that:

(A) The securities are issued in compensatory circumstances for bona fide services rendered to the issuer or its affiliates in connection with their businesses and such services are not rendered in connection with the offer or sale of securities in a capital-raising transaction;

(B) Any interests in the plan are not transferable other than by will or the laws of descent or distribution;

(C) The issuer takes reasonable steps to preclude the offer and sale of interests in the plan or securities under the plan to U.S. residents other than employees on temporary assignment in the United States; and

(D) Documentation used in connection with any offer pursuant to the plan contains a statement that the securities have not been registered under the Act and may not be offered or sold in the United States unless registered or an exemption from registration is available.

(2) *Category 2.* The following conditions apply to securities that are not eligible for Category 1 (paragraph (b)(1)) of this section and that are equity securities of a reporting foreign issuer, or debt securities of a reporting issuer or of a non-reporting foreign issuer.

(i) Offering restrictions are implemented;

(ii) The offer or sale, if made prior to the expiration of a 40-day distribution compliance period, is not made to a U.S. person or for the account or benefit of a U.S. person (other than a distributor); and

(iii) Each distributor selling securities to a distributor, a dealer, as defined in section 2(a)(12) of the Act (15 U.S.C. 77b(a)(12)), or a person receiving a

selling concession, fee or other remuneration in respect of the securities sold, prior to the expiration of a 40-day distribution compliance period, sends a confirmation or other notice to the purchaser stating that the purchaser is subject to the same restrictions on offers and sales that apply to a distributor.

(3) *Category 3.* The following conditions apply to securities that are not eligible for Category 1 or 2 (paragraph (b)(1) or (b)(2)) of this section:

(i) Offering restrictions are implemented;

(ii) In the case of debt securities:

(A) The offer or sale, if made prior to the expiration of a 40-day distribution compliance period, is not made to a U.S. person or for the account or benefit of a U.S. person (other than a distributor); and

(B) The securities are represented upon issuance by a temporary global security which is not exchangeable for definitive securities until the expiration of the 40-day distribution compliance period and, for persons other than distributors, until certification of beneficial ownership of the securities by a non-U.S. person or a U.S. person who purchased securities in a transaction that did not require registration under the Act;

(iii) In the case of equity securities:

(A) The offer or sale, if made prior to the expiration of a one-year distribution compliance period, is not made to a U.S. person or for the account or benefit of a U.S. person (other than a distributor); and

(B) The offer or sale, if made prior to the expiration of a one-year distribution compliance period, is made pursuant to the following conditions:

(*1*) The purchaser of the securities (other than a distributor) certifies that it is not a U.S. person and is not acquiring the securities for the account or benefit of any U.S. person or is a U.S. person who purchased securities in a transaction that did not require registration under the Act;

(*2*) The purchaser of the securities agrees to resell such securities only in accordance with the provisions of this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes), pursuant to registration under the Act, or pursuant to an available exemption from registration; and agrees not to engage in hedging transactions with regard to such securities unless in compliance with the Act;

(*3*) The securities of a domestic issuer contain a legend to the effect that transfer is prohibited except in accordance with the provisions of this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes), pursuant to registration under the Act, or pursuant to an available exemption from registration; and that hedging transactions involving those securities may not be conducted unless in compliance with the Act;

(*4*) The issuer is required, either by contract or a provision in its bylaws, articles, charter or comparable document, to refuse to register any transfer of the securities not made in accordance with the provisions of this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes), pursuant to registration under the Act, or pursuant to an available exemption from registration; *provided, however,* that if the securities are in bearer form or foreign law prevents the issuer of the securities from refusing to register securities transfers, other reasonable procedures (such as a legend described in paragraph (b)(3)(iii)(B)(*3*) of this section) are implemented to prevent any transfer of the securities not made in accordance with the provisions of this Regulation S; and

(iv) Each distributor selling securities to a distributor, a dealer (as defined in section 2(a)(12) of the Act (15 U.S.C. 77b(a)(12)), or a person receiving a selling concession, fee or other remuneration, prior to the expiration of a 40-day distribution compliance period in the case of debt securities, or a one-year distribution compliance period in the case of equity securities, sends a confirmation or other notice to the purchaser stating that the purchaser is subject to the same restrictions on offers and sales that apply to a distributor.

(4) *Guaranteed securities.* Notwithstanding paragraphs (b)(1) through (b)(3) of this section, in offerings of debt securities fully and unconditionally guaranteed as to principal and interest by the parent of the issuer of the debt securities, only the requirements of paragraph (b) of this section that are applicable to the offer and sale of the guarantee must be satisfied with respect to the offer and sale of the guaranteed debt securities.

(5) *Warrants.* An offer or sale of warrants under Category 2 or 3 (paragraph (b)(2) or (b)(3)) of this section also must comply with the following requirements:

(i) Each warrant must bear a legend stating that the warrant and the securities to be issued upon its exercise have not been registered under the Act and that the warrant may not be exercised by or on behalf of any U.S. person unless registered under the Act or an exemption from such registration is available;

(ii) Each person exercising a warrant is required to give:

(A) Written certification that it is not a U.S. person and the warrant is not being exercised on behalf of a U.S. person; or

(B) A written opinion of counsel to the effect that the warrant and the securities delivered upon exercise thereof have been registered under the Act or are exempt from registration thereunder; and

(iii) Procedures are implemented to ensure that the warrant may not be exercised within the United States, and that the securities may not be delivered within the United States upon exercise, other than in offerings deemed to meet the definition of ''offshore transaction'' pursuant to § 230.902(h), unless registered under the Act or an exemption from such registration is available.

6. Section 230.904 is revised to read as follows:

§ 230.904. Offshore resales.

(a) An offer or sale of securities by any person other than the issuer, a distributor, any of their respective affiliates (except any officer or director who is an affiliate solely by virtue of holding such position), or any person acting on behalf of any of the foregoing, shall be deemed to occur outside the United States within the meaning of § 230.901 if:

(1) The offer or sale are made in an offshore transaction;

(2) No directed selling efforts are made in the United States by the seller, an affiliate, or any person acting on their behalf; and

(3) The conditions of paragraph (b) of this section, if applicable, are satisfied.

(b) *Additional conditions. (1) Resales by dealers and persons receiving selling concessions.* In the case of an offer or sale of securities prior to the expiration of the distribution compliance period specified in Category 2 or 3 (paragraph (b)(2) or (b)(3)) of § 230.903, as applicable, by a dealer, as defined in Section 2(a)(12) of the Act (15 U.S.C. 77b(a)(12)), or a person receiving a selling concession, fee or other remuneration in respect of the securities offered or sold:

(i) Neither the seller nor any person acting on its behalf knows that the offeree or buyer of the securities is a U.S. person; and

(ii) If the seller or any person acting on the seller's behalf knows that the purchaser is a dealer, as defined in Section 2(a)(12) of the Act (15 U.S.C. 77b(a)(12)), or is a person receiving a selling concession, fee or other remuneration in respect of the securities

sold, the seller or a person acting on the seller's behalf sends to the purchaser a confirmation or other notice stating that the securities may be offered and sold during the distribution compliance period only in accordance with the provisions of this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes); pursuant to registration of the securities under the Act; or pursuant to an available exemption from the registration requirements of the Act.

(2) *Resales by certain affiliates.* In the case of an offer or sale of securities by an officer or director of the issuer or a distributor, who is an affiliate of the issuer or distributor solely by virtue of holding such position, no selling concession, fee or other remuneration is paid in connection with such offer or sale other than the usual and customary broker's commission that would be received by a person executing such transaction as agent.

7. By adding § 230.905 to read as follows:

§ 230.905 Resale limitations.

Equity securities of domestic issuers acquired from the issuer, a distributor, or any of their respective affiliates in a transaction subject to the conditions of § 230.901 or § 230.903 are deemed to be ''restricted securities'' as defined in § 230.144. Resales of any of such restricted securities by the offshore purchaser must be made in accordance with this Regulation S (§ 230.901 through § 230.905, and Preliminary Notes), the registration requirements of the Act or an exemption therefrom. Any ''restricted securities,'' as defined in § 230.144, that are equity securities of a domestic issuer will continue to be deemed to be restricted securities, notwithstanding that they were acquired in a resale transaction made pursuant to § 230.901 or § 230.904.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

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

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

* * * * *

9. By amending Form 8–K (referenced in § 249.308) by removing the last sentence of General Instruction B.1. and Item 9.

(**Note:** The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.)

10. By amending Form 10–Q (referenced in § 249.308a) by revising paragraph (c) of Item 2 of Part II prior to the Instruction to read as follows:

(**Note:** The text of Form 10–Q does not, and these amendments will not, appear in the Code of Federal Regulations.)

Form 10–Q

* * * * *

Part II

* * * * *

Item 2. Changes in Securities and Use of Proceeds.

* * * * *

(c) Furnish the information required by Item 701 of Regulation S–K (§ 229.701 of this chapter) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act.

* * * * *

11. By amending Form 10–QSB (referenced in § 249.308b) by revising paragraph (c) to Item 2 of Part II prior to the Instruction to read as follows:

(**Note:** The text of Form 10–QSB does not, and these amendments will not, appear in the Code of Federal Regulations.)

Form 10–QSB

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Part II

* * * * *

Item 2. Changes in Securities and Use of Proceeds.

* * * * *

(c) Furnish the information required by Item 701 of Regulation S–B (§ 228.701 of this chapter) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act.

* * * * *

12. By amending Form 10–K (referenced in § 249.310) by revising paragraph (a) of Item 5 of Part II to read as follows:

(**Note:** The text of Form 10–K does not, and these amendments will not, appear in the Code of Federal Regulations.)

Form 10–K

* * * * *

Part II

* * * * *

Item 5. Market for Registrant's Common Equity and Related Stockholder Matters.

(a) Furnish the information required by Item 201 of Regulation S–K (§ 229.201 of this chapter) and Item 701 of Regulation S–K (§ 229.701 of this chapter) as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act. If the Item 701 information previously has been included in a Quarterly Report on Form 10–Q or 10–QSB (§ 249.308a or 249.308b of this chapter), however, it need not be furnished.

* * * * *

13. By amending Form 10–KSB (referenced in § 249.310b) by revising paragraph (a) of Item 5 of Part II to read as follows:

(**Note:** The text of Form 10–KSB does not, and these amendments will not, appear in the Code of Federal Regulations.)

Form 10–KSB

* * * * *

Part II

Item 5. Market for Common Equity and Related Stockholder Matters.

(a) Furnish the information required by Item 201 of Regulation S–B and Item 701 of Regulation S–B as to all equity securities of the registrant sold by the registrant during the period covered by the report that were not registered under the Securities Act. If the Item 701 information previously has been included in a Quarterly Report on Form 10–Q or 10–QSB, however, it need not be furnished.

Dated: February 17, 1998.

* * * * *

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4458 Filed 2–24–98; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230 and 239

[Release No. 33–7506, 34–39669; File No S7–2–98]

RIN 3235–AG94

Registration of Securities on Form S–8

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is publishing for comment proposed amendments to Form S–8 and related rules under the Securities Act and Regulations S–K and S–B to restrict the use of the form for the sale of securities to consultants and advisors, and to allow the use of the form for the exercise of stock options by family members of employee optionees. The first set of proposals is intended to eliminate the abuse of Form S–8 purportedly to register offerings to consultants and advisors who then act as statutory underwriters to sell the securities to the general public, and to register securities issued as compensation to consultants who promote the registrant's securities. The second set of proposals is intended to facilitate legitimate employee estate planning transactions and other intra-family transfers.

DATES: Comments should be submitted on or before April 27, 1998.

ADDRESSES: All comments concerning the proposed amendments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–2–98; this file number should be included on the subject line if e-mail is used. Comment letters will be available for inspection and copying in the public reference room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Anne M. Krauskopf, Special Counsel, Office of Chief Counsel, Division of Corporation Finance, at (202) 942–2900.

SUPPLEMENTARY INFORMATION: The Commission today proposes amendments to Rules 401 [1] and 405 [2] under the Securities Act of 1933 (''Securities Act''),[3] Item 402 [4] of Regulations S–B and S–K, and Securities Act Forms S–3 [5] and S–8.[6]

I. Executive Summary and Background

The Commission today proposes rule amendments to address two separate problems associated with the use of Form S–8 to register employee benefit plan securities. First, the Commission proposes to restrict the availability of streamlined registration on Form S–8 to deter abuse of the form to make sales to the general public through so-called ''consultants and advisors,'' and to eliminate registration on the form of securities issued to stock promoters. These amendments are proposed as part of the Commission's comprehensive agenda to deter registration and trading abuses, particularly by small capitalization issuers.[7] Second, the Commission proposes to expand Form S–8 to facilitate option exercises by employees' family members, so that the rules governing use of the form do not impede legitimate intra-family transfers by employees, such as transfers for estate planning purposes or transfers pursuant to domestic relations orders.

Form S–8 is used to register securities for offer and sale to employees [8] of the issuer in a compensatory or incentive context. In 1990, the Commission adopted substantial revisions to Form S–8, including an abbreviated disclosure format that eliminated the need to file a separate prospectus that duplicated information otherwise provided to plan participants.[9] The delivery of regularly prepared materials to advise employees about benefit plans was permitted to satisfy prospectus delivery requirements. This revision reflected a distinction the Commission traditionally has recognized between offerings made to employees primarily for compensatory and incentive purposes and offerings made by registrants for capital-raising purposes. Specifically, employees' familiarity with the business of the issuer through the employment relationship and the compensatory purpose of the offering justify the use of abbreviated disclosure that would not be adequate in the context of a capital-raising offer of securities to the non-employee public.[10]

The 1990 revisions also made Form S–8 available for offers and sales of securities to consultants and advisors who render *bona fide* services to the registrant, provided that such services are not rendered in connection with the offer or sale of securities in a capital-raising transaction. Where securities are issued for compensatory rather than capital-raising purposes, there appeared to be no meaningful basis for distinguishing between transactions with regular employees and those with consultants and advisors retained by the registrant. As a result of the 1990 revisions, for example, a physician on the faculty of a medical school who advises a company regarding a pharmaceutical product in development could be compensated for this service with company securities registered on Form S–8.

A. ''Consultant'' Abuses

Since the adoption of the 1990 revisions, some issuers have used Form S–8 improperly as a means to distribute securities to the public without the protections to investors of registration under Section 5 of the Securities Act. In a typical pattern, an issuer registers on Form S–8 securities underlying options issued nominally to so-called ''consultants'' where, by prearrangement, the issuer directs the consultants' exercise of the options and resale of the underlying securities by the consultants in the public markets. In some cases, these consultants perform little or no other service for the issuer. The consultants then either remit to the issuer the proceeds from the sale of the underlying shares, or apply the proceeds to pay debts of the issuer that are not related to any service provided by the consultants.[11]

The registration of the underlying shares on Form S–8 does *not* register these public sales under Section 5 of the

[1] 17 CFR 230.401.

[2] 17 CFR 230.405.

[3] 15 U.S.C. 77a *et seq.*

[4] 17 CFR 228.402 and 17 CFR 229.402.

[5] 17 CFR 239.13.

[6] 17 CFR 239.16b.

[7] See Securities Act Release No. 7505, adopting amendments to Regulation S [17 CFR 230.901 *et seq.*], and Release No. 39670 under the Securities Exchange Act of 1934 (''Exchange Act'') [15 U.S.C. 78a *et seq.*], proposing amendments to Exchange Act Rule 15c2–11 [17 CFR 240.15c2–11].

[8] For this purpose, ''employees'' includes also the employees of the issuer's subsidiaries or parents. See General Instruction A.1(a) to Form S–8.

[9] Securities Act Release No. 6867 (June 6, 1990) [55 FR 23909].

[10] Form S–8 also provides for incorporation by reference of the registrant's reports filed under the Exchange Act regardless of the length of the registrant's reporting history or the size of its public float. Incorporation by reference from Exchange Act reports into a Securities Act registration statement is not otherwise available unless the eligibility requirements for Form S–2 [17 CFR 239.12] or Form S–3 are satisfied.

[11] See, *e.g.*, In the Matter of Spectrum Information Technologies, Inc. (''Spectrum''), Securities Act Release No. 7426, Exchange Act Release No. 38774, Accounting and Auditing Enforcement Release No. 930 (June 25, 1997). For additional discussion, see Section II.A below.

Securities Act. The transaction that actually takes place (a capital-raising transaction with the public) is not the transaction that is registered (a compensatory transaction with consultants). Form S–8 is available solely to register compensatory sales of securities to ''employees,'' including certain consultants and advisors.[12] While the issuer purports to sell the securities to employees, the actual public sale of securities is not made to employees. Instead, the ''employees'' act as conduits by selling the securities to the public and remitting the proceeds (or their economic benefit) to the issuer. This public sale of securities by the issuer has not been registered, as is required by the Securities Act. Public investors accordingly are deprived of the accountability and disclosure that the liability provisions of the Securities Act and the opportunity for Commission staff review of the registration statement provide in registered public distributions.

The form also has been misused to register securities issued to compensate ''consultants'' whose service to the issuer is the promotion of the issuer's securities. This practice facilitates securities fraud by providing inexpensive compensation to persons who hype the issuer's stock, and expands the market for the issuer's securities through resales by these persons.

The Commission seeks to prevent future abuse of Form S–8 while, to the extent possible, preserving the original goal of making Form S–8 available for the registration of compensatory transactions between the registrant and consultants and advisors who render *bona fide* services outside the capital-raising context, as well as traditional employees. To this end, the Commission today issues proposals that would:

- Clarify that Form S–8 is not available for sales to consultants and advisors who directly or indirectly promote or maintain a market for the company's securities;
- Exclude certain registration statements and post-effective amendments that automatically become effective upon filing from the general rule that a registration statement or amendment is deemed filed on the proper form unless the Commission objects to the form before the effective date; and
- Require disclosure in Part II of Form S–8 of the names of any consultants or advisors to whom the registrant will issue securities under the registration statement, the number of securities to be issued to each of these persons, and the specific services that each will provide to the registrant.

In addition, the Commission solicits comment on a number of other approaches to the problem, such as limiting the percentage of the total number of the registrant's securities outstanding that may be registered on Form S–8 for issuance to consultants and advisors. The Commission also solicits comment as to whether specific certification as to the *bona fide* nature of consultants' or advisors' services should be required; whether each consulting or advisory agreement under which securities are proposed to be issued should be filed as an exhibit to the Form S–8; and whether disclosure of sales to consultants and advisors should be required on Forms 8–K or 10–Q.

B. Option Exercises by Family Transferees; Executive Compensation Disclosure

Currently, Form S–8 is available for the exercise of employee benefit plan options only if the option is exercised by the employee/optionee. The form is unavailable to non-employee option transferees, such as an adult son or daughter of an employee. If a company wishes to permit a family member transferee to exercise an employee benefit plan option, it must register the sale of the underlying securities on a separate, less streamlined registration statement.

In the 1996 amendments to the rules under Section 16[13] of the Securities Exchange Act of 1934 (''Exchange Act''),[14] the Commission revised Rule 16b–3[15] to provide a broader, simplified exemption from short-swing profit recovery for transactions between an issuer and its directors or officers, whether or not in the context of an employee benefit plan. Among other things, the amendments eliminated the requirement of former Rule 16b–3 that a derivative security issued under an employee benefit plan be non-transferable.[16]

Under current tax law, significant estate tax savings may be obtained if an employee, during his or her lifetime, transfers a vested option to a family member, who then exercises it. In comparison, the exercise of the option by the employee with the underlying security later passing to the family member through the employee's taxable estate is more costly from a tax standpoint. The Rule 16b–3 revisions simplified the transfer of options and other derivative securities by employees to their immediate family members, and to trusts and partnerships established for the benefit of immediate family members, for estate planning purposes. Other aspects of the 1996 Amendments facilitated the transfer of securities to a former spouse in divorce proceedings.[17] For the first time, many companies are issuing transferable options to their officers and directors.

The Commission believes that making Form S–8 available for registration of employee benefit plan option exercises by an employee's family members may be appropriate. Because of the family relationship to an employee and the compensatory—rather than capital-raising—character of the transaction, the abbreviated disclosure format of Form S–8 may be suitable for these transactions. The fact that only companies that are required to file Exchange Act reports are eligible to use Form S–8 supports this approach.

The proposals issued today would:

- Make Form S–8 available for the exercise of employee benefit plan options by an employee's family member who has acquired the options from the employee through a gift or domestic relations order;
- Make Form S–8 available to former employees for the exercise of transferable, as well as non-transferable, options; and
- Revise executive compensation disclosure requirements to clarify how options and stock appreciation rights (''SARs'') that have been transferred should be reported.

In addition, the Commission proposes to make Form S–3 equally available for the offer and sale of securities underlying both warrants and options, without regard to whether either class of securities is transferable.

II. Consultant Abuses

A. Consultants and Advisors Eligible for Form S–8 Transactions

[12] ''Employee'' is defined in General Instruction A.1.(a) of the form to include consultants and advisors who render *bona fide* services not in connection with the offer or sale of securities in a capital-raising transaction, exclusive insurance agents of the registrant and, in certain circumstances, former employees and the estates of employees or former employees.

[13] 15 U.S.C. 78p.

[14] 15 U.S.C. 78a *et seq.*

[15] 17 CFR 240.16b–3. See Exchange Act Release No. 37260 (May 31, 1996).

[16] Former Rule 16b–3(a)(2) prohibited transfers except (i) by will or the laws of descent and distribution, or (ii) pursuant to a qualified domestic relations order as defined by the Internal Revenue Code.

[17] Rule 16a–12 [17 CFR 240.16a–12] exempts from both the reporting requirements of Section 16(a) and the short-swing profit recovery requirements of Section 16(b) the acquisition or disposition of equity securities pursuant to a domestic relations order.

General Instruction A.1(a) to Form S–8 restricts the form's availability to the offer and sale of the registrant's securities to its employees, or employees of its subsidiaries or parents, pursuant to any employee benefit plan. For this purpose, ''employee'' is defined to include a consultant or advisor who provides *bona fide* services to the registrant other than in connection with the offer or sale of securities in a capital-raising transaction. Like a traditional employee, a consultant or advisor must be a natural person, and privity must exist between the registrant and the consultant or advisor both as to the consulting contract and the issuance of the securities registered on Form S–8.[18] In response to telephone inquiries, the Division of Corporation Finance staff has interpreted the phrase ''in connection with the offer or sale of securities in a capital-raising transaction'' to preclude the issuance of securities on Form S–8 to consultants either (i) as compensation for any service that directly or indirectly promotes or maintains a market for the registrant's securities, or (ii) as conduits for a distribution to the general public.

Despite express limitations set forth in Form S–8 and related staff interpretations, some companies have taken advantage of the automatic effectiveness—and resultant absence of staff review—applicable to Form S–8 to register securities for issuance in capital-raising transactions.[19] In the typical fact pattern, a company issues shares registered on Form S–8 to purported employees or other nominees designated as ''consultants'' or ''advisors,'' who frequently do not provide any *bona fide* services to the company. At the direction of the company, these nominees then resell the shares on an unregistered basis and remit all or part of the proceeds back to the company. These distributions deprive the ultimate public purchasers of the disclosure and liability benefits of Securities Act registration. In some cases, a series of Forms S–8 is used to effect the distributions, so that the aggregate number of shares distributed constitutes a significant percentage—if not the preponderance—of the company's shares outstanding.[20]

In distributing the shares to the public on behalf of the company, these consultants or employees act as ''underwriters,'' as defined in Section 2(a)(11) of the Securities Act.[21] The company's registration statement on Form S–8 registers only offers and sales of stock to employees and consultants or advisors. However, the company's distribution of securities does not come to rest with these persons. Instead, the company uses these nominal ''consultants'' as conduits for unregistered offers and sales of securities to the public for which no exemption is available. In these circumstances, the Commission has charged companies with violations of Sections 5(a) and 5(c) of the Securities Act.[22] Consultants acting as nominees have been charged with violating Section 5 as underwriters.[23]

In other circumstances, companies have misused Form S–8 by using it to register securities issued to consultants or advisors as compensation for their services as stock promoters. Public investors who repurchase these securities in effect pay the salaries of individuals whose services for the issuer may result in the dissemination of material fraudulent information. These transactions are outside the scope of transactions that currently are permitted to be registered on Form S–8, whether or not they result in unregistered sales of securities to the public in violation of Section 5.

The Commission believes that one means to deter these abuses of Form S–8 is to restrict further the definition of consultants and advisors who may be compensated with securities registered on the form. The Commission proposes to amend General Instruction A.1(a) to Form S–8 to clarify that the consultant or advisor must provide to the registrant *bona fide* services that do not directly or indirectly promote or maintain a market for the registrant's securities.[24] This limitation would be in addition to the existing provision that these services may not be in connection with the offer or sale of securities in a capital-raising transaction. The amended instruction also would codify the existing requirement that the consultant or advisor be a natural person who has contracted directly with the registrant. The Commission proposes similarly to amend the definition of ''employee benefit plan'' contained in Securities Act Rule 405, so that a consultant or advisor may participate in an employee benefit plan only if the same conditions are met.

Under the proposed amendment to Form S–8, issuers could not use the form to register securities as compensation for the services of financial consultants who advise the company regarding a potential capital restructuring because this service is a predicate to capital-raising and market maintenance. In contrast, issuers would be able to register on Form S–8 securities issued as compensation for the services of financial consultants who assist the company in structuring its compensation scheme, or attorneys who defend the company in litigation, because these activities do not have a capital-raising connection.

Commenters are asked to address whether, in the context of the other proposals set forth in this Release, the proposed restriction regarding consultant promotional services effectively will deter or prevent the use of ''consultants'' as underwriters. Commenters also should address whether this proposed restriction would unduly hinder the use of Form S–8 to register securities as compensation to consultants for legitimate purposes. If so, how should the restriction otherwise be crafted to distinguish activities that do not promote or maintain securities markets—and thus assist capital-raising—from those that do? Alternatively, should the Commission simply amend Form S–8 so that it is no longer available at all for the issuance of securities to consultants and advisors?

In light of the proposal to deter the Form S–8 abuse described above, and consistent with the Commission's broader goal of harmonizing its regulations, the Commission is considering whether to limit the categories of people who are permitted to participate, as ''consultants and

[18] See *Image Entertainment* (Mar. 6, 1992). However, where the consultant or advisor performs services for the registrant through a wholly-owned corporate alter ego, the registrant may contract with and register securities on Form S–8 as compensation to that corporate entity. See *Aaron Spelling Productions, Inc.* (July 1, 1987).

[19] Rule 462(a) provides that a registration statement on Form S–8 becomes effective upon filing with the Commission. Rule 464(a) provides that a post-effective amendment filed on Form S–8 also becomes effective upon filing with the Commission.

[20] See In the Matter of Sky Scientific, Inc. (''Sky Scientific''), Securities Act Release No. 7372, Exchange Act Release No. 38049, Accounting and Auditing Enforcement Release No. 863 (Dec. 16, 1996), in which the company conducted an unregistered distribution to the public through 106 registration statements and post-effective amendments filed on Form S–8, covering a total of approximately 30 million shares of common stock.

[21] 15 U.S.C. 77b(a)(11), which states, in pertinent part: ''The term 'underwriter' means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking [* * *].''

[22] See, *e.g.*, Spectrum, cited at n. 11 above.

[23] In addition to Spectrum, see Sky Scientific, cited at n. 20 above.

[24] Whether activities that otherwise promote the registrant would indirectly promote the registrant's securities would depend upon the facts and circumstances.

advisors,'' in private companies' compensatory transactions exempted from Securities Act registration under Rule 701.[25] Specifically, the Commission is considering interpreting ''consultants and advisors'' for Rule 701 purposes in the narrower manner it has interpreted these terms for Form S–8 eligibility purposes.

Under current staff interpretation of Rule 701, ''consultants and advisors'' is construed more broadly than under Form S–8. For example, staff interpretive letters have permitted Rule 701 offers and sales to be made to:

- Independent sales representatives who distribute the company's products;[26]
- Franchisees;[27]
- Physicians who contract to provide medical services pursuant to various managed care arrangements;[28] and
- Golf pros who serve as independent agents for the distribution of golf products through their pro shops.[29]

In contrast, companies are not currently permitted to register on Form S–8 securities issued to compensate these persons, unless there is a *de facto* employment relationship between the person and the company. Such a relationship may exist where a person not employed by a company provides services to the company that traditionally are performed by an employee, and the compensation paid by the company for those services is the primary source of the person's earned income.[30]

These differences in interpretation have caused some confusion because the terms ''consultants and advisors'' appear in both rules, and both rules relate to compensation involving securities. It is not clear why a broader interpretation should be appropriate for exempt sales by a private company, as compared to registered sales by a public company, although it should be noted that securities issued in a Rule 701 plan are ''restricted securities''[31] for resale purposes.

Should the availability of Rule 701 to compensate consultants and advisors be interpreted consistently with the availability of Form S–8? Would a consistent interpretation further the Commission's goal of preventing the use of ''consultants'' as underwriters in the Form S–8 context? On the other hand, is there good reason to interpret ''consultant or advisor'' more narrowly for purposes of Form S–8, because it results in the issuance of freely-tradeable registered securities, whereas Rule 701 results in the issuance of restricted securities?

Alternatively, would it be more appropriate to change the interpretations under Form S–8 to conform with the less restrictive approach in Rule 701? If so, should Form S–8 be amended to remove the specific requirement that insurance agents be ''exclusive,'' given that independent insurance agents are eligible participants in a Rule 701 plan?[32] If this approach were adopted, should independent insurance agents and other independent sales representatives be required to derive a specified minimum percentage of income from the company—such as 10, 20 or 50 percent—in order to qualify for both Rule 701 and Form S–8?

Employee benefit plans also are addressed in Regulation S, the exemptive rule for offshore offers and sales, using language similar to the current wording of Form S–8 and Rule 405.[33] No parallel amendment to Regulation S is proposed in this Release, in light of the other changes to the regulatory structure of Regulation S proposed today in a companion release.[34] However, the Commission is considering whether such an amendment should be adopted, and solicits comment on whether this would be necessary.

B. Requirement as to Proper Securities Act Form

Securities Act Rule 401(g) currently states that any registration statement or amendment is deemed to be filed on the proper form unless the Commission objects to the form before the effective date. This rule requires the Commission and the registrant to resolve any dispute as to whether a filing is on the appropriate form before effectiveness. Because the disclosure requirements of different forms are tailored for the transactions for which they are prescribed, in some cases registration on a form other than the form prescribed for the specific transaction may deprive public investors of the disclosure benefits of Securities Act registration.

Of course, for registration statements filed on Form S–8 and other forms that become effective immediately upon filing,[35] the Commission has no opportunity to object to the form in a timely manner. The Commission proposes to remedy this situation by amending Rule 401(g) so that all registration statements and post-effective amendments that become effective automatically upon filing under Securities Act Rules 462 and 464 would be excluded from its scope.[36] Accordingly, there no longer would be a presumption that any Securities Act filing that is automatically effective under these rules is on the proper form.

The proposed amendment would clarify that the Commission, by failing to object in the absence of an opportunity for pre-effective review, does not concede that the proper form has been used. Where a form that is solely available for a specified purpose

[25] 17 CFR 230.701.

[26] Herff Jones, Inc. (Nov. 13, 1990), Microchip Technology, Inc. (Nov. 4, 1992) and Optika Imaging Systems, Inc. (Oct. 1, 1996).

[27] USWeb Corporation (Nov. 7, 1996).

[28] The Morgan Health Group, Inc. (Dec. 18, 1995), Princeton Medical Management Resources, Inc. (Sept. 12, 1997), PHM Management, Inc. (Sept. 16, 1997) and Talbert Medical Management Corporation (Sept. 16, 1997).

[29] Golfpro, Inc. (Oct. 3, 1989).

[30] See Foundation Health Corporation (July 12, 1993), which permitted registration on Form S–8 of stock underlying employee benefit plan options granted to physicians employed by an affiliated professional corporation to provide medical services at the registrant's HMO, where the company had the right to require the physicians to provide medical services exclusively at the HMO.

[31] As defined in Rule 144(a)(3)(ii) [17 CFR 230.144(a)(3)(ii)].

[32] Agents who serve as independent sales representatives for an affiliate of an insurance company are considered ''consultants or advisors'' under Rule 701. See Exceptional Producers Holding Company (Aug. 17, 1989). In contrast, General Instruction A.1(a) to Form S–8 currently requires an insurance agent to be an exclusive agent of the registrant to be considered an ''employee.'' See First Centennial Corporation (Feb. 25, 1992).

[33] Securities Act Rule 903(c)(1)(iv)(A) [17 CFR 230.903(c)(1)(iv)(A)], which requires securities offered and sold to employees of the issuer or its affiliates pursuant to an employee benefit plan administered under the laws of a foreign country to be issued in compensation for *bona fide* services not rendered in connection with the offer and sale of securities in a capital raising transaction.

[34] Securities Act Release No. 7505.

[35] Securities Act Rule 462 [17 CFR 230.462] makes the following registration statements effective immediately upon filing: (a) Rule 462(a) covers Forms S–3 and F–3 for dividend and interest reinvestment plans, and Form S–8; (b) Rule 462(b) covers registration statements filed in specified limited circumstances to increase by no more than 20% the number of shares of the same class previously registered for the same offering, and post-effective amendments to those registration statements; (c) Rule 462(c) covers post-effective amendments filed in specified limited circumstances to provide only price-related information omitted from the registration statement in reliance on Rule 430A; and (d) 462(d) covers post-effective amendments filed solely to add exhibits. Where the issuer continues to meet the requirements for filing on the appropriate form, Rule 464 [17 CFR 230.464] makes effective upon filing post-effective amendments on Form S–8; Forms S–3, F–2 and F–3 relating to dividend or interest reinvestment plans; and Form S–4 [17 CFR 239.25] (if filed in reliance on General Instruction G to that form).

[36] Investment company registration statements and post-effective amendments that become effective immediately upon filing under Securities Act Rules 485(b) [17 CFR 230.485(b)] and 486(b) [17 CFR 230.486(b)] would not be affected by the amendment proposed today.

is used for a different type of transaction, the registration may not be valid. Where a registration statement is filed on a Securities Act registration form available only for the offer and sale of securities to a different class of persons than the persons to whom the securities are in fact offered and/or sold, the Commission staff will, in appropriate cases, assert that the securities are offered and sold in violation of Section 5.

Although, to date, significant abuses in this area have been limited primarily to Form S–8, the Commission proposes to exclude from Rule 401(g) all registration statements and post-effective amendments that become effective immediately upon filing under Rules 462 and 464 in order to preclude abuses involving the other automatically effective forms. Commenters should address whether this approach is appropriate, or, alternatively, whether the proposed amendment should be limited to registration statements and post-effective amendments on Form S–8.

It is noted that Rule 464 requires the issuer to continue to meet the requirements of the specified forms as a condition for automatic effectiveness of post-effective amendments. In light of this specific condition, should post-effective amendments to Forms S–4 filed pursuant to General Instruction G (applicable to bank or savings and loan holding company formations) and dividend reinvestment plan registration statements on Forms S–3, F–2 and F–3 be excluded from the proposed amendment to Rule 401(g)?

C. Information About Consultants and Advisors

Today's proposals would amend Part II of Form S–8 to require the company to name any consultants or advisors to whom securities will be sold under the registration statement, to specify the number of securities to be issued to each of these persons, and to describe specifically the services that each of these persons will provide to the company. If this information is not available at the time the Form S–8 is filed, the company would be required to file it by post-effective amendment before the securities are sold to the consultants or advisors. The failure to provide any part of this information in the Form S–8 would result in a disclosure violation.

The requirement to name these persons in the registration statement is designed to have a chilling effect on their use as conduits for unregistered public offerings. Further, this requirement would facilitate objective verification that the consultant or advisor is a natural person. The requirement to specify the number of securities to be issued to each person would discourage the use of Form S–8 as a vehicle to distribute significant quantities of securities into the public markets. Finally, the requirement to specify the services to be provided by consultants and advisors would permit an objective determination whether these services are *bona fide*, non-capital-raising and non-promotional services that legitimately may be compensated with securities registered on Form S–8. Generic disclosure, such as ''consulting services,'' would result in a disclosure violation.

Commenters are asked to address whether these proposals would reduce the likelihood of securities being sold on Form S–8 to ''consultants'' who act as statutory underwriters, or otherwise promote or maintain a market for the registrant's securities. Are there any specific circumstances under which these disclosures would not be warranted, or would create difficulty? For example, would these amendments unduly burden companies in industries—such as computer technology—that routinely conduct their businesses through numerous consultants, who are compensated with securities registered on Form S–8? If so, would any specific compensatory practices be impeded? How should the proposal be tailored to alleviate any inappropriate burdens while retaining its prophylactic effect?

Would other potential amendments to Form S–8—either in addition to, or substitution for, those proposed today—more effectively promote this goal? For example, in addition to the proposed amendments, should the Form S–8 cover page include a box that a registrant would be required to check if any of the securities registered are to be offered and sold to consultants or advisors? If so, in order to facilitate the location of this information in the EDGAR database, should filers also be required to include an electronic ''tag'' in the header of their EDGAR filings or other electronic means of identifying this information? In addition to—or as an alternative to—the proposed Part II disclosure of consultant services, should registrants be required to file consulting and advisory contracts as exhibits to Form S–8?[37]

The signature requirements to Form S–8 require the registrant to certify ''that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S–8[.]''[38] A registrant cannot in good faith make this certification, in its current form, for a Form S–8 under which securities are issued to consultants and advisors who act as underwriters or otherwise promote the registrant's securities. Should this certification be expanded to require the registrant, or an officer of the registrant, to certify specifically that any consultant or advisor who will receive securities under the registration statement is not hired for capital-raising or promotional activities?

In addition to, or substitution for the proposed amendments to Part II of Form S–8, should companies be required to disclose issuances of securities to consultants and advisors that occurred during the most recently completed fiscal quarter in their Exchange Act annual and quarterly reports? If so, should the names of the recipients and amounts of securities be included? Are these issuances of sufficient market significance that their disclosure instead should be required in a Form 8–K? Should either form of Exchange Act disclosure be mandated only in particular circumstances, for example where the securities issued equal or exceed one percent of the issuer's total securities outstanding, or where the issuer's total market capitalization does not exceed a specified dollar amount, such as $200 million, $250 million or $300 million? Would it be appropriate to require Exchange Act disclosure by registrants that do not satisfy the ''float test'' for registrant eligibility to make a primary offering on Form S–3 (aggregate market value of voting and non-voting common equity held by non-affiliates of $75 million or more)?[39] Alternatively, should the proposed amendments to Part II of Form S–8 apply only to issuers that meet one or more of these criteria?

D. Percentage of Securities Registrable on Form S–8

As noted above, in some cases issuers have used Form S–8 to distribute to the public a significant percentage of the total number of securities outstanding.[40] One means to eliminate this abusive practice would be to limit the aggregate percentage of securities that may be sold

[37] In the absence of an exhibit requirement, companies would remain obligated to furnish these agreements, as supplemental information, to the Commission staff promptly upon request under Securities Act Rule 418 [17 CFR 230.418].

[38] Similar registrant certification provisions are included in the signature requirements to Securities Act Forms S–2, S–3, S–11 [17 CFR 239.18], S–20 [17 CFR 239.20], SB–1 [17 CFR 239.9], SB–2 [17 CFR 239.10], F–1 [17 CFR 239.31], F–2 [17 CFR 239.32], F–3 [17 CFR 239.33], F–6 [17 CFR 239.36], F–7 [17 CFR 239.37], F–8 [17 CFR 239.38], F–9 [17 CFR 239.39], F–10 [17 CFR 239.40], and F–80 [17 CFR 239.41].

[39] General Instruction I.B.1 to Form S–3.

[40] See Sky Scientific, discussed at n. 20 above.

to consultants or advisors pursuant to Form S–8 during the registrant's fiscal year. For example, these securities could be limited to ten percent of the number of securities of the same class outstanding, computed based on the registrant's most recent balance sheet.

While no specific rule proposal is included among the amendments proposed today, the Commission is considering this approach. Comment is solicited as to whether such an annual limitation is a necessary or desirable means to prevent the abuse of Form S–8 to conduct unregistered public offerings. If such a limitation were adopted, should the annual percentage limit be set higher (for example, at 15 percent) or lower (such as at five percent) to achieve this goal? Would a ten percent limitation leave an adequate pool of securities available to compensate consultants for legitimate purposes? Finally, should a different standard apply to companies in industries (such as computer technology) that rely extensively on the services of consultants in the ordinary conduct of their business?

III. Transferable Options and Proxy Reporting

A. Form S–8 Availability for Family Member Transferees

The past decade has witnessed the increased use of options by corporations as a component of the employee compensation package. As executives and other employees receive an increasing proportion of their compensation—and thereby accumulate an increasing proportion of their wealth—in the form of options,[41] these instruments assume greater significance in the context of estate planning transactions and other intra-family transfers, such as property settlements in connection with divorce. Particularly in the estate planning context, an option transfer to a family member during the employee's lifetime can confer significant tax advantages.[42]

Because Form S–8 is available only for the offer and sale of employee benefit plan securities to employees (including consultants and advisors) of the registrant and its subsidiaries or parents, family member transferees have not been allowed to exercise options on Form S–8.[43] However, because of the family relationship to an employee and the compensatory—rather than capital-raising—character of the transaction, the abbreviated disclosure format of Form S–8 may be suitable for these transactions, particularly in light of the fact that companies eligible to use Form S–8 must file Exchange Act reports. The theories of compensatory purpose and access to information about the company/employer that justify streamlined registration on Form S–8 for transactions with employees also appear to encompass option exercises by family members.

Consistent with the 1996 amendments to the Section 16 rules that facilitated intra-family option transfers, discussed above,[44] the Commission today proposes to amend Form S–8 so that it is available for the exercise of employee benefit plan options by an employee's family member who has acquired the options from the employee through a gift or a domestic relations order.[45] For this purpose, ''family member'' would be defined as in the Exchange Act Rule 16a–1(e) definition of ''immediate family'' to include any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships. In addition, unlike Rule 16a-1(e), for Form S–8 purposes ''family member'' would include trusts for the exclusive benefit of these persons, and any other entity owned solely by these persons.[46]

Commenters are asked to address whether other relatives, such as nieces and nephews, should be added to the Form S–8 definition of ''family member,'' particularly to facilitate estate planning transfers to these people. In the interest of harmonizing regulations, should these relatives also be added to the Rule 16a–1(e) definition of ''immediate family,'' so that a Section 16 insider would be deemed to have an indirect pecuniary interest in securities that are held by these persons if they share the insider's household? Or do the differences in purposes between Form S–8 eligibility and pecuniary interest under Section 16 justify different treatment of these or any other people?

Assuming this amendment is adopted, it is contemplated that ''family members'' would be treated like employees for all purposes under Form S–8. For example, under General Instruction C, the Form S–3 resale prospectus would be available for (i) the resale by a ''family member'' who is an affiliate of the issuer of securities that were registered on the Form S–8; and (ii) the resale by a ''family member'' of restricted securities acquired upon the exercise of transferred employee benefit plan options before the Form S–8 was filed. Similarly, if the employee/optionee left the company following the option transfer, Form S–8 would remain available to the ''family member'' for the option exercise to the same extent it would be available to a former employee.

Moreover, consistent with current practice, registration of shares underlying employee benefit plan options would continue to be permitted at any time before the option is exercised, without regard to when the option becomes exercisable. This departure from the general requirement that a registration statement must be on file before an option becomes exercisable (*i.e.*, before an offering of the underlying security is deemed to be made) if the exercise will be registered is based on a policy determination that transactions registered on Form S–8 should be afforded more flexibility because of the unique character of the employer/employee relationship and the compensatory purpose involved.[47]

As drafted, the proposal would make the form available to ''family members'' of any person who satisfies the Form S–

[41] The total value of shares set aside for option grants in the United States during 1996 has been estimated as $600 billion, as compared to approximately $59 billion in 1985. See estimates calculated by Sanford C. Bernstein & Co., as cited in J. Fox, ''The Next Best Thing to Free Money,'' Fortune (July 7, 1997).

[42] For example, if an employee makes a lifetime gift of a vested option to a family member, the gift will be subject to federal gift tax at the time of the gift, based on the option's then fair market value. If the employee instead exercises the option and retains the underlying stock, the fair market value of that stock at the date of the employee's death will be included in his or her taxable estate. A donor is subject to gift taxes to the extent the value of a gift exceeds the $10,000 annual exclusion and the $600,000 unified estate and gift tax credit (as indexed for inflation pursuant to Section 501 of the Taxpayer Relief Act of 1997). Assuming that the option's fair market value at the time of gift is substantially lower than the fair market value of the underlying stock at the time it would be transferred to the family member from the employee's taxable estate, the earlier lifetime transfer would exclude the difference from estate and gift taxation (or from reducing any remaining available annual exclusion or unified credit).

[43] Currently, shares underlying options transferred to certain family members may be registered on Form S–3, in reliance on Instruction I.B.4 to that form. See Use of Form S–3 for Transferred Options (Aug. 7, 1997), discussed in Section III.C, below.

[44] See Section I.B above.

[45] Of course, making Form S–8 available for these transactions would not compel companies to permit employees to transfer options to family members. The decision whether to allow this practice would remain with the company.

[46] Rule 16a–1(a)(2)(ii)(A) provides that a Section 16 insider has an indirect pecuniary interest in securities held by members of a person's immediate family (as defined in Rule 16a–1(e)) sharing the same household. Whether an insider has a pecuniary interest in securities held by a trust or other entity is determined by reference to Rules 16a–8(b) and 16a–1(a)(2), respectively.

[47] See Division of Corporation Finance Manual of Publicly Available Telephone Interpretations (July, 1997), at Section G (Securities Act Forms), Interpretation No. 61.

8 definition of ''employee,'' including consultants and advisors. Commenters should address whether this aspect of the proposal is too broad, given that consultants and advisors have more remote connections to the registrant than do traditional employees. Moreover, do the consultant abuses discussed above justify limiting the proposal to ''family members'' of traditional employees?

As proposed, the form would be available only for options transferred through a gift or domestic relations order. Other than options transferred pursuant to domestic relations orders, should Form S–8 be available for the exercise of any option transferred for value to a ''family member''? In addition to trusts for the exclusive benefit of family members, should Form S–8 be made available to any other entity solely owned by ''family members,'' as proposed, or should only entities other than trusts that are used for estate planning purposes, such as limited partnerships, specifically be permitted? Alternatively, is the limitation to entities solely owned by ''family members'' too restrictive for legitimate estate planning purposes? For example, should Form S–8 be available for the exercise of options transferred by gift by the employee (and/or a ''family member'' transferee) to a charity? Would extending Form S–8 to any entity not solely owned by ''family members'' exceed the boundaries of the employment connection that justifies the abbreviated disclosure format of Form S–8?

As proposed, the ''family member'' transferee would not be required to have received the option directly from the employee for Form S–8 to be available to the transferee. Instead, the form would be available to a subsequent transferee, provided that he or she is a ''family member'' of the employee, and receives the option either by gift or through a domestic relations order from another ''family member'' of the employee. Is it more consistent with the theory of compensatory purpose to require the ''family member'' to receive the option directly from the employee? Would making the form available for options transferred indirectly from employees impose burdensome recordkeeping obligations on issuers?[48]

As for ''reload'' options,[49] it is assumed that following the exercise of the original employee benefit plan option by a ''family member,'' the reload option would be issued to the employee/optionee, who would decide whether to exercise or transfer it. Should the form be made available for reload options issued directly to the immediate family member transferee? In this regard, would a gift be completed for tax purposes if the donor received the reload option?

B. Technical Change to Form S–8 to Allow Registration of Shares Underlying Transferable Options

To implement the proposal to permit family member transferees to exercise employee benefit plan options on Form S–8, the form must be available to the issuer for the registration of shares underlying transferable options. Current General Instruction A.1(a) to Form S–8 provides that the form is available to former employees, and guardians and executors of both current and former employees, for the exercise of non-transferable employee benefit plan stock options and the subsequent sale of the underlying securities,[50] if such exercises and sales are not prohibited under the plan. The proposed amendment would eliminate this non-transferability restriction.[51] As a result, an issuer always would be able to register shares underlying any employee benefit plan option on Form S–8, whether or not the option is transferable.[52]

Commenters are asked to address whether unlimited transferability is appropriate for option shares registered on Form S–8. Alternatively, should the existing restriction be lifted only for options that may be transferred to ''family members'' by gift or pursuant to a domestic relations order, consistent with the proposed amendment to expand the scope of offerees who may exercise options registered on Form S–8?

C. Registration on Form S–3 of Shares Underlying Transferable Warrants or Options

Currently, General Instruction I.B.4 to Form S–3 allows registration on Form S–3 of the offer and sale of securities to be received upon the exercise of outstanding transferable warrants issued by the same issuer.[53] The Instruction requires, as a condition to Form S–3 availability, that the issuer have sent, within twelve calendar months immediately before the Form S–3 is filed, specified annual report information[54] to all record holders of the transferable warrants.

By interpretation, the staff of the Division of Corporation Finance has expressed the view that employee benefit plan options transferred by gift from employees to their immediate family members[55] would be considered ''transferable warrants'' for purposes of this Instruction.[56] If Form S–8 is amended as proposed to permit family members to exercise employee benefit plan options on Form S–8, there should be no further need for this interpretation because the proposed amendments will provide more favorable relief.

However, in considering this interpretation, the staff concluded that it may be appropriate generally to treat options (including options not issued under employee benefit plans) the same as warrants for purposes of Form S–3 availability, in each case without regard to transferability. Securities offered pursuant to options, like securities offered pursuant to rights, convertible securities and warrants, are offered to existing security holders of the issuer, who are presumed to ''follow'' the issuer through corporate communications and Exchange Act filings.[57]

[48] Issuers would not, of course, have to permit these transfers.

[49] ''Reload'' options generally are replacement options granted upon the exercise of an earlier-granted option.

[50] Instruction A.1(a) also makes Form S–8 available to the issuer's former employees, and guardians and executors of both current and former employees, for the acquisition of registrant securities pursuant to intra-plan transfers among plan funds, to the extent permitted by the specific plan.

[51] By its terms, this restriction applies only to the exercise of options by former employees. However, issuers often apply it to all Form S–8 optionees because of practical difficulties in replacing options when current employees become former employees.

[52] If this amendment is adopted as proposed, issuers no longer would need to rely on the staff's interpretive position in Merrill Lynch & Co., Inc. (May 16, 1996), which permitted former employees to exercise on Form S–8 options transferable only to children, step-children, grandchildren or trusts established for their exclusive benefit, provided such options had never been transferred previously.

[53] Instruction I.B.4 also makes Form S–3 available for securities offered upon exercise of outstanding rights granted by the same issuer, pursuant to dividend or interest reinvestment plans, or upon the conversion of outstanding convertible securities. In each case, these securities may be registered on Form S–3 whether or not the $75 million public float test is satisfied.

[54] The Instruction specifically refers to material containing the information required by Rule 14a–3(b) under the Exchange Act and Regulation S–K Items 401 (Directors, Executive Officers, Promoters and Control Persons), 402 (Executive Compensation) and 403 (Security Ownership of Certain Beneficial Owners and Management).

[55] For purposes of this interpretation, the definition of ''immediate family'' in Exchange Act Rule 16a–1(e) applies.

[56] Use of Form S–3 for Transferred Options (Aug. 7, 1997). The letter addresses the procedures (including fee transfer) for transferring such shares underlying a transferred option from a Form S–8 to a Form S–3. (Fee transfers in other circumstances are distinguished in Ropes & Gray (Oct. 30, 1997).)

[57] See Release 33–6331 (Aug. 6, 1981).

Accordingly, the Commission proposes to amend General Instruction I.B.4 to Form S–3 so that the form will be available equally for securities underlying options and warrants in a broader context outside the employee benefit area. The proposed amendment also re-writes the Instruction so that it is more clear.

Commenters should address whether any differences between an issuer's relationships with option holders and warrant holders justify different treatment of the underlying securities for purposes of Form S–3 availability. Do any similar distinctions arise based on whether the instrument is transferable? For example, is it more likely that a warrant holder would have purchased the warrant, whereas an option holder would have been granted it under a plan or received it as a gift? If so, does that make any difference in determining whether the holder would have knowledge about the company for purposes of making Form S–3 available? If transferability makes a difference, should instruments with limited transferability be treated the same for S–3 purposes as fully transferable instruments?

D. Executive Compensation Disclosure of Transferred Options

The growing practice of transferring employee benefit plan stock options raises questions on how transferred (or transferable) options should be reported under the executive compensation disclosure requirements of Item 402 of Regulations S–K and S–B.[58] These issues arise under the summary compensation table,[59] the option/SAR grants table,[60] and the aggregated option/SAR exercises and fiscal year-end option/SAR value table.[61] Today's proposals and requests for comment reflect the staff's current interpretation [62] that the transfer of an option by an executive does not negate the option's status as compensation that should be reported.

1. Summary Compensation Table

The summary compensation table prescribed by Item 402(b) requires a three year reporting history of compensation, including the number of securities for which options were granted, for each person serving as the issuer's chief executive officer (the ''CEO'') during the last fiscal year and the four other most highly compensated executive officers serving at the end of that year (together with the CEO, the ''named executive officers''). Item 402(b)(2)(iv)(B) would be amended so that the sum of the number of securities underlying stock options granted required to be reported in column (g) of the table would include options that subsequently have been transferred by the officer. This amendment would codify the staff's current interpretation of this disclosure Item. Commenters should address whether this codification is necessary or desirable.

2. Option/SAR Grants Table

This table must show, among other things, the number of options granted during the most recent fiscal year to the named executive officers, together with footnote disclosure of the material terms of those options. Consistent with current staff interpretation, Item 402(c)(1) would be amended so that the information required by the table would apply to all options and SARs granted during the year, including options and SARs that subsequently have been transferred.

Although the staff is of the view that transferability is an option term that should be disclosed in a footnote to this table, no rule proposal codifying this position is included among the amendments proposed today. However, comment is solicited whether Instruction 3 to Item 402(c) should be amended to include transferability among the material terms requiring footnote disclosure. If so, should the instructions to the table also be amended to require footnote disclosure that specifies the date of any transfer of an option or SAR that has occurred? Should such a footnote require that a transfer be characterized as ''donative'' or ''for value received?''

Should the footnote name a family member—or any other—transferee? Alternatively, would generic disclosure of the transferee's status, such as an ''immediate family member'' or ''unaffiliated charity'' be sufficient? Should a similar footnote description of transfers also be required in the summary compensation table, so that disclosure will be required of transfers that take place in the two years following the year in which an option is granted?

3. Aggregated Option/SAR Exercises and Fiscal Year-End Option/SAR Value Table (''Option Exercises and Year-End Value Table'')

This table must present, among other things, both the option exercises by the named executive officers during the last fiscal year and the value of options held by the named executive officers at fiscal year end. That value is computed based on the difference between the exercise price of the options and the year-end fair market value of the covered shares.

The proposed amendments to the summary compensation and the option/SAR grants tables are designed to ensure that executive compensation disclosure continues to provide investors meaningful information as to all option and SAR compensation awarded by the issuer. In order to make executive compensation disclosure complete, is it necessary to amend the option exercises and year-end value table to include all option and SAR compensation from which the named executive officer's family members continue to derive benefits?

Such an instruction has not been included among the rule proposals published today. However, comment is solicited whether a new instruction should be added to Item 402(d)(2) to require that options and SARs exercised or held by a ''family member'' (as defined in the proposed amended Instructions to Form S–8) of the named executive officer be included in the table. If so, should the family member be named in a footnote to the table? Where the transferee is controlled by the named executive officer's family, such as a charitable foundation, should the option or SAR be included in the option exercises and year-end value table? Should the result depend on whether the named executive officer's family continues to benefit financially from securities held by the entity?

IV. General Request for Comment

Any interested person is invited to submit written comments on the proposed rule and form amendments, or to suggest additional changes or comments on other matters that might have an impact on the proposals set forth in this release. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

[58] An issuer must include, or incorporate by reference, this disclosure in Securities Act registration statements filed on Forms S–1 [17 CFR 239.11], S–2, S–3, S–4, S–8, S–11 and SB–2. An issuer also must include this disclosure in its Exchange Act registration statement on Form 10 or Form 10–SB [together, 17 CFR 249.210], and its proxy or information statement (if action is to be taken as to the election of directors or the approval of specified director or executive compensation, as provided in Item 8 of Schedule 14A [17 CFR 240.14a–101]). Finally, an issuer must include, or incorporate by reference from its definitive proxy or information statement, this disclosure in its annual report on Form 10–K [17 CFR 249.310] or Form 10–KSB [17 CFR 249.310b].

[59] Item 402(b) of Regulations S–B and S–K.

[60] Item 402(c) of Regulations S–B and S–K.

[61] Item 402(d) of Regulations S–B and S–K.

[62] This interpretation and the other interpretations referenced in this section have been given by the staff in response to telephone inquiries.

Comment is requested as to the impact of the proposals from the point of view of the public, as well as public companies and their employees affected by the proposed rule and form amendments. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 19(a) of the Securities Act.[63]

Comment letters should refer to File No. S7–2–98. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted to the Commission's Internet Web site (http://www.sec.gov).

V. Cost-Benefit Analysis

The proposed rule and form changes have two objectives. The changes pertaining to the sale of shares to consultants and advisers are intended to eliminate misuses of Form S–8 and thus enhance investor protection. The changes pertaining to interfamily transfers are intended to facilitate such transfers and, thereby, provide significant benefits to issuers and their employees. The costs and benefits of these changes are discussed below. The Commission requests comment on this analysis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

A. Shares Issued to Consultants and Advisers

Currently, some issuers are using Form S–8 inappropriately to make distributions of their securities to the general public, or to compensate consultants for services that promote or maintain the market for their securities. The proposal is intended to preclude the use of Form S–8 to register transactions in which consultants act as conduits to distribute securities to the public, or transactions in which consultants are compensated for other capital-raising services. This will discourage filers from misusing the form to register transactions for which it currently is not available. The Commission believes this will provide a substantial investor protection benefit. Other forms remain available to register securities for these purposes.

The Commission's records indicate that 5340 Forms S–8 were filed during the fiscal year ending September 30, 1997.[64] The Commission does not have the data to determine how many of those filings would have been precluded if the proposed amendments to Form S–8 had been in effect. To the extent any reduction is due to the fact that the transaction was not eligible for Form S–8, however, the Commission believes this effect is a benefit rather than a cost. Commenters are requested to provide data that would enable the Commission to quantify this effect.

The proposals also would require disclosure of: (a) The identity of consultants and advisors who will be compensated with securities registered on Form S–8, (b) the services they provide to the issuer, and (c) the number of securities to be issued to each. This may require registrants to incur some additional costs. However, these costs should not be significant since they will primarily involve the transmission of information that is readily available. Where the information must be provided by post-effective amendment, the additional burden should not be significant because the post-effective amendment filing procedure does not require registrants to refile materials that previously were filed in the original Form S–8. The Commission estimates the total reporting and recordkeeping burden that will result from the collection of this additional information to be one hour per form.

Currently, issuers are not required to indicate whether Form S–8 is being used to compensate a consultant or advisor; therefore, the Commission cannot estimate the number of Forms S–8 under which securities were issued to consultants and advisors. For purposes of cost estimation, the Commission is assuming that one tenth of the Forms S–8 registered securities for issuance to consultants and advisors, and that the average number of consultants and advisors is two. The Commission further assumes that future filings will reflect the same proportions. Based on these assumptions, the additional annual aggregate cost of reporting and recordkeeping is estimated to be approximately $110,000 (1,100 hours × $100/hour). Commenters are asked to provide data that would help the Commission ensure that this estimate of burden hours and cost is as accurate as possible.

B. Facilitating Intra-Family Transfers

The exercise of employee benefit plan options by family members of the employee optionees is not currently permitted on Form S–8. Form S–3 currently is not available for the exercise of outstanding nontransferable warrants or outstanding options (whether or not transferable) without regard to the ''float test'' applicable to primary offerings by the issuer, except under limited circumstances based on staff interpretation. The proposal to make Form S–8 available for option exercises by an employee's family members should reduce recordkeeping and compliance burdens by eliminating the need to file a different, less streamlined registration form for these option exercises. By reducing these costs for issuers, option transferability may become more widespread, allowing families to incur estate tax savings as a result. Because information on interfamily transfers is not reported, the Commission does not have any data upon which to estimate these savings. The Commission estimates that issuers could save an average of four hours by using Form S–8 rather than one of the more detailed registration forms.

The proposal to make Form S–3 available for the exercise of options to the same extent as it is available for the exercise of warrants also should reduce recordkeeping and compliance burdens by making this streamlined registration form available for a broader group of transactions. The Commission does not have a basis for quantifying this effect. Commenters are requested to provide data on how many additional Forms S–3 would be filed if the proposed amendment is adopted, and quantify cost savings where possible.

The proposed amendments to Item 402 of Regulations S–B and S–K should not increase recordkeeping and compliance burdens because they will not require the reporting of any compensatory transactions that are not already required to be reported. Commenters recommending changes that have not been proposed but for which comment is requested, such as reporting of options exercised or held by an executive officer's family members, should estimate any additional recordkeeping burden, and quantify costs where possible.

Comment is requested on whether the proposed rule amendments would be a ''major rule'' for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission preliminarily believes that the proposed rule amendments would not result in a major increase in costs or prices for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, innovation or small business. The Commission believes that persons affected by the proposed amendments will not have significantly increased costs for providing information. Comments are requested

[63] 15 U.S.C. 77s(a).

[64] During the same period, 684 post-effective amendments were filed on Form S–8.

on whether the proposed rule amendments are likely to have a $100 million or greater annual effect on the economy. Commenters are requested to provide empirical data to support their views.

VI. Initial Regulatory Flexibility Analysis

The Commission has prepared an initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendments.

As noted in the analysis, the amendments to Form S–8, Rules 401 and 405 are proposed to deter abusive practices in which Form S–8 is used to make capital-raising distributions of securities to the general public, or to compensate consultants and advisors for promotional and other capital-raising activities, in contravention of the express purposes of the form. Other amendments to Form S–8 and the amendments to Item 402 of Regulations S–B and S–K result from concerns expressed by representatives of industry that the current limited scope of persons permitted to exercise options under Form S–8 has a chilling effect on intra-family transfers for estate planning and other purposes. The amendments to Form S–3 result from the staff's analysis that shares underlying options should be treated the same as shares underlying warrants for purposes of form availability. The Commission believes that the proposed amendments will not result in any impairment of protection for the investing public, and should result in improved protection by assuring that capital-raising offerings are registered on the forms prescribed for those offerings.

As the IRFA describes, the staff is aware of approximately 1100 Exchange Act reporting companies that currently satisfy the definition of ''small business'' under Rule 157 of the Securities Act. Overall, 13,226 companies are Exchange Act reporting companies. However, the Commission has no empirical data upon which it may quantify the effects of the proposed changes on small businesses. The IRFA states that the proposals will not significantly increase reporting, recordkeeping or compliance burdens, and in some cases may reduce those burdens for smaller businesses.

The proposals to require disclosure of the identity of consultants and advisors who will be compensated with securities registered on Form S–8, to specify the services that will be provided to the issuer, and to quantify the number of securities to be issued to each consultant or advisor may require registrants to incur some additional costs. However, these costs should not be significant, since they will be limited to the transmission of limited additional information in the Securities Act registration statement. Where the information must be provided by post-effective amendment, the additional burden should not be significant because post-effective amendment filing procedure does not require registrants to refile materials that previously were filed in the original Form S–8.

The Commission estimates the total reporting and recordkeeping burden that will result from the collection of this additional information to be one hour per form. The Commission's records indicate that 5340 Forms S–8 were filed during the fiscal year ended September 30, 1997. However, the Commission cannot estimate with certainty either the number of those filings that were made by small business issuers or the number under which securities were issued to consultants and advisors. For purposes of the analysis, the Commission assumes that one-tenth of the Forms S–8 filed during fiscal 1997 registered securities for issuance to two consultants apiece, and that small issuers accounted for one-twelfth of all such filings.[65] Based on these assumptions, 45 small issuers would have an annual aggregate reporting and recordkeeping cost of approximately $9,000 (90 hours × $100/hour).

The proposal to make Form S–8 available for option exercises by an employee's family members should reduce recordkeeping and compliance burdens by eliminating the need to file a different, less streamlined registration form for these option exercises. While the Commission cannot quantify the number of small businesses that would be affected, the Commission estimates the average reporting and recordkeeping burden that would be avoided by eliminating the need to file a different form rather than Form S–8 as approximately four hours. Thus, even if there were only 26 Forms S–8 filed by small businesses per year, the savings to small businesses would exceed the costs of providing the new disclosures about consultants and advisors.

The proposal to make Form S–3 available for the exercise of options to the same extent as it is available for the exercise of warrants will further reduce recordkeeping and compliance burdens by making this streamlined registration form available for a broader group of transactions.

The proposed amendments to Item 402 of Regulations S–B should not increase recordkeeping and compliance burdens because they will not require the reporting of any compensatory transactions that are not already required to be reported. Regulation S–K does not generally apply to small issuers.

The Commission invites written comments on any aspect of the IRFA. In particular, the Commission requests comment on: (i) The number of small entities that would be affected by the proposed rule amendments; and (ii) the determination that the proposed rule amendments would reduce reporting, recordkeeping and other compliance requirements for small entities. Commenters should address whether the proposed amendments to Forms S–3 and S–8 will increase the number of registration statements filed on these forms, increase the dollar amount of securities sales on these forms, or make the forms generally more available to small entities. Commenters should address how much time and money may be saved by making more streamlined forms available for more transactions.

Any commenter who believes that the proposals will significantly impact a substantial number of small entities should describe the nature of the impact and estimate the extent of the impact. For purposes of making determinations required by the Small Business Regulatory Enforcement Act of 1996, the Commission also requests data regarding the potential impact of the proposed amendments on the economy on an annual basis. All comments will be considered in the preparation of the Final Regulatory Flexibility Act Analysis if the proposed amendments are adopted. A copy of the Initial Regulatory Flexibility Act Analysis may be obtained from Anne M. Krauskopf, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

VII. Paperwork Reduction Act

Certain provisions of the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*). The Commission staff has submitted the proposals for review by the Office of Management and Budget (''OMB'') in accordance with the PRA . 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 control number. This collection of information has been assigned OMB Control No. 3235–0066. The title to the affected information collection is: ''Form S–8.''

[65] Small issuers account for approximately one-twelfth of all reporting issuers.

The proposed amendments, if adopted, will require registrants filing Form S–8 for the issuance of securities to consultants and advisors to disclose the identity of these persons in the form, to specify the services that they will provide to the issuer, and to specify the number of securities to be issued to each consultant and advisor. As discussed above, the Commission estimates the total reporting and recordkeeping burden that will result from the collection of this additional information to be one hour per form. Of the 5340 Forms S–8 filed during the fiscal year ended September 30, 1997, the Commission cannot estimate with certainty the number of Forms S–8 under which securities were issued to consultants and advisors. Assuming that one-tenth of these filings registered securities for issuance to two consultants apiece,[66] the additional annual aggregate reporting and recordkeeping burden should be approximately 1100 hours. Commenters should address whether these assumptions are accurate.

The proposed amendments to Form S–8, if adopted, also would permit the form to be used for the exercise of employee benefit plan options by family members of employee optionees. By eliminating the need to file different, less streamlined registration statements for these transactions, the proposed amendments may encourage registrants to permit intra-family transfers of employee benefit plan options. The Commission believes that, to the extent registrants have filed separate registration statements for option exercises by family member transferees, the form most often used was Form S–3.[67] The Commission is unable to estimate with certainty the number of Forms S–3 that have been filed for this purpose, but believes it to be a negligible percentage of the 3137 Forms S–3 filed during the fiscal year ending September 30, 1997.[68] Because option transferability is a relatively new and limited practice, it is difficult to quantify burden hours that will be saved by the proposed amendments. However, by permitting family members' option exercises to be registered on the least burdensome registration form, the proposed amendments, like prior rule amendments and staff interpretations,[69] should make transferability substantially more attractive. The Commission estimates that an average of four burden hours per Form S–8 will be saved by this proposal.

The proposed amendment to General Instruction I.B.4 Form S–3 to make the form available for the registration of shares underlying options as well as warrants, in each case without regard to transferability, would allow the registration of additional transactions on Form S–3, a relatively streamlined registration form. While the Commission cannot state with certainty the number of Forms S–3 filed during fiscal 1997 that were filed in reliance on General Instruction I.B.4, the Commission estimates that it was a relatively small percentage of the 3137 Forms S–3 filed. Commenters are asked to estimate, to the extent possible, the number of additional Forms S–3 that would be filed and the number of burden hours that would be saved if this amendment were adopted. Even if only 275 additional Forms S–3 are filed per year, the savings due to the use of Form S–3 will exceed the costs described above.

In accordance with 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment on the following: Whether the proposed changes in the collection of information is necessary; the accuracy of the estimated burden of the proposed changes to the collection of information; the quality, utility and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Persons desiring to submit comments on the collection of information requirement should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20549, with reference to File No. S7–2–98. The Office of Management and Budget (''OMB'') is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VIII. Effects on Efficiency, Competition, and Capital Formation

Sections 2(b) of the Securities Act[70] and 3(f) of the Exchange Act[71] require the Commission, when engaged in rulemaking, to consider in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.[72] In addition, section 23(a)(2) of the Exchange Act[73] requires the Commission, in adopting rules under the Exchange Act, to consider the impact any rule would have on competition and not to adopt rules that would impose a burden on competition not necessary or appropriate in the public interest. Several of the proposed amendments are intended to prevent issuers from abusing Form S–8 by registering their stock sold to so-called consultants and advisors who act as promoters and statutory underwriters; other proposed amendments provide a simplified form to facilitate certain intra-family transfers of stock options.

The Commission's preliminary view is that the proposed amendments would not have any anticompetitive effects that are not necessary or appropriate. Because Form S–8 was never intended for capital-raising transactions, but solely for purposes of compensating employees, the proposed amendments should have no effect on legitimate capital-raising. To the extent the proposed amendments make it easier for reporting companies to compensate their employees, the Commission believes the amendments would promote efficiency.

The Commission requests comments on the competitive benefits that may result from the proposals and any anticompetitive effects that may result if the Rule is adopted as proposed. The Commission requests data and analysis on what effect the proposed changes may have on efficiency and capital formation.

IX. Statutory Basis and Text of Amendments

The amendments to Securities Act Forms S–8 and S–3 and Rules 401(g) and 405 are being proposed pursuant to the authority set forth in Sections 6, 7, 8, 10 and 19 of the Securities Act of 1933. The proposed amendments to Item 402 of Regulations S–B and S–K also are being proposed pursuant to Exchange Act Sections 12, 13, 14, 15 and 23.

List of Subjects in 17 CFR Parts 228, 229, 230 and 239

Reporting and recordkeeping requirements, Securities.

[66] See Cost-Benefit Analysis at Section V, above.

[67] See Use of Form S–3 for Transferred Options (Aug. 7, 1997), discussed at n. 43 and n. 56 above.

[68] This number does not include Forms S–3 filed to register dividend or interest reinvestment plans, or to register additional securities pursuant to Rule 462(b).

[69] See Sections I.B, III.A and III.C, above.

[70] 15 U.S.C. 77b(b).

[71] 15 U.S.C. 78c(f).

[72] 15 U.S.C. 77b(b) and 78c(f).

[73] 15 U.S.C. 78w(a)(2).

Text of the Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

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

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

2. In § 228.402, paragraph (b)(2)(iv) introductory text is republished and paragraphs (b)(2)(iv)(B) and (c)(1) introductory text are revised to read as follows:

§ 228.402 (Item 402) Executive compensation.

* * * * *

(b) *Summary compensation table*—(1) *General* * * *

(2) * * *

(iv) Long-term compensation (columns (f), (g) and (h)), including:

(A) * * *

(B) The sum of the number of securities underlying stock options granted (including options that subsequently have been transferred), with or without tandem SARs, and the number of freestanding SARs (column (g)); and

* * * * *

(c) *Option/SAR grants table.*—(1) The information specified in paragraph (c)(2) of this item, concerning individual grants of stock options (whether or not in tandem with SARs) and freestanding SARs (including options and SARs that subsequently have been transferred) made during the last completed fiscal year to each of the named executive officers shall be provided in the tabular format specified below:

* * * * *

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

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

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

* * * * *

4. In § 229.402, paragraph (b)(2)(iv) introductory text is republished and paragraphs (b)(2)(iv)(B) and (c)(1) introductory text are revised to read as follows:

§ 229.402 (Item 402) Executive compensation.

* * * * *

(b) *Summary Compensation Table.*

(1) *General.* * * *

(2) * * *

(iv) Long-term compensation (columns (f), (g) and (h)), including:

(A) * * *

(B) The sum of the number of securities underlying stock options granted (including options that subsequently have been transferred), with or without tandem SARs, and the number of freestanding SARs (column (g)); and

* * * * *

(c) *Option/SAR Grants Table.* (1) The information specified in paragraph (c)(2) of this item, concerning individual grants of stock options (whether or not in tandem with SARs) and freestanding SARs (including options and SARs that subsequently have been transferred) made during the last completed fiscal year to each of the named executive officers shall be provided in the tabular format specified below:

* * * * *

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

5. The authority citation for part 230 continues to read in part as follows:

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

* * * * *

6. By amending § 230.401 to revise paragraph (g) to read as follows:

§ 230.401 Requirements as to proper form.

* * * * *

(g) Except for registration statements and post-effective amendments that become effective automatically pursuant to §§ 230.462 and 230.464, a registration statement or any amendment thereto is deemed filed on the proper form unless the Commission objects to the form before the effective date.

7. By amending § 230.405 to revise the definition of ''Employee benefit plan'' to read as follows:

§ 230.405 Definition of terms.

* * * * *

Employee benefit plan. The term *employee benefit plan* means any written purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan or written compensation contract solely for employees, directors, general partners, trustees (where the registrant is a business trust), officers, or consultants or advisors. However, a consultant or advisor may participate in an employee benefit plan only if:

(1) The consultant or advisor renders *bona fide* services to the registrant;

(2) The services rendered by the consultant or advisor are not in connection with the offer or sale of securities in a capital-raising transaction, and do not directly or indirectly promote or maintain a market for the registrant's securities; and

(3) The consultant or advisor is a natural person who has contracted directly with the registrant to render those services.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

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

* * * * *

9. By amending § 239.13 to revise paragraph (b)(4) to read as follows:

§ 239.13 Form S–3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

(b) *Transaction requirements.*

* * *

(4) *Rights offerings, dividend or interest reinvestment plans, and conversions, warrants and options.* (i) Securities to be offered:

(A) Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted on a *pro rata* basis to all existing security holders of the class of securities to which the rights attach;

(B) Under a dividend or interest reinvestment plan; or

(C) Upon the conversion of outstanding convertible securities or the exercise of outstanding warrants or options issued by the issuer of the securities to be offered, or an affiliate of that issuer.

(ii) However, Form S–3 is available for registering these securities only if the issuer has sent, within the twelve

calendar months immediately before the registration statement is filed, material containing the information required by § 249.14a–3(b) of this chapter under the Exchange Act to:

(A) All record holders of the rights;

(B) All participants in the plans; or

(C) All record holders of the convertible securities, warrants or options, respectively.

(iii) The issuer also must have provided, within the twelve calendar months immediately before the Form S–3 registration statement is filed, the information required by Items 401, 402 and 403 of Regulation S–K (§§ 229.401 through 229.403 of this chapter) to:

(A) Holders of rights exercisable for common stock;

(B) Holders of securities convertible into common stock; and

(C) Participants in plans that may invest in common stock, securities convertible into common stock, or warrants or options exercisable for common stock, respectively.

* * * * *

10. By amending Form S–3 (referenced in § 239.13) by revising paragraph B.4 of General Instruction I to read as follows:

[**Note**—The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.]

Form S–3 Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form S–3

* * * * *

B. Transaction Requirements. * * *

4. *Rights Offerings, Dividend or Interest Reinvestment Plans, and Conversions, Warrants and Options.*

(a) Securities to be offered (1) upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted on a *pro rata* basis to all existing security holders of the class of securities to which the rights attach, (2) under a dividend or interest reinvestment plan, or (3) upon the conversion of outstanding convertible securities or the exercise of outstanding warrants or options issued by the issuer of the securities to be offered, or an affiliate of that issuer.

(b) However, Form S–3 is available for registering these securities only if the issuer has sent, within the twelve calendar months immediately before the registration statement is filed, material containing the information required by Rule 14a–3(b) (§ 249.14a–3(b) of this chapter) under the Exchange Act to:

(1) All record holders of the rights,

(2) All participants in the plans, or

(3) All record holders of the convertible securities, warrants or options, respectively.

(c) The issuer also must have provided, within the twelve calendar months immediately before the Form S–3 registration statement is filed, the information required by Items 401, 402 and 403 of Regulation S–K (§§ 229.401–229.403 of this chapter) to:

(1) Holders of rights exercisable for common stock,

(2) Holders of securities convertible into common stock, and

(3) Participants in plans that may invest in common stock, securities convertible into common stock, or warrants or options exercisable for common stock, respectively.

* * * * *

11. By amending § 239.16b to revise paragraph (a)(1) to read as follows:

§ 239.16b Form S–8, for registration under the Securities Act of 1933 of securities to be offered to employees pursuant to employee benefit plans.

(a) * * *

(1) Securities of such registrant to be offered to its employees or employees of its subsidiaries or parents pursuant to any employee benefit plan. The form also is available for the exercise of employee benefit plan options by an employee's family member who has acquired the options from the employee through a gift or a domestic relations order.

* * * * *

12. By amending Form S–8 (referenced in § 239.16b) by revising paragraph 1.(a) of General Instruction A; by amending Part II by redesignating Items 8 and 9 as Items 9 and 10, respectively; and by adding Item 8 to read as follows:

[**Note**—The text of Form S–8 does not, and this amendment will not, appear in the Code of Federal Regulations.]

Form S–8 Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

A. Rule as to Use of Form S–8.

1. * * *

(a) Securities of such registrant to be offered pursuant to any employee benefit plan to its employees or employees of its subsidiaries or parents. For purposes of this form, the term ''employee benefit plan'' is defined in Rule 405 of Regulation C (§ 230.405).

(1) For purposes of this form, the term ''employee'' is defined as any employee, director, general partner, trustee (where the registrant is a business trust), officer, or consultant or advisor. Form S–8 is available for the issuance of securities to a consultant or advisor only if:

(i) The consultant or advisor renders *bona fide* services to the registrant;

(ii) The services rendered by the consultant or advisor are not in connection with the offer or sale of securities in a capital-raising transaction, and do not directly or indirectly promote or maintain a market for the registrant's securities; and

(iii) The consultant or advisor is a natural person who has contracted directly with the registrant to render those services.

(2) In addition, the term ''employee'' includes insurance agents who are exclusive agents of the registrant, its subsidiaries or parents.

(3) The term ''employee'' also includes former employees as well as executors, administrators or beneficiaries of the estates of deceased employees, guardians or members of a committee for incompetent former employees, or similar persons duly authorized by law to administer the estate or assets of former employees. The inclusion of all individuals described in the preceding sentence in the term ''employee'' is only to permit registration on Form S–8 of:

(i) The exercise of employee benefit plan stock options and the subsequent sale of the securities, if these exercises and sales are permitted under the terms of the plan; and

(ii) The acquisition of registrant securities pursuant to intra-plan transfers among plan funds, if these transfers are permitted under the terms of the plan.

(4) The term ''registrant'' as used in this Form means the company whose securities are to be offered pursuant to the plan, and also may mean the plan itself.

(5) The form also is available for the exercise of employee benefit plan options by an employee's immediate family member who has acquired the options from the employee through a gift or a domestic relations order. For purposes of this form, ''family member'' includes any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, trusts for the exclusive benefit of these persons, and any other entity owned solely by these persons.

* * * * *

Part II

Information Required in the Registration Statement

* * * * *

Item 8. Consultants and Advisors

Disclose the names of any consultants or advisors to whom securities will be issued pursuant to the registration statement. Specify the number of securities that will be issued to each of these persons pursuant to this registration statement. Describe the specific services provided to the registrant by each consultant or advisor that are compensated by securities registered on this registration statement.

* * * * *

Dated: February 17, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4459 Filed 2–24–98; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–39670; File No. S7–3–98]

RIN 3235–AH40

Publication or Submission of Quotations Without Specified Information

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is publishing for public comment proposed amendments to Rule 15c2–11 (''Rule'') under the Securities Exchange Act of 1934 (''Exchange Act''). The Commission is publishing these proposals in response to increasing incidents of fraud and manipulation in the over-the-counter securities market involving thinly traded securities of thinly-capitalized issuers (*i.e.*, ''microcap securities''). Rule 15c2–11 governs the publication of quotations for securities that are traded in a quotation medium other than a national securities exchange or Nasdaq. The proposals would require all broker-dealers to review information about the issuer when they first publish or resume publishing a quotation for a security subject to the Rule, document that review, annually update the information if they publish priced quotations, and make the information available to other persons upon request. In addition, the proposals would enhance the Rule's information requirements for quotations for the securities of non-reporting issuers and ease the Rule's recordkeeping requirements when broker-dealers have electronic access to information about reporting issuers. The Commission also is proposing a number of textual and structural changes in an effort to simplify and streamline the Rule. Finally, the Commission is proposing an amendment to Rule 17a–4 under the Exchange Act that would incorporate the record retention requirements currently contained in Rule 15c2–11.

DATES: Comments must be received on or before April 27, 1998.

ADDRESSES: Persons wishing to submit written comments should send three copies to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–3–98; this file number should be included on the subject line if E-mail is used. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Any of the following attorneys in the Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, at (202) 942–0772: Nancy J. Sanow, Alan Reed, Irene Halpin, Florence Harmon, Denise Landers, or Chester McPherson.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment amendments to Rule 15c2–11 [1] and Rule 17a–4 [2] under the Securities Exchange Act of 1934 (''Exchange Act'').[3]

I. Executive Summary and Background

A. Executive Summary

Incidents involving fraud and manipulation of microcap securities that trade in the over-the-counter (''OTC'') securities market appear to be rising.[4] This trend has been the subject of Congressional hearings,[5] state hearings [6] and numerous media reports.[7] These developments have caused the Commission to reexamine Exchange Act Rule 15c2–11, its rule governing the publication of quotations in the non-Nasdaq OTC market. As a result, the Commission is proposing comprehensive amendments to Rule 15c2–11 that address abuses involving microcap securities and more generally would enhance the integrity of quotations for securities in this market sector. The proposed amendments also would reorganize and simplify the Rule's provisions.

Microcap securities [8] generally are characterized by low share prices and little or no analyst coverage. The issuers of microcap securities typically are thinly capitalized and often are not required to file periodic reports with the Commission. Securities of microcap companies usually are quoted on the OTC Bulletin Board (''Bulletin Board'') operated by the National Association of Securities Dealers, Inc. (''NASD'') or in the Pink Sheets published by the National Quotation Bureau (''NQB''), but they are not exclusive to these

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[1] 17 CFR 240.15c2–11.

[2] 17 CFR 240.17a–4.

[3] 15 U.S.C. 78a *et seq.*

[4] See, *e.g.*, *M. Rimson & Co., Inc.*, 1997 WL 93628 (February 25, 1997) (Initial Decision); (Securities Exchange Act Release No. 38489 (April 9, 1997) (Finality Order)); *See also, SEC* v. *Jeffrey Szur,* No. 97 Civ. 9305 (S.D.N.Y. December 18, 1997); *SEC* v. *George Badger,* No. 97 CV 963K (D. Utah December 18, 1997); *SEC* v. *Andrew Scudiero,* No. 97 Civ. 9304 (S.D.N.Y. December 18, 1997); *SEC* v. *Leonard Alexander Ruge,* No. 97 Civ. 9306 (S.D.N.Y. December 18, 1997); *SEC* v. *Joseph Pignatiello,* No. 97 Civ. 9303 (S.D.N.Y. December 18, 1997). For a summary of the SEC's allegations in these cases, see Litigation Release No. 15595 (December 18, 1997), 1997 SEC LEXIS 2602.

[5] See United States Senate Committee on Governmental Affairs Permanent Subcommittee on Investigations, Hearing on Fraud in the Micro Capital Market (September 22, 1997) (testimony of Arthur Levitt, Chairman of the U.S. Securities and Exchange Commission) (''Senate Testimony on Microcap Fraud'').

[6] N.Y. Attorney General, REPORT ON MICRO-CAP FRAUD (December 1997).

[7] See, *e.g.*, Weiss, ''Investors Beware—Chop Stocks Are on the Rise,'' Business Week, December 15, 1997, at 112–128; Lohse and Emshwiller, ''Bulletin Board Likely to Remain Wild West of Wall Street,'' The Wall Street Journal, December 15, 1997, at C1; Schroeder, ''Despite Reforms, Penny-Stock Fraud is Roaring Back,'' The Wall Street Journal, September 4, 1997, at A12; Byrne, ''The Real OTC Market: The Spectacular Success of Pink Sheet and Bulletin Board Trading: Why the NASD is Toughening Standards,'' Traders, September 1997, at 36–39; Lohse, ''Fraud by Small-Stock Operators Flourishes in Long Bull Market,'' The Wall Street Journal, July 31, 1997, at C1.

[8] The term ''microcap securities'' is not defined under the federal securities laws or regulations. The use of the term ''microcap securities'' in this release, however, should be distinguished from its use in the mutual fund context. For example, Lipper Analytical Services, a mutual fund rating organization, generally categorizes microcap companies as companies with market capitalization of less than $300 million. Lipper-Directors' Analytical Data, Investment Objective Key, 2d ed. 1997.

mediums.[9] The Commission recognizes, however, that not all securities traded in this market sector are tainted by fraud.

Microcap fraud frequently involves issuers for which public information is limited, especially when issuers are not subject to reporting requirements.[10] Without information, it is difficult for investors, securities professionals, and others to evaluate the risks presented by microcap securities. Investors consequently can fall prey to persons who make false representations and unrealistic predictions about these securities.

As part of their manipulative schemes, unscrupulous retail brokers, operating out of ''boiler rooms,'' frequently use high pressure sales tactics to stimulate investors to buy these securities. These brokers often publicly disseminate false press releases or make false statements about issuers (including through the Internet) to promote sales. To further the manipulative scheme, retail broker-dealers often also act as market makers or, either on their own or through the issuers' promoters, induce other firms to act as market makers in the securities.

Market makers' quotations are important to the success of microcap fraud schemes. By publishing quotations in the Bulletin Board, in the Pink Sheets, or in similar quotation mediums, broker-dealers give the market for the securities an aura of credibility. This can occur even if the market maker is not intentionally participating in improper activities, but is publishing quotes in response to escalating demand for the securities resulting from increasing retail sales. Trading volume for the security skyrockets and quotations and sales prices escalate (often at prices artificially set by the manipulators).

Eventually, broker-dealers and promoters stop stimulating interest in the security and its price drops. Too often the result is the same: innocent investors lose money. To address this microcap fraud problem, the Commission is pursuing a strategy of investor education, focused broker-dealer inspections, increased enforcement, and regulatory initiatives.[11]

The proposed amendments to Rule 15c2–11 would place greater information review and recording requirements, and thus greater accountability, on broker-dealers publishing quotations for securities in a quotation medium other than a national securities exchange or Nasdaq (''covered OTC securities''). These proposed amendments also would provide greater investor access to information about these securities. In particular, the proposed amendments would:

- Eliminate the Rule's ''piggyback'' provision, which currently permits broker-dealers (other than the initial broker-dealer) to quote the security without having current issuer information;
- Require broker-dealers that publish priced quotations for a security to obtain and review updated information about the issuer at least annually;
- Expand the information required about issuers that do not file periodic reports with the Commission;
- Require documentation of the broker-dealer's compliance with Rule 15c2–11; and
- Enhance investor access to the information required by Rule 15c2–11.

The proposed amendments apply to all securities covered by Rule 15c2–11, not just microcap securities. The Commission believes that the scope of the amendments is appropriate to preserve the general integrity of quotations in the OTC market and to foster greater information transparency in a marketplace where issuers often are relatively unknown and their securities are traded infrequently.

B. Operation of Current Rule 15c2–11

Rule 15c2–11 regulates the initiation and resumption of quotations in a quotation medium by a broker-dealer for certain OTC securities. The Commission adopted Rule 15c2–11 in 1971 to prevent fraudulent and manipulative trading schemes that had arisen in connection with the distribution and trading of unregistered securities issued by ''shell'' companies, or other issuers of infrequently-traded securities (about which there was little public information).[12] The Rule prevents broker-dealers from publishing quotations for covered OTC securities without reviewing basic information about the issuer.[13] Specifically, the Rule applies to broker-dealers publishing quotations in a ''quotation medium,''[14] but it does not apply to broker-dealers publishing quotations for securities listed and traded on an exchange or quoted on Nasdaq.

Subject to certain exceptions, the Rule prohibits a broker-dealer from publishing a quotation for a security (or submitting a quotation for publication) in a quotation medium unless it has obtained and reviewed specified information about the issuer and the security. The broker-dealer also must have a reasonable basis for believing that the issuer information is accurate and that it was obtained from a reliable source.

Currently, a broker-dealer must review and maintain in its records the following issuer information:

- For an issuer that has conducted a recent public offering either registered under the Securities Act of 1933 (''Securities Act'')[15] or effected pursuant to Regulation A under the Securities Act, a copy of the prospectus or offering circular;
- For an issuer that files reports with the Commission pursuant to Sections 13 or 15(d) of the Exchange Act (''reporting issuer'') or is an insurance company of the kind specified in Section 12(g)(2)(G) of the Exchange Act, the issuer's most recent annual report and any quarterly or current reports filed thereafter;
- For foreign issuers that claim the registration exemption under Exchange Act Rule 12g3–2(b), the information furnished to the Commission pursuant to that rule; or
- For any other issuer, the information, including certain financial information, specified in paragraph (a)(5) of the Rule, which must be reasonably current in relation to the day a quotation is submitted.

In addition, paragraph (c) of the Rule requires a broker-dealer to review any other information about the issuer that comes to its knowledge or possession before the publication or submission for publication of a quotation.

Under the Rule's ''piggyback'' exception, the information requirements do not apply when a broker-dealer publishes, in an interdealer quotation system,[16] a quotation for a covered OTC

[9] Microcap securities can also be listed on securities exchanges or Nasdaq.

[10] See *e.g., SEC* v. *Global Financial Traders, Ltd.*, Litigation Release Nos. 15291 (March 14, 1997) and 15338 (April 17, 1997); see also infra note 73.

[11] In addition, the NASD recently published for comment several proposed rules aimed at microcap stock abuses. These proposals would limit quotations on the OTC Bulletin Board to the securities of issuers that file reports with the Commission or other regulatory authority, and would require NASD members to review current issuer financial statements prior to recommending a transaction to a customer in an OTC equity security (other than securities listed on Nasdaq or an exchange) and to deliver a disclosure statement to a customer prior to an initial purchase of an OTC equity security. NASD Notices to Members 98–14 and 98–15 (January 1998).

[12] Securities Exchange Act Release No. 9310 (September 13, 1971), 36 FR 18641.

[13] See Securities Exchange Act Release No. 29094 (April 17, 1991), 56 FR 19148 (''1991 Adopting Release''); Securities Exchange Act Release No. 29095 (April 17, 1991), 56 FR 19158 (''1991 Proposing Release'').

[14] See 17 CFR 240.15c2–11(e)(1) (defining *quotation medium* as any *interdealer quotation system* or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell).

[15] 15 U.S.C. 77a *et seq.*

[16] An *interdealer quotation system* is a quotation medium of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers. 17 CFR 240.15c2–11(e)(2).

security that already has been the subject of regular and frequent quotations.[17] A broker-dealer can''piggyback'' on either its own or other broker-dealers' previously published quotations. The exception is grounded on the assumption that regular and frequent quotations for a security generally reflect market supply and demand forces based on independent, informed pricing decisions.

C. 1991 Proposing Release

In 1991, the Commission proposed amendments to Rule 15c2–11 that would have eliminated the piggyback provision. At the time, the Commission believed that the underlying assumption of the piggyback provision (*i.e.*, that regular and frequent quotations for a security generally reflect supply and demand forces based on independent pricing decisions) were no longer valid in the non-Nasdaq OTC market.[18]

The Commission observed that the Rule's coverage is limited to non-Nasdaq OTC securities, which usually are low-priced, speculative stocks of relatively unknown issuers, and that the market for these securities is characterized by an absence of both market making and retail competition. As a result, the Commission proposed amendments that would have required every broker-dealer to review issuer information prior to initiating or resuming quotations in a covered OTC security. These amendments would have retained a ''self-piggybacking'' provision for broker-dealers that quoted these securities with the required frequency.[19]

The Commission received 75 comment letters from 74 commenters in response to the 1991 Proposing Release. The vast majority of commenters opposed the Commission's proposal. These commenters believed that the proposal would discourage, or even eliminate, market making for many non-Nasdaq OTC securities. They claimed that the proposed amendments would have impaired liquidity, reduced market value, and harmed the capital-raising process. Several commenters believed that the proposed changes would have hurt the market for the securities of many substantial and legitimate companies, but would have little effect on fraud in worthless stocks. For several reasons, including the adoption of other measures aimed at curbing then-existing abuses in low-priced stocks,[20] the Commission did not take further action on this initiative.[21]

II. Proposed Amendments

A. Proposed Revisions to Rule 15c2–11

1. Activities Prohibited by the Rule

The proposed amendments restructure Rule 15c2–11 to set forth more clearly the activities prohibited by the Rule and the requirements of the Rule. The Rule would state that it is unlawful for a broker-dealer, directly or indirectly, to publish or to submit for publication any quotation for a security in any quotation medium unless the broker-dealer complies with the Rule's provisions.[22]

The Rule further would provide that, prior to publishing or submitting for publication an initial quotation for a security in a quotation medium, or upon the occurrence of enumerated events, a broker-dealer must:

- Obtain and review the Rule's information;
- Determine that it has a reasonable basis for believing that the information is accurate and current in all material respects and is obtained from reliable sources; and
- Record the date it reviewed the specified information, the sources of the information, and the person at the firm responsible for the broker-dealer's compliance with the Rule.[23]

By restructuring the Rule in this manner, the Commission believes that the obligations of broker-dealers under the Rule are more clearly set out. Moreover, by imposing a recordation requirement, broker-dealers' accountability for compliance with the Rule should be enhanced.

Q1. Do the Rule's core requirements remain appropriate or should they be amended?

Q2. Are there other compliance items that should be recorded?

Q3. Should the Rule expressly require the firm's compliance officer to review the Rule 15c2–11 information before the quote is submitted?

Q4. What type of review do broker-dealers currently undertake? What is the appropriate scope of review by a broker-dealer to comply with the Rule, as proposed to be amended? Commenters should consider the duties of a broker-dealer under Rule 15c2–11 as discussed in the 1991 Adopting Release.[24]

2. Elimination of the Piggyback Provision

The Commission proposes to eliminate the piggyback provision. As discussed above, the piggyback provision currently permits broker-dealers to publish quotations for a security without complying with the Rule's requirements if any other broker-dealer has published regular and frequent quotations for that security. In the Commission's view, microcap fraud is facilitated by broker-dealers that publish quotations for a security without reviewing any issuer information.[25] Even if they are not participating in the fraud, these other broker-dealers give the security a measure of credibility through their quotations. Some broker-dealers claim that they ''trade by the numbers'' (*i.e.*, they trade solely on the basis of supply and demand factors and without regard to fundamental information about the issuer).[26] The Commission believes that eliminating the piggyback provision is an essential step to preventing microcap fraud. In the Commission's view,

[17] 17 CFR 240.15c2–11(f)(3). The security must have been the subject of quotations on at least 12 business days during the previous 30 calendar days, with no more than 4 consecutive business days elapsing without a quotation. Once this quotation frequency is established, a broker-dealer may publish a quotation for a covered security without having the required information if the 12 and 4 day tests are satisfied.

[18] 1991 Proposing Release, 56 FR at 19161.

[19] See 1991 Proposing Release. *Self-piggybacking* refers to the ability of a broker-dealer to continue publishing quotations without reviewing the Rule's required information, as long as that broker-dealer satisfies the quotation frequency tests of the piggyback provision.

[20] See Securities Exchange Act Release No. 30608 (April 20, 1992), 57 FR 18004 (adopting the Commission's Penny Stock Disclosure Rules (17 CFR 240.3a51–1, 240.15g–1 through 240.15g–6, 240.15g–8, and 240.15g–100)); see also Securities Exchange Act Release No. 32576 (July 2, 1993), 58 FR 37413 (redesignating Rule 15c2–6 under the Exchange Act as Rule 15g–9 under the Exchange Act (17 CFR 240.15g–9)).

[21] In light of the present proposals, the Commission is withdrawing the 1991 proposals.

[22] Rule 15c2–11 generally applies to the publication or submission for publication of quotations for OTC securities that do not satisfy any of the exceptions under the Rule. The exceptions are discussed in Section A.5, *infra*.

[23] See 1991 Adopting Release, 56 at 19150 (discussing of the nature of the review that a broker-dealer must conduct to satisfy its obligations under Rule 15c2–11 and the determination of whether the source of the information is reliable).

[24] *Id*.

[25] See General Bond & Share Co., 51 S.E.C. 411 (1993) *aff'g Market Surveillance Committee* v. *General Bond & Share Co.*, 1992 NASD Discip. Lexis 99 (January 30, 1992), *affirmed in part, vacated in part, and remanded*, 39 F.3d 1451 (10th Cir. 1994). In this case, the Commission affirmed a decision of the NASD's National Business Conduct Committee Securities Dealers (''NBCC''), which found that General Bond & Share Co. (''General Bond''), a registered broker-dealer, violated Article III, Section 1 of the NASD's Rules of Fair Practice by accepting issuer-paid compensation for listing itself as a market maker in the Pink Sheets for the securities of numerous issuers. The NBCC also found that General Bond's Pink Sheet entries paved the way for other market makers to piggyback onto those quotations without complying with the requirements of Rule 15c2–11.

[26] *See* D.H. Blair & Co., 44 S.E.C. 320, 332 (1970) (trading by the numbers cannot be completely separated from the investment value of the security or the need for supervision with a view to detecting possible signs of manipulation).

responsible broker-dealers would be deterred from publishing quotations if they were aware of basic information about the issuer that suggested a possible fraud.

Under the proposal, each broker-dealer that publishes a quotation for a covered OTC security for the first time in a particular quotation medium [27] other than the exchanges or Nasdaq would be required to review fundamental information about the issuer and have a reasonable basis for believing that the information is accurate, current, and from reliable sources. The Commission recognizes that many commenters on the 1991 Proposing Release raised issues about the perceived costs of compliance and the possible resulting loss of liquidity for some securities if the piggyback provision were eliminated and annual information updating were required. As discussed below, the availability of the EDGAR system should reduce the information gathering and recordkeeping costs for those broker-dealers that publish quotes for the securities of reporting issuers. Also, the Commission encourages the development of central repositories of information about issuers that are not participating in its public disclosure system.[28]

Q5. Are there any circumstances in which it would be appropriate to retain a piggyback provision? If so, how should such a provision be structured?

3. The Occurrence of Events Requiring Actions under the Rule

After a broker-dealer publishes its first quotation [29] in compliance with the Rule for a security in a particular quotation medium it can continue to publish quotations (either priced or unpriced) for the security in that medium without reviewing updated information until the occurrence of either of the following events:

- A period of five or more consecutive business days in which the broker-dealer does not publish quotations for the security; or
- The Commission has ordered a trading suspension pursuant to Section 12(k) [30] of the Exchange Act for any of the issuer's securities.

Following one of these events, a broker-dealer must gather and review the information required by the Rule before publishing quotations. In the Commission's view, if a broker-dealer has not quoted the security for five or more consecutive business days, that fact may reflect the broker-dealer's nominal interest in publishing quotations for the security, and thus the broker-dealer may not be aware of significant events involving the issuer.

The Rule also would require a broker-dealer to gather and review the specified information annually if the broker-dealer publishes priced quotations for the security. The purpose of this requirement is to make sure that a broker-dealer publishing priced quotations periodically reviews fundamental information about the issuer. A broker-dealer should know if there is no current information about the issuer or if the current information reflects a significant change in the issuer's ownership, operations, or financial condition.

The annual update requirement would apply only to broker-dealers publishing priced quotations. The Commission believes that priced quotations have been used in microcap fraud and manipulation schemes, (*e.g.*, when a broker-dealer publishes quotations at increasing prices to obtain bank loans or to value customer securities' positions). In addition, priced quotations are used as indicia of value for a variety of purposes (*e.g.*, pledges of securities). The Commission will reconsider its position, however, if it discovers that unpriced entries are also used to facilitate unlawful schemes.

The broker-dealer would have two optional dates as measuring points for conducting the annual review: the anniversary date of its initial quotation for the security; or the date that is four months after the end of the issuer's fiscal year (or, for a foreign private issuer, the date that is seven months after the end of the issuer's fiscal year). The annual review must be conducted before the broker-dealer publishes a priced quotation following the review date option that it selects. The Commission believes that four months (or seven months for foreign private issuers) would give a broker-dealer sufficient time to obtain and review updated issuer information about reporting and non-reporting issuers.

Q6. Should the annual update requirement apply to unpriced quotations?

Q7. Should the annual update requirement be eased or eliminated when a reporting issuer is current in its Exchange Act reporting obligations?

Q8. Should the provision triggering the review of updated information following a break in quotations provide for a period of more or less than five consecutive business days?

Q9. In addition to a trading suspension, should any other significant events involving the issuer (*e.g.*, a merger or acquisition, significant offering, name change, change of business, resignation of accountants, or bankruptcy proceeding) trigger the Rule's obligations to obtain, review, and document updated information?

Q10. Should the Rule include other optional dates triggering the annual review requirement for priced quotations (*e.g.*, by January 1 of each year)?

Q11. For domestic issuers, should the period within which a broker-dealer must conduct an annual review be longer than four months after an issuer's fiscal year end (for example, five or six months) or shorter than four months (for example, three months, or 14 weeks)?

Q12. For foreign issuers, should the period within which a broker-dealer must conduct an annual review be longer than seven months after an issuer's fiscal year end (for example, as long as nine months) or shorter than seven months (for example, four or six months)?

Q13. For foreign issuers, should the annual updating requirement apply if trading is suspended on any exchange or organized market on which its securities trade?

Q14. Would either the requirement to review updated information after a five-day lapse or the annual update requirement adversely affect the liquidity of covered OTC securities? Commenters responding to this question are urged to provide data and analysis.

4. Information Required by the Rule

a. Issuer Information. Current Rule 15c2–11 specifies the information that a broker-dealer must review before publishing quotations for five categories of issuers: (1) Issuers that had a recent registered offering; (2) issuers that had a recent offering under Regulation A under the Securities Act;[31] (3) reporting issuers and insurance companies

[27] See Section C, *infra*, for a discussion of the definition of quotation medium.

[28] See Section D, *infra*.

[29] The term *quotation* is defined as any bid or offer at a specified price with respect to a security, or any indication of interest by a broker or dealer in receiving bids or offers from others for a security, or any indication by a broker or dealer that advertises its general interest in buying or selling a particular security. For the purposes of this release, a ''priced quotation'' is a bid or offer at a specified price and an ''unpriced quotation'' is any indication by a broker or dealer in receiving bids or offers from others or any indication by a broker or dealer that advertises its general interest in buying or selling a particular security.

[30] 15 U.S.C. 78*l*(k).

[31] Regulation A provides an exemption from registration under the Securities Act for offerings not exceeding $5 million, less the aggregate offering price of any other Regulation A offering during the prior 12 months. 17 CFR 230.251–230.263.

exempted from Section 12(g) of the Exchange Act[32] by reason of Section 12(g)(2)(G) (''exempt insurance companies'');[33] (4) foreign private issuers that are exempt from Section 12(g) of the Exchange Act by reason of compliance with Rule 12g3–2(b) thereunder;[34] and (5) other issuers. The proposals would revise the Rule's information requirements with respect to reporting issuers and would enhance the requirements for non-reporting issuers. In addition, the proposals would add an information provision that covers certain non-reporting financial institutions.

i. Reporting issuers and exempt insurance companies. Currently, a broker-dealer publishing quotations for the securities of a reporting issuer (or exempt insurance company) must review the issuer's most recent annual report, together with any subsequently filed quarterly or current reports. The proposed amendments retain this requirement and clarify that the issuer must be current in its reporting obligations. Therefore, broker-dealers publishing quotations for the securities of any issuer delinquent in its reporting obligations (''delinquent issuer'') no longer would be able to rely on the Rule's provision containing the information requirements designed for non-reporting issuers.[35]

For reporting issuers, broker-dealers would be able to access and review the required information on the Commission's EDGAR system, available through the Commission's Internet website (http://www.sec.gov). Broker-dealers using this method would have to document the date of their review and satisfy the Rule's information retention requirements, discussed later in this release.

Under the proposals, a broker-dealer could not publish its initial quote without reviewing the Rule's required information, nor could it continue to publish priced quotations without updating that information annually. This means that, in the case of a delinquent issuer, a broker-dealer would not be permitted to publish an initial quotation or continue to publish *priced* quotations after the annual review date because it would not be able to obtain current reports. Broker-dealers that initiated a quotation in compliance with the Rule prior to the issuer's delinquency could continue to publish *unpriced* quotations after the annual review date.

While the market for a delinquent issuer's securities may be somewhat constrained by this proposal, this requirement furthers the Rule's purpose of limiting the fraudulent and manipulative potential of priced quotations in the absence of accurate and current information about the issuer. The Commission recently brought several enforcement actions against issuers for failure to file timely reports.[36] In many of these actions, an active trading market for the issuer's securities existed even though adequate and current issuer information was not available to broker-dealers or investors. In these circumstances, priced quotations have a substantial potential to facilitate improper retail sales practices where broker-dealers recommend securities to investors, without adequate information to support the recommendation, and refer investors to the market price (*i.e.*, priced quotes) as an indication of value.

In the past, commenters have suggested marking the quotation with a designator to indicate that issuer information was not available.[37] The Commission does not view this alternative as responding adequately to the problem of active trading facilitated by priced quotations without current information. Moreover, that approach would remove an incentive that delinquent issuers may have to provide current information to their shareholders and the marketplace.

Q15. Under what circumstances, if any, should broker-dealers be able to initiate quotations, or continue publishing priced quotations, for the securities of delinquent issuers?

ii. Other issuers. Rule 15c2–11(a)(5)[38] specifies the information that broker-dealers must obtain and review for issuers other than those covered by paragraphs (a)(1) through (a)(4). For the most part, this provision covers the securities of U.S. non-reporting issuers. Currently, a broker-dealer is required to review basic information about these issuers, including: the issuer's most recent balance sheet, profit and loss, and retained earnings statements; a description of the issuer's business, products or services offered, and facilities; and a description of any relationship between the broker-dealer and the issuer's insiders.

Based on recent experience, broker-dealer review of additional items of information should reduce the potential for fraud in this segment of the capital market.

Therefore, the Commission proposes to expand the information that broker-dealers must review before publishing a quotation for a non-reporting issuer's securities and to make that information more readily available to the marketplace.

The proposed amendments would require broker-dealers to review more information about the issuer's outstanding securities, its officers and directors, its financial condition, and certain significant events, among other items. This enhanced information would give a broker-dealer that is considering whether to publish quotations a greater understanding of the issuer's operations and a better indication of whether potential or actual fraud or manipulation may be present.

Securities Information. The Rule would require a broker-dealer to obtain and review information regarding each class of the non-reporting issuer's outstanding securities, including the number of securities outstanding, the number of securities issuable upon exercise or conversion of outstanding derivative securities of the issuer, and the total number of securityholders of record as of the end of the issuer's most recent fiscal year (or a more recent date if the data is available). The Commission believes that this information is relevant because it provides broker-dealers with a greater awareness of the issuer's equity structure, particularly as recent incidents of fraud have involved transactions in derivative securities,

[32] 15 U.S.C. 78*l*(g).

[33] 15 U.S.C. 78*l*(g)(2)(G).

[34] 17 CFR 240.12g3–2(b).

[35] Currently, a broker-dealer can rely on paragraph (a)(5) of the Rule pertaining to non-reporting issuers when a report or statement of a reporting issuer or exempt insurance company is not ''reasonably available'' (*i.e.*, not on file with the Commission). 17 CFR 240.15c2–11(a)(5). See e.g., Robin Rushing, [1995–1996] Fed. Sec. L. Rep. (CCH) ¶ 85,731 (Initial Decision), Securities Exchange Act Release No. 36910 (February 29, 1996) (Finality Order) (where the company was delinquent in Exchange Act filing, the market maker was required to obtain paragraph (a)(5) information to comply with Rule 15c2–11).

[36] *SEC* v. *Wincanton*, No. 96–CV–02152 (D.D.C. September 17, 1996) (Litigation Release No. 15052 (D.D.C. September 17, 1996)); *SEC* v. *Equity AU, Inc.*, 96–CV–01775 (D.D.C. July 30, 1996)(Litigation Release No. 14993 (July 30, 1996)); *SEC* v. *Cayman Resources*, 96–CV–00968 (D.D.C. July 24, 1996) (Litigation Release No. 14996 (D.C.C. July 31, 1996; *SEC* v. *American Cascade*, 96–CV–00626 (D.D.C. March 29, 1996) (Litigation Release No. 14857 (March 29, 1996)); *SEC* v. *Parallel Technologies, Inc.*, 96–CV00545 (D.D.C. March 19, 1996) (Litigation Release No. 14848 (March 20, 1996)).

[37] In response to the 1991 Proposing Release, 17 commenters suggested some form of special designation indicating the broker-dealers's lack of required information. See, *e.g.*, Letter dated February 24, 1992, from Stephen D. Hickman, Secretary, NASD, to Jonathan G. Katz, Secretary, SEC (''1992 NASD Letter''), p.7.

[38] 17 CFR 240.15c2–11(a)(5).

such as warrants.[39] This enhanced information requirement would indicate to the broker-dealer whether any persons had access to large quantities of securities that could dilute the value of the public float.

Q16. Are there other items of information regarding the issuer's outstanding securities that would be helpful to broker-dealers publishing quotations of covered OTC securities?

Control Person Information. For non-reporting issuers, the Rule would require broker-dealers to obtain the names, addresses, and holdings in the issuer's securities of the issuer's insiders (including promoters and control persons), and information about the disciplinary histories of the issuer's insiders (including promoters and control persons). Specifically, the broker-dealer must review information about the following events involving persons related to the issuer in: Any criminal charges or convictions; any court-issued injunctions, bars or other limitations involving any type of business, securities, commodities, or banking activities; any violation of federal or state securities or commodities law; or any bars or suspensions by a self-regulatory organization (''SRO''). This information must be provided if the events occurred during the five-year period preceding the publication of the quotation. Reviewing these items of information should help broker-dealers evaluate the degree of control over the issuer exerted by insiders and alert the broker-dealer to possible ''red flags'' regarding the issuer's insiders and control persons.

Two alternative options for the broker-dealer to satisfy this requirement are proposed. The broker-dealer could obtain a statement from the issuer that none of the specified actions had occurred; or the broker-dealer could document the steps taken to obtain the required information and the issuer's response, including whether the issuer refused to cooperate. The second alternative would allow the broker-dealer to publish quotations when it has difficulty obtaining the information. However, the broker-dealer should consider the issuer's refusal to supply this information when the broker-dealer ascertains whether it has a reasonable basis for believing that the other Rule 15c2–11 information it obtained and reviewed is accurate and the sources are reliable.

Q17. Is it appropriate to allow a broker-dealer to publish quotations if the issuer refuses to supply disciplinary history information regarding its insiders, control persons, or promoters?

Q18. Should any other disciplinary history or other background information about the issuer's insiders, control persons, or promoters be required? Would this information be helpful to broker-dealers in determining whether to publish quotations?

Financial Information. The Commission is proposing to expand the financial information that a broker-dealer must gather and review about a non-reporting issuer. The proposal includes different requirements with respect to domestic and foreign private issuers. Currently, paragraph (a)(5)(xii) requires a broker-dealer to obtain and review an issuer's most recent balance sheet and profit and loss and retained earnings statements. The Rule does not require this financial information to be audited or presented in a particular format.

Domestic non-reporting issuers. The proposed amendments would require a broker-dealer to obtain and review the issuer's most recent balance sheet, statement of operations (income), statement of cash flows, statement of shareholders' equity, and statement of comprehensive income. It also would require these items to be prepared in accordance with U.S. generally accepted accounting principles (''U.S. GAAP''). This requirement for the financial statements to be prepared in accordance with a comprehensive body of generally accepting accounting principles would create greater uniformity for these financial statements. This uniformity would assist the review by broker-dealers and surveillance by regulators.

The Commission understands that in the case of non-reporting U.S. issuers, the financial statements submitted on NASD Form 211 to the NASD pursuant to NASD Marketplace Rule 6740 typically are prepared in accordance with U.S. GAAP and some, but not all, are audited.[40] Accordingly, the Commission's preliminary view is that the proposed U.S. GAAP standard would not impose substantial costs on issuers.

Q19. Do most domestic non-reporting issuers already prepare their financial statements in accordance with U.S. GAAP?

Q20. Should the Rule require that these financial statements be audited?

Foreign non-reporting issuers. The proposals would require a broker-dealer to obtain and review the following information for a foreign private issuer (other than an issuer furnishing information to the Commission pursuant to Rule 12g3–2(b)): the issuer's most recent balance sheet and statement of operations (income) and, to the extent prepared by the issuer, statements of cash flows, comprehensive income and changes in shareholders' equity. These statements must be prepared in accordance with a comprehensive body of accounting principles. This proposal would provide broker-dealers with financial information about issuers that do not participate in the Exchange Act reporting programs. Preparation of U.S. GAAP financial statements would be permitted but not required.

The proposal would permit broker-dealers to obtain information prepared using a number of different comprehensive bodies of accounting which will limit the uniformity of the information reviewed. Although the Commission has not included specific amendments to address this concern, the Commission is seeking comments on possible alternative measures that could be adopted to improve the level of financial information relied upon by broker-dealers when submitting priced quotations for foreign non-reporting issuers' securities.

Q21. The proposal requires a broker-dealer to obtain and review statements of cash flows, comprehensive income and changes in shareholders' equity only to the extent prepared by the issuer. Should broker-dealers be prohibited from publishing quotations if certain of those financial statements are not available? If so, which ones should be required?

Q22. Do most foreign non-reporting issuers already prepare their financial statements in accordance with a comprehensive body of accounting principles?

Q23. Should broker-dealers be required to obtain and review financial statements for foreign non-reporting issuers prepared in accordance with or that are reconciled to U.S. GAAP?[41]

Q24. Should broker-dealers be required to obtain and review financial statements for foreign non-reporting issuers prepared in accordance with or reconciled to U.S. GAAP[42] only when the principal market for their securities is the United States?

[39] See Michael J. Markowski, Securities Exchange Act Release No. 38424 (March 20, 1997) (instituting an administrative proceeding alleging manipulation in connection with the initial public offering of units made up of common stock and warrants of three different issuers); Securities Exchange Act Release No. 38425 (March 20, 1997) (order of settlement).

[40] See NASD Manual, Marketplace Rules, Rule 6740.

[41] Requirements for quantitative and qualitative reconciliations of non-U.S. GAAP financial information to U.S. GAAP are specified in Items 17 and 18 of Form 20–F. 17 CFR 249.220F.

[42] *Id*.

Q25. Should the Rule require that these financial statements be audited? If so, should they be required to be audited in accordance with U.S. generally accepted auditing standards?

Significant Events. In addition, the proposals would require a description of significant events regarding the issuer during the last two years, including: A change in control; a 10% or more increase in an outstanding class of equity securities; a merger or acquisition; an acquisition or disposition of significant assets; bankruptcy proceedings; or delistings by a securities exchange or Nasdaq. This information seems relevant because broker-dealers would be made aware of information about significant events involving the issuer. The Commission is also proposing to add a provision, similar to the disciplinary history requirement, that would give broker-dealers the alternative of either obtaining a statement from the issuer that none of these events had occurred or providing its own statement of the steps it took to obtain the significant event information in cases where the issuer failed or refused to provide it.

Q26. Are there other significant events involving the issuer that a broker-dealer should review before publishing a quotation?

Q27. Is it appropriate to allow a broker-dealer to publish quotations if the issuer refuses to provide information regarding a significant event?

iii. Certain foreign issuers. Rule 15c2–11 [43] currently permits a broker-dealer to obtain and review the information submitted to the Commission by a foreign private issuer pursuant to Rule 12g3–2(b) under the Exchange Act.[44] Rule 12g3–2(b) exempts securities of any foreign private issuer from registration pursuant to Section 12(g) of the Exchange Act if the issuer furnishes to the Commission information that the issuer has: Made or is required to make public pursuant to the law of the country in which the foreign private issuer is domiciled or incorporated; filed or is required to file with a stock exchange on which the securities are traded and which the exchange made public; or distributed or is required to distribute to its securityholders.[45]

The Commission has not included a specific proposal to change the Rule's requirements for Rule 12g3–2(b) issuers.[46] This is consistent with the general incorporation of Section 12 issuer information requirements and exemptions into the Rule. The Commission notes, however, that Rule 12g3–2(b) has no specific information requirements. As a result, there is no assurance that broker-dealers will have the same types of information for foreign private issuers that claim the Rule 12g3–2(b) exemption as broker-dealers will be required to have with respect to other issuers. In addition, many of the companies that claim the Rule 12g3–2(b) exemption are foreign microcap companies that can be subject to the same type of abusive practices as U.S. microcap companies.[47] Accordingly, the Commission is considering whether to limit a broker-dealer's reliance under Rule 15c2–11 on an issuer's 12g3–2(b) exempt status at least with respect to priced quotations.

Q28. Should the reference to Rule 12g3–2(b) be deleted from Rule 15c2–11? This would mean that broker-dealers publishing quotations for Rule 12g3–2(b) issuers' securities would be required to obtain and review the same information as required for all other foreign non-reporting issuers whose securities are subject to Rule 15c2–11. Comment is specifically requested with respect to Question 23 in the context of the requirements of Rule 15c2–11 as applied to Rule 12g3–2(b) issuers. Should a distinction in this respect be made depending upon whether the quotation is priced or unpriced?

Q29. Should reliance under Rule 15c2–11 on the Rule 12g3–2(b) exception not be permitted for those issuers whose principal market is the United States? If so, how should the principal market be determined? [48]

Q30. What difficulty, if any, would broker-dealers encounter in obtaining the information specified in proposed paragraph (d)(6) for a Rule 12g3–2(b) issuer?

Q31. Should the exception for Rule 12g3–2(b) issuers apply only to larger foreign private issuers, so that quotations for smaller issuers would require the information specified in proposed paragraph (d)(6)? If so, how should such distinction be measured? For example, if market value of public float is used, what would be the appropriate threshold (*e.g.*, $25 million, $75 million, $150 million, or some other amount)? If dollar value of average daily trading volume is used, what would be the appropriate threshold (*e.g.*, $100,000, $1 million, $5 million, or some other amount)?

Q32. Should the Rule 12g3–2(b) exception be available only for foreign private issuers that satisfy Nasdaq SmallCap quantitative listing standards (*i.e.*, at least $4 million in net tangible assets, or a market capitalization of at least $50 million, or net income in two of the last three fiscal years of at least $750,000, and a market value of public float of at least $5 million)?

Q33. Should there be a separate Commission rule requiring broker-dealers, whether or not they recommend a transaction in a security, to inform customers about available information regarding the issuer of the foreign security?

Q34. Should there be a separate Commission rule requiring broker-dealers, before recommending a transaction in a foreign security, to review financial information about the foreign issuer that is the basis of the recommendation and to document that review?

iv. Exempt financial institutions. Proposed paragraph (d)(4) would apply to financial institutions that are exempt from Exchange Act reporting requirements,[49] but file reports with other governmental agencies (''exempt financial institutions'').[50] The Commission has determined that,

[43] 17 CFR 240.15c2–11(a)(3).

[44] 17 CFR 240.12g3–2(b).

[45] The information may be submitted by a government official or agency of the country of the issuer's domicile or in which it is incorporated or organized.

[46] See proposed paragraph (d)(5) of the Rule. Broker-dealers publishing quotations for the securities of Rule 12g3–2(b) issuers would be subject to the updating requirements of proposed paragraph (b). Accordingly, broker-dealers would have to review updated information about these foreign private issuers following a Commission trading suspension or a five-day lapse in quotations. Broker-dealers also would have to review the issuer information on an annual basis in order to publish priced quotations. The Commission staff is considering whether Rule 12g3–2(b) continues to serve its original purpose and will evaluate whether changes to that rule should be proposed. If Rule 12g3–2(b) is amended, the interaction if that exemption with the requirements of Rule 15c2–11 could be affected.

[47] See *SEC* v. *Chelekis*, Litigation Release No. 15264 (February 25, 1997) (over half of the companies involved claimed the Rule 12g3–2(b) exemption).

[48] *See, e.g.*, definition of ''principal market'' contained in Rule 100 of Regulation M. 17 CFR 242.100.

[49] 15 U.S.C. 77(c)(a)(2), 78*l*(i).

[50] See *e.g.*, 12 CFR 363.4 (requiring insured banks to file annual reports with their respective bank supervisory agencies); 12 CFR 208.16 (requiring state member banks to file periodic reports with the Federal Reserve); 12 CFR 18.3 through .5 (requiring national banks to file annual disclosure statements with the Office of the Comptroller of the Currency (''OCC'')); FFIEC Forms 031–034 (requiring national banks to file annual call reports with the OCC and Federal Deposit Insurance Corporation); 12 CFR 562.2 (requiring federally chartered savings associations to file annual regulatory reports with the Office of Thrift Supervision (''OTS'')); NY Bank Section 37 and NY ADC § 24.1 (requiring all New York state chartered banks to file annual reports with the New York Banking Department); and Ca Fin Section 689 (requiring California state chartered banks to file annual reports with the California Department of Banking).

because the reports filed with federal or state bank supervisory agencies are readily available and contain information analogous to Exchange Act reports, broker-dealers should be required to obtain and review that information rather than the information required under proposed paragraph (d)(6) for other non-reporting issuers. Broker-dealers that quote the securities of financial institutions that file periodic reports with the Commission would have to obtain and review the information specified in proposed paragraph (c)(3) of the Rule.[51]

Q35. Should the Rule contain a separate provision relating to exempt financial institutions?

Q36. Would broker-dealers face any difficulties in obtaining information about exempt financial institutions that is filed with the appropriate regulatory authority?

v. Bankruptcy situations. *Issuers in Bankruptcy.* When the Commission issued a release in 1989 seeking comment on the piggyback provision (among other things), it inquired whether there were situations, such as issuer bankruptcies, that should be addressed if the piggyback provision were eliminated.[52] Many commenters on the 1989 Release argued that it was appropriate to permit broker-dealers to continue quoting the securities of issuers that had filed for bankruptcy because it provided liquidity for these securities. Commenters, including the NASD,[53] suggested that issuers in bankruptcy be designated as such in the quotation system by affixing a special indicator to the security's symbol. The NASD also recommended that this indicator be required on all confirmations of transactions involving the bankrupt issuer's securities and that broker-dealers publishing quotations for these securities be required to obtain, at a minimum, the most recent financial statements on file with the bankruptcy court.

The Commission disagreed with these views and stated that the initiation of any quotations, or indefinite continuation of priced quotations, for securities where the basic information required by the Rule is not available to the marketplace would undercut the prophylactic purposes of the Rule and might even encourage the abuses sought to be prevented.[54]

Commenters also suggested that broker-dealers could satisfy the Rule's requirements by reviewing court filings for an issuer in reorganization pursuant to Chapter 11 of the Bankruptcy Code.[55] However, these Chapter 11 filings generally are periodic reports that ordinarily contain only receipts and disbursements.[56] These periodic reports do not provide the type of issuer financial information contemplated by the Rule. In particular, where a bankrupt issuer meets the criteria for Exchange Act reporting, it would be inconsistent with the public interest and protection of investors to permit broker-dealers to facilitate trading by publishing quotations without reviewing Exchange Act information. Therefore, under the proposals, broker-dealers would not be able to initiate or resume quotations for the securities of issuers in bankruptcy and could not publish priced quotations for those securities as of the annual update requirement, unless they have obtained and reviewed the Rule's required information.

Q37. What difficulties does this position present for broker-dealers quoting securities of issuers that file for bankruptcy?

Issuers Emerging from Bankruptcy. The Commission recently received a petition for rulemaking seeking a revision of the financial statement requirements for non-reporting issuers emerging from bankruptcy.[57] In addition to the issuer's most recent financial statements, the Rule currently requires that a broker-dealer review similar financial information for the two preceding years. This requirement could result in a review of pre-bankruptcy financial information that has little bearing on the financial condition of the issuer emerging from a Chapter 11 reorganization. The Commission agrees with the suggestion made in the petition and proposes to amend Rule 15c2–11 to limit a broker-dealer's review to the court-approved disclosure statement[58] for the issuer's plan of reorganization and the issuer's financial information from the date the bankruptcy court confirms the reorganization plan.

Q38. Does the proposed amendment deal appropriately with issuers emerging from bankruptcy?

b. Supplemental Information. Rule 15c2–11(b)(2) currently requires a broker-dealer to maintain in its records a copy of any trading suspension order issued in the 12 months preceding the publication or submission of the quotation.[59] In addition, Rule 15c2–11(b)(3) requires a broker-dealer to preserve material information regarding the issuer which comes to the broker-dealer's attention before publishing the quotation or submitting the quotation for publication.[60] The Commission is proposing to retain these provisions. As under the current Rule, a broker-dealer would be required to consider this supplemental information, along with the issuer information, when it determines whether it has a reasonable basis for believing that both the issuer information and supplemental information are accurate, current, and from reliable sources.[61]

c. Significant Relationship Information. Currently, Rule 15c2–11 requires a broker-dealer to record information regarding the broker-dealer's relationship with those non-reporting issuers whose securities are being quoted. Specifically, broker-dealers must document whether:

- The broker-dealer or any associated person is affiliated with the issuer;
- The quotation is being entered on behalf of another broker-dealer and, if so, its name; and
- Whether the quote is being submitted on behalf of an insider or control person of the issuer, the name of the person, and the basis for any exemption from the federal securities laws for sales by such person.

The purpose of this information is to alert regulators and others of possible ''red flags,'' such as potential violations of the registration provisions of the Securities Act.

The proposed amendments would retain these requirements and apply

[51] Broker-dealers publishing quotes for securities of exempt financial institutions may obtain the regulatory reports from the financial institution by contracting their primary bank regulatory agency. Broker-dealers can access the Federal Reserve System's National Information Center of Banking Information website, www.ffiec.gov/NIC, the Federal Deposit Insurance Corporation's (''FDIC'') website, www.fdic.gov, which provides the most recent Call Reports for all FDIC insurance banks, or the OCC's website, www.occ.treas.gov, which has information about individual nationally chartered banks. Broker-dealers that access exempt financial institution information through these websites would be able to satisfy the Rule's requirements by recording their review and preserving the information in the same manner as for EDGAR information discussed above.

[52] Securities Exchange Act Release No. 27247 (September 14, 1989), 54 FR 39194 (''1989 Release'').

[53] See 1992 NASD Letter, *supra* note 37.

[54] 1991 Proposing Release, 56 FR at 19158.

[55] 11 U.S.C. 1101 *et seq.*

[56] See Federal Rule of Bankruptcy Procedure 2015.

[57] See Letter from Daniel J. Demers to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC (November 14, 1997). This petition for rulemaking is available in File No. 4–405 in the Commission's Pubic Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

[58] 11 U.S.C. 1125. The disclosure statement includes, among other things, a description of the issuer's business plan, a description of any securities to be issued, and financial information.

[59] 17 CFR 240.15c2–11(b)(2). Information regarding recent trading suspension orders can be obtained by calling (800) SEC–0330.

[60] 17 CFR 240.15c2–11(b)(3).

[61] *Cf.* Robin Rushing, *supra* note 35.

them to all covered OTC securities, not just those of non-reporting issuers. In addition, the proposals would require the broker-dealer to record whether it had any arrangement to receive any compensation for publishing the quotation and, if so, a description of the compensation and the name of the person providing it.

Microcap fraud often involves payments by the issuer (or insiders or promoters of the issuer) or other broker-dealers to the broker-dealer to create a market in the issuer's stock.[62] The Commission believes that the records created by the broker-dealer under the proposals would help expose improper arrangements, which can mislead market participants as to the quality of a broker-dealer's quotations.[63] Moreover, this information also would assist regulators in identifying broker-dealers that may be acting as ''fronts'' for other broker-dealers or the issuer by publishing ostensibly independent quotes.

Q39. Is there a better way to identify when compensation has been paid to broker-dealers for publishing quotations?

5. Exceptions to the Rule

Under the proposed amendments, the current exceptions relating to quotations representing a customer's indication of interest and not involving the solicitation of a customer's interest, quotations for municipal securities, and quotations representing a security listed and traded on a national securities exchange or authorized for quotation on Nasdaq remain substantively the same.

Q40. Is there any reason to continue the requirement in the exception regarding exchange-listed securities that the security be traded on the exchange in proximity to the day the OTC quotation is published?

The Commission is concerned that the proposed changes may result in misuse of the exception covering unsolicited customer orders, particularly if a broker-dealer wants to publish quotations for a security but cannot obtain the requisite issuer information. The unsolicited status of the underlying customer orders would be called into question if a broker-dealer repeatedly publishes quotations on the basis of this exception.[64] In that circumstance, the broker-dealer's activities would suggest that it is acting as a market maker, rather than a broker or dealer attempting to fill unsolicited customer orders.

Q41. How frequently and under what circumstances do broker-dealers rely on the unsolicited customer order exception?

Q42. Is it appropriate for the Rule to retain an exception for unsolicited customer orders?

Q43. Should unsolicited customer orders be required to be identified as such in the quotation medium?[65]

Q44. Should there be a limited exception for a quotation reflecting isolated proprietary transactions by the broker-dealer? What should be the parameters of any such exception?

Debt Securities. Rule 15c2–11 covers debt securities, although the Commission recognizes that broker-dealers publishing quotations for debt securities may not have focused on this aspect of the Rule. Debt securities frequently are held by institutional investors, and it does not appear that they have been the subject of the abuses that the Rule is intended to address.

Q45. In light of these considerations, should the Rule continue to apply to debt securities? Should the Rule except all non-convertible debt securities or just non-convertible investment grade debt securities?

6. Information Available upon Request

Rule 15c2–11(a)(5) currently provides that the information described in that paragraph must be made available upon request to any person expressing an interest in a transaction in that security with the broker-dealer.[66] This requirement may have little practical effect because only the first broker-dealer to publish quotations must have the information, and an investor might find it difficult to identify that broker-dealer.[67] In fact, that broker-dealer may no longer be publishing quotations. The proposed amendments would require every broker-dealer that publishes quotations for covered OTC securities to obtain, review, and preserve the specified information. The Commission believes that some microcap fraud could be prevented if there were greater investor access to information about these securities and their issuers. Accordingly, the Commission is proposing to enhance the accessibility of this information by requiring a broker-dealer publishing quotations for any covered OTC security to make the information promptly available upon request by any person.

The Commission believes that the cost of requiring broker-dealers to make the information available (including to other broker-dealers) upon request is minimal. Also, the requirement to provide the requested information would prevent a broker-dealer from arranging with the issuer to have exclusive access to the issuer's information and thereby have sole access to Rule 15c2–11 information. This result would be anti-competitive and detrimental to the marketplace.

The proposed amendments would retain in substantial form the current clause that providing information to others does not constitute a representation by the broker-dealer that the information is accurate. Providing the information to others instead would constitute a representation that the information is current in relation to the date the information was reviewed, and that the broker-dealer has a reasonable basis for believing that the information is accurate and from reliable sources.

Q46. Under what circumstances do broker-dealers currently provide Rule 15c2–11 information to others?

Q47. Should the proposed rule specifically permit broker-dealers to charge a reasonable fee to offset their costs of providing the information?

Q48. Should the scope of this provision be limited to non-reporting issuers because information about reporting issuers is available to investors, such as on EDGAR through the Internet? If this requirement should be limited to non-reporting issuer information, should broker-dealers be required to furnish the supplemental and significant relationship information about reporting issuers?

7. Preservation of Documents and Information

To facilitate compliance with the Rule's recordkeeping requirements, the Commission believes that it is appropriate to codify the Rule's record preservation requirements in Rule 17a–4,[68] rather than in Rule 15c2–11.

Rule 17a–4 obligates broker-dealers to preserve documents and information that they must compile pursuant to Commission rules for the time period and in the manner specified in the

[62] See *Butcher & Singer, Inc.,* 48 S.E.C. 640 (1987); *Douglass and Co., Inc.,* 14 S.E.C. 537 (1978); *Gotham Securities Corporation,* 46 S.E.C. 723 (1976). See also NASD Rule 2460 (prohibiting broker-dealers from receiving payment from an issuer or a promoter for publishing a quotation or acting as a market marker).

[63] See *General Bond & Share Co.,* 51 S.E.C. at 413–414.

[64] *Cf. D.H. Blair & Co.,* 44 S.E.C. 320, (1970) (noting that insertion of both bid and ask quotations in the Pink Sheets for a customer is a highly unusual practice).

[65] Currently the exception for unsolicited customer orders is not available for customer orders representing both a bid and an offer at specified prices, unless the quotation medium identifies the quotations as customer orders.

[66] See 17 CFR 240.15c2–11(a)(5).

[67] As discussed above, this is a consequence of the current piggyback exception.

[68] 17 CFR 240.17a–4.

various provisions of Rule 17a–4. The Commission therefore is proposing to amend Rule 17a–4 to add the information specified in proposed paragraphs (d), (e), and (f) of Rule 15c2–11 to the other information that broker-dealers are already required to preserve under Rule 17a–4. Rule 15c2–11, as proposed to be amended, also would cross reference this proposed requirement.

With regard to issuer information that is accessible to broker-dealers through the Commission's EDGAR system, the proposed revisions would provide that if broker-dealers satisfied the Rule's requirements by obtaining and reviewing the information contained on EDGAR, they would not need to preserve such information independently, as long as they document the review and the information is accessible on EDGAR for the same period of time that the broker-dealers are obligated to preserve such information pursuant to Rule 17a–4. For example, if a broker-dealer is required by Rule 15c2–11 to obtain and review an issuer's Annual Report on Form 10–K and to preserve that information for three years, then as long as the broker-dealer can electronically access the Form 10–K for that three-year period, it does not have to preserve the document independently in a separate location. Broker-dealers still would need to preserve information about reporting issuers that is not available on EDGAR, *e.g.*, other information that comes to their attention before entering a quotation.

Q49. Are there other ways to ease the Rule's recordkeeping requirements for broker-dealers?

8. Information Provided to the NASD

Rule 15c2–11 currently requires any broker-dealer covered by the Rule to submit the information required under paragraph (a)(5) (*i.e.*, for non-reporting issuers) to the interdealer quotation system, in the form prescribed by the system, at least three business days before submitting a quotation for publication. The Commission is proposing to amend this obligation by requiring broker-dealers to submit the information that they must obtain and review pursuant to Rule 15c2–11 to the NASD only, in accordance with the NASD's rules. Previously, this information was not obtained by an SRO (a substantial proportion of the documents were submitted to the National Quotation Bureau, Inc., the publisher of the Pink Sheets). Presently, NASD Marketplace Rule 6740 requires broker-dealers to submit the Rule 15c2–11 information to the NASD before they can publish a quotation for a covered OTC equity security in any quotation medium. The proposed amendment would recognize broker-dealers' obligation under NASD rules and avoid any possible need to make multiple submissions of the same information (*e.g.*, to the NASD and to one or more interdealer quotation systems). The NASD uses this information for surveillance and enforcement purposes and routinely provides copies of this information to the Commission.

Q50. Does there continue to be any need for the Rule to require that the information be supplied to the operator of each interdealer quotation system?

B. Central Information Repository

The elimination of the piggyback provision and the increased costs of compliance that may result suggest the desirability of having a central data base of information, particularly for the securities of non-reporting issuers. Such a data base also would enhance the availability of information about little known issuers to investors, other professionals, and regulators. For these reasons, the Commission encourages the development of one or more repositories for Rule 15c2–11 information.

In the 1991 Proposing Release, the Commission contemplated that a Rule 15c2–11 repository would:

(1) collect information about a substantial segment of issuers of securities subject to the Rule;

(2) maintain current and accurate information about such issuers;

(3) use effective acquisition, retrieval, and dissemination systems;

(4) charge reasonable fees; and

(5) operate in a manner that would permit it reasonably to carry out the purposes of the Rule.[69] The Commission seeks comments concerning the features and the feasibility of a central information repository.

Q51. Should the Rule incorporate the standards above? Are there other standards that should be included?[70]

Q52. Should the Commission promote the development of central information repositories through other means?

C. Definitions

The proposals would revise or eliminate several definitions now contained in Rule 15c2–11 and add a few new definitions. The current definitions of ''issuer'' and ''quotation'' would be retained.

Q53. Are the proposed definitions appropriate in light of the Rule's purposes?

Quotation Medium. The definition of ''interdealer quotation system'' would be incorporated into the definition of ''quotation medium.''[71] This definition is quite inclusive: it covers any publication or electronic communications network, or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell. The Commission has been advised by the NASD that almost all Forms 211 that it receives are filed for quotations to be published in the OTC Bulletin Board or the Pink Sheets. Transaction data indicates, however, that there is significant trading in OTC securities that are not quoted in these quotation mediums. While there can be many explanations for this phenomenon, it is possible that broker-dealers view Rule 15c2–11 as applying only to quotations published in the Bulletin Board or the Pink Sheets. In fact, the Rule applies to quotations published in any quotation medium.

Q54. What is the experience of broker-dealers under the Rule when publishing quotations in quotation mediums other than the Bulletin Board or the Pink Sheets?

Q55. Is the scope of the definition of quotation medium too broad?

Q56. Should the Rule except mediums that do not identify broker-dealers publishing quotations (*i.e.*, where quotations are anonymous) and/or that do not provide automatic execution facilities? Why would this be appropriate or inappropriate?

Q57. Should the definition draw any distinction between ''quotations'' and ''orders''?

Q58. Should the Rule apply to quotation systems devoted exclusively to a single issuer's securities? If so, would an aggregation of such systems be a quotation medium?

Q59. Should the Rule apply to quotation systems devoted exclusively to a single broker-dealer's quotations? If so, would an aggregation of such systems be a quotation medium?

Q60. Should the definition of ''interdealer quotation system'' be retained?

[69] 56 FR at 19163.

[70] Commenters may also wish to consider the need for a process to recognize repositories that meet such standards. *Cf.* Securities Exchange Act Release No. 39457 (December 17, 1997), 62 FR 68018 (proposing the process for designating ''nationally recognized statistical rating organizations'' for purposes of the New Capital Rule, 17 CFR 240.15c3–1).

[71] A separate definition of ''interdealer quotation system'' no longer would be necessary because of the elimination of the piggyback provision and the revision that the information be furnished to the NASD in accordance with NASD rules, rather than to interdealer quotation systems.

D. Transition Provision

The Commission is proposing a transition provision covering quotations by broker-dealers that were initiated prior to the effective date of the proposed amendments. Broker-dealers could continue their market-making activities until the occurrence of one of the events set forth in the Rule, as proposed to be amended. The Commission believes that this proposed transition provision would be necessary to maintain liquidity in covered OTC securities while broker-dealers adjust to the amended requirements. Broker-dealers initiating quotations for these securities, however, would need to obtain and review the requisite information.

Q61. Does the proposed transition provision adequately address securities that broker-dealers may have been quoting for significant periods of time, and for which they may be unable to obtain current information from the issuer?

Q62. Under what circumstances should the Rule accommodate those broker-dealers that would like to initiate quotations for securities covered by the transition paragraph but for which they cannot obtain the requisite issuer information?

III. General Request for Comments

The Commission solicits comment on all aspects of its proposed amendments to Rule 15c2–11, as well as on any other matter that might have an impact on the proposals discussed above. In particular, the Commission seeks comment on whether the proposals would help promote information transparency in the OTC market and help curb abuses in the trading of microcap securities. Commenters are asked to consider whether the proposed revisions would have any adverse impact on the liquidity of covered OTC securities and should provide data and analysis to support their views. Commenters are invited to address whether the Rule's text is sufficiently clear and understandable. In addition, commenters are asked to discuss whether the Rule and/or proposed amendments should apply to quotations for all securities covered by Rule 15c2–11, or whether certain amendments (*e.g.*, disciplinary histories of an issuer's insiders and promoters) should be limited to quotations for microcap securities.

Persons submitting written comments should send three copies of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and should refer to File No. S7–3–98. Comments also may be sent electronically to the following e-mail address: rule-comments@sec.gov and should include the file number on the subject line of the e-mail.

IV. Costs and Benefits of the Proposed Amendments

The Commission requests commenters to evaluate the costs and benefits associated with the proposed amendments to Rule 15c2–11. The Commission has identified certain costs and benefits relating to the proposals, which are discussed below, and encourages commenters to discuss any additional costs or benefits.[72] In particular, the Commission requests comment on the potential costs for any necessary modifications to information gathering, management, and recordkeeping systems or procedures that would be necessary to implement the proposals, as well as any potential benefits resulting from the proposals for issuers, investors, broker-dealers, securities industry professionals, regulators or others. Commenters should provide analysis and data to support their views on the costs and benefits associated with the proposals.

A. Benefits

The Commission believes that the proposed amendments generally would help improve the quality of the markets for securities subject to Rule 15c2–11 and would help protect investors from fraudulent schemes involving these securities. Traders of the securities of legitimate microcap issuers also would benefit if the integrity of this market sector is improved. The Commission believes that the specific benefits set forth below would flow from the proposed amendments.

The Commission does not routinely collect, as part of its examinations or investigations, data for the dollar value of fraudulent activity and therefore cannot quantify investor losses due to recent microcap frauds. However, from its enforcement investigations and interactions with other regulators, and review of investor complaints, the Commission believes microcap trading abuses are on the rise and overall involve significant dollar amounts.

Microcap fraud frequently involves issuers for which public information is limited.[73] Without information, it is difficult for investors, securities professionals, and others to evaluate the risks presented by these securities. Many investors consequently fall prey to persons who make false representations and unrealistic predictions about these securities. The publication of quotations by broker-dealers can facilitate the fraudulent promotion of microcap securities. Currently, not all broker-dealers are required to review certain basic information about an issuer before initiating quotations.

To reduce the potential for fraud in the OTC market, the proposed amendments require every broker-dealer, before initiating a quotation for a covered OTC security in a quotation medium, to gather and review the issuer information and to update that information annually when it publishes priced quotations. The proposed amendments would require more information than the Rule currently requires about the issuer's outstanding securities, its officers and directors, and its financial condition. In particular, by requiring that all broker-dealers obtain and review issuer information and update it annually, the proposed amendments should substantially assist a broker-dealer in its consideration of whether to publish quotations for an issuer's securities. Provided with this additional information, the broker-dealer would gain a greater understanding of the issuer's business and a better indication of whether potential or actual fraud or manipulation may be present.

After reviewing the information, responsible broker-dealers should refrain from publishing quotations for questionable securities. This will prevent responsible broker-dealers from becoming unwitting participants in manipulative or fraudulent schemes of unscrupulous broker-dealers and/or promoters. Because all broker-dealers must have issuer information before initiating quotations for covered OTC securities, issuer information would be more widely available to market professionals. Additionally, broker-dealers must provide this information to any person upon request.

The proposals, if adopted, would serve an important surveillance function. Currently, only the first broker-dealer quoting a security must gather, review, and preserve the information. The proposed amendments would require all broker-dealers

[72] In 1985, the Commission issued a release for the purpose of seeking comment on the costs and benefits associated with Rule 15c2–11. Securities Exchange Act Release No. 21914 (April 1, 1985), 50 FR 14111. The comment letters are available in File No. S7–14–85. Generally, the commenters failed to provide data to support costs or benefits.

[73] See, *e.g.*, *SEC* v. *Global Financial Traders, Ltd.*, Litigation Release Nos. 15291 (March 14, 1997), and 15338 (April 17, 1997); see also *supra* note 10.

initiating quotations to satisfy the Rule's current requirements and would add a recordation requirement. Moreover, under NASD Marketplace Rule 6740, the broker-dealer demonstrates its compliance with that rule by filing the Rule 15c2–11 information with the NASD. Recently, the review of Forms 211 filed with the NASD has resulted in a number of Commission trading suspensions and other enforcement actions.

The proposed amendments would ease significantly the Rule's recordkeeping requirement when broker-dealers have access to reporting issuer information on the Commission's EDGAR system. Access to EDGAR is free on the Internet. Given that approximately 42% of securities on the OTC Bulletin Board (''OTCBB'') and Pink Sheets are issued by reporting companies, whose reports are included on EDGAR, a significant recordkeeping cost savings to broker-dealers should result.

The Commission does not have data to quantify the value of the benefits described above. The Commission seeks comments on the value of these benefits and on any benefits, not already identified, that may result from the adoption of these proposed amendments.

B. Costs

The Commission has identified various costs that may result if the proposals are adopted. The proposals would eliminate the piggyback provision, which now effectively limits the Rule's application to those broker-dealers that publish quotations during the first 30 days of the security's trading. Under the proposals, each broker-dealer would need to obtain and review the Rule's required information when it initiates quotations for the security or initiates or resumes quotations following specified events. Moreover, an annual update requirement would apply to all broker-dealers that publish priced quotations. As a result of these proposals, each broker-dealer publishing quotations for a security would have to obtain issuer information and possibly incur costs when it first publishes a quotation and when it conducts the required update. To the extent a broker-dealer does not already have this information, it would incur costs for the collection and review of this information. Moreover, a broker-dealer also would incur costs associated with creating the records required by the Rule and retaining the Rule's required information for the specified period of time pursuant to the proposed amendment to Rule 17a–4.

The Commission estimates that it would cost a broker-dealer $35 per hour to comply with the requirements of the Rule based on a blended compensation rate of $35 per hour for clerical and supervisory compliance staff. As identified in the Paperwork Reduction Act section of this release, the Commission estimates that the additional annual burden hours to broker-dealers in the aggregate would be approximately 127,000 hours. The Commission, therefore, estimates that the cost to broker-dealers in the aggregate to obtain and review the required information if the proposed amendments are adopted would be approximately $4,445,000. The Commission seeks comments on the reasonableness of its estimates for the additional annual hourly and dollar costs to broker-dealers.

The Commission believes that any additional costs to broker-dealers should be offset, however, by the fact that those broker-dealers conducting a retail business already may have the information required to satisfy their obligations under the federal securities laws and the rules of the SROs when they recommend a security to an investor.

Although Rule 15c2–11 does not regulate issuers, there may be some indirect costs imposed on issuers, particularly non-reporting issuers, because they may be contacted by broker-dealers to provide the information specified in the Rule. Non-reporting issuers would incur the cost of having to collect and provide the requested information to each requesting broker-dealer. In addition, the proposals would expand the scope of the information required for quotations of non-reporting issuers' securities. However, the Commission is assuming that non-reporting issuers maintain their financial information in compliance with prevailing accounting standards and, in most instances, would have available updated financial information prepared in accordance with GAAP. The NASD has informed us that the financial statements filed with the Form 211 generally are prepared in accordance with GAAP, and many are audited.

The Commission assumes that for non-reporting issuers, it will cost approximately $15 per hour for clerical staff to obtain and provide the information required if the proposed amendments are adopted.[74] As identified in the PRA section of this release, the Commission estimates that the additional annual reporting burden hours to non-reporting issuers in the aggregate would be approximately 50,000 hours, or approximately $750,000 per year. The Commission seeks comments on the reasonableness of its estimates for the additional annual hourly and dollar costs to issuers.

Regarding start-up, operating, and maintenance costs, the Commission believes that broker-dealers that now collect, review, and retain the information required by the current Rule would incur only marginal start-up, operating, and maintenance costs (*i.e.*, to expand systems already in place). Further, some broker-dealers may be collecting the information required by the proposals for other purposes. However, the Commission believes some broker-dealers may not have adequate systems in place to retain issuer information and would, therefore, incur start-up, operating, and maintenance costs in order to comply with the requirements of the proposed amendments.

As discussed in the PRA section of this release, the Commission estimates that an average of 4.3 broker-dealers provide quotations for each of the 7,038 covered OTC securities that would be affected if the proposed amendments are adopted. The Commission estimates that broker-dealers would incur start-up, operating, and maintenance costs of approximately $17,736 associated with reporting issuer information, and approximately $97,968 associated with non-reporting issuer information. The total start-up, operating and maintenance cost burden for broker-dealers is estimated to be $115,704 ($17,736+$97,968). The Commission seeks comments on the reasonableness of its estimates for the total start-up, operating and maintenance cost burdens to broker-dealers.

Finally, the Rule could affect the liquidity of some securities. If broker-dealers are unable to obtain the required issuer information, they would have to refrain from publishing priced quotations in that security. This could make it more difficult for investors to determine what prices other market participants are willing to bid or offer for the security. However, broker-dealers may still publish unpriced quotes and publish priced quotes representing unsolicited customer interest in buying or selling securities. It should also be possible for some broker-dealers to continue to make

[74] The Commission assumes that because the required information should be available in house, someone in a clerical position should be able to copy and forward the information in response to a request. Accordingly, the Commission believes that $15 per hour is a reasonable estimate of this cost.

markets without publishing quotations in a quotation medium. Thus, while investors are still able to obtain price information, the cost of obtaining this information may increase. Any effect on liquidity must be weighed against the benefit of stopping potential fraud or manipulation. Greater investor access to information should result in more informed investor decisions and potentially could result in additional trading and thus liquidity for covered OTC securities. The Commission's preliminary view is that the benefits of the proposed rule changes should justify any adverse impact on liquidity.

The Commission seeks comments on the cost estimates identified in this section and comments on any cost, not already identified, should the amendments be adopted as proposed. Commenters are requested to supply specific data and analysis.

V. Effects on Efficiency, Competition, and Capital Formation

In adopting rules under the Exchange Act, Section 23(a)(2) requires the Commission to consider the impact any rule would have on competition and to not adopt any rule that would impose a burden on competition not necessary or appropriate in the public interest. Section 3(f) of the Exchange Act requires the Commission, when engaged in rulemaking, to consider or determine whether an action is necessary or appropriate in the public interest, and whether the action would promote efficiency, competition, and capital formation.[75] The proposed amendments are intended to protect investors by requiring broker-dealers that initiate or resume quotations for a covered OTC security in a quotation medium, and that are publishing priced quotations as of the annual update requirement, to have fundamental information about the issuer.

When reports of fraud and manipulation in a particular market sector are common, legitimate participants in that marketplace are adversely affected. For example, legitimate small issuers seeking capital in the public markets may find that their costs of raising capital are increased because of underwriters' and, ultimately, investors' reluctance to participate in these transactions. Measures to reduce microcap fraud should result in enhanced capital formation by legitimate small issuers.

The Commission believes that the requirement to obtain and review issuer information should improve the level of competition among broker-dealers because all broker-dealers would be affected equally. With the elimination of the piggyback provision, every broker-dealer must obtain and review the information in connection with a decision to publish quotations. Absent these requirements, the Commission believes that some broker-dealers would submit quotations without regard to basic information about relatively unknown issuers, and therefore, would be more likely to cause investors to fall prey to fraudulent and manipulative pricing schemes. Because all broker-dealers would now be subjected to the same requirements to gather and review the information before publishing quotations, fairness and competition in this segment of the industry should improve.

The Commission's preliminary view is that the proposed amendments to the Rule would not have any anticompetitive effects that are not necessary or appropriate in the public interest. There may be isolated cases where some broker-dealers can continue to publish unpriced quotations for a security because issuer information was available when they initiated quotations or the security qualifies for the transition provision covering quotations occurring prior to the amendment's effective date, yet other broker-dealers later cannot initiate or resume quotations because current issuer information is no longer available. Because of the proposed annual updating requirement, the broker-dealer would only be able to publish unpriced quotations after the updating period (if current issuer information was not available). Although in such cases some broker-dealers may be precluded from publishing quotations in a quotation medium, the Commission preliminarily considers this possible burden on competition to be justified by the benefits to investors of broker-dealers having accurate and current issuer information before they initiate or resume publication of quotations in a quotation medium.

The Commission requests comments on the competitive benefits that may result to broker-dealers under the proposed amendments to the Rule and also is requesting comments on any anticompetitive effects that may result if the Rule is adopted as proposed. The Commission is aware that requiring broker-dealers to collect information more regularly may cause some broker-dealers to stop publishing quotations, thus reducing the liquidity of some securities. The Commission requests data and analysis on what effect the proposed changes may have on the liquidity of this market. Finally, the Commission seeks comment on what impact the proposals, if adopted, would have on efficiency and capital formation.

VI. Initial Regulatory Flexibility Act

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'')[76] regarding the proposed amendments to Rule 15c2–11 and the companion amendment to Rule 17a–4 under the Exchange Act. The following summarizes the IRFA.

As discussed in the IRFA, the Rule specifies the information that a broker-dealer must gather and review before publishing quotations for covered OTC securities. The Rule is intended to prevent broker-dealers from publishing quotations for covered OTC securities in a quotation medium without obtaining, reviewing, and retaining current information about the issuer. The Commission is proposing these amendments because of increased incidence of fraud and manipulation in securities subject to Rule.

The amendments to the Rule would affect all broker-dealers, including a number of small broker-dealers, seeking to publish quotations for covered OTC securities. The Commission's Office of Economic Analysis (''OEA'') estimated that as of December 31, 1996, there were 3,444 small public broker-dealers. Based on Exchange Act Rule 0–10(c)(1), OEA considered a small broker-dealer as a broker-dealer reporting total capital of less than $500,000 at year-end 1996. The number of these small broker-dealers that submit quotations for covered OTC securities to quotation mediums is unknown. However, the Commission believes that, at any given time, there are approximately 400 broker-dealers, including small broker-dealers, that submit quotations for covered OTC securities. The Commission seeks comments on the number of small broker-dealers that quote covered OTC securities in quotation mediums.

The proposed amendments would indirectly affect those small issuers that may be requested to provide the information required by the proposed amendments to broker-dealers publishing quotations in those issuers' securities. Based on Exchange Act Rule 0–10(a), a small issuer is one that on the last day of its most recent fiscal year had total assets of $5,000,000 or less. The total number of small issuers of covered OTC securities is not known at this time. The Commission seeks comment on the total number of issuers of covered OTC securities; the number (or

[75] 15 U.S.C. 78c(f).

[76] 5 U.S.C. 603.

percentage) of these issuers that are small issuers; and the total number (or percentage) of small issuers of covered OTC securities that are reporting and non-reporting issuers, respectively.

As discussed above in this release, the proposed amendments would eliminate the piggyback provision and would specify that every broker-dealer must gather and review the required information when it initiates or resumes publishing quotations for a covered OTC security. At least once a year thereafter in the case of priced quotations, or following a break in quotations of five or more business days or upon the termination of a Commission trading suspension order, a broker-dealer would have to gather and review the information required by the Rule.

In addition, a broker-dealer would be required to maintain information concerning its compliance with the Rule, including whether: the broker-dealer is affiliated with the issuer; a quotation is being submitted on behalf of another broker-dealer or associated person (including the name of such broker-dealer); the quotation is being submitted on behalf of the issuer or persons affiliated with the issuer; and the broker-dealer has received any monetary or other compensation to publish the quotation.

The Commission is also proposing to require broker-dealers to acquire and review the annual and other periodic reports that financial institutions file with their respective regulatory agencies other than the Commission. The Commission believes that because non-reporting financial institutions file periodic reports containing information similar or identical to information that reporting financial institutions file with the Commission, a broker-dealer quoting such financial institutions' securities should obtain these reports in order to achieve the informational goals of the Rule.

The possible addition of recordkeeping costs for broker-dealers as a result of eliminating the piggyback provision and enhancing the required issuer information further highlights the desirability of creating a central data base for information on covered issuers and their securities. In that regard, the Commission encourages the development in the private sector of one or more central repositories for Rule 15c2–11 information. Such repositories may provide a more efficient vehicle for meeting the record-assembly needs of brokers and dealers, including firms seeking to comply not only with the Rule, but also with other applicable investor protection requirements, such as general anti-fraud and suitability rules of the Commission and SROs.

The IRFA notes that the availability of the Commission's EDGAR system for broker-dealers to collect and review the reports required by the Rule should lessen the costs and burdens associated with compliance with any expanded information gathering, review, and updating requirements. In addition, the prevalent use of computers and the Internet, on which access to EDGAR is free, should also reduce the recordkeeping and compliance costs for all broker-dealers by automating the information collection and retention process.

The IRFA recognizes that the proposed amendments indirectly affect certain issuers, particularly non-reporting issuers. The proposed amendments would require all broker-dealers, before initiating or resuming publication of a quotation, to obtain, review, and retain more issuer information than is currently required under Rule 15c2–11 and, when publishing priced quotations, to update that information annually. Consequently, non-reporting issuers must collect and provide the required information for each requesting broker-dealer. The Commission assumes that non-reporting issuers maintain their financial information in compliance with prevailing accounting standards and that the cost incurred by non-reporting issuers to prepare the necessary information in response to broker-dealers' requests would be minimal.

The IRFA discusses the kinds of possible alternative proposals that the Commission has considered. These include, among others, creating differing compliance or reporting requirements or timetables that take into account the resources available to small entities, and whether such entities could be exempted from any of the proposed rules, or any part thereof. Therefore, having considered the foregoing alternatives in the context of the proposed amendments, the Commission does not believe they would accomplish the stated objectives of the proposal.

The Commission encourages the submission of written comments regarding any aspect of the IRFA. In particular, the Commission seeks comments on: (i) The number of small entities that would be affected by the amended Rule, including the number of small broker-dealers and issuers; (ii) the number of small entities that are issuers of covered OTC securities; and (iii) the number of small entities that are reporting and non-reporting issuers of covered OTC securities, respectively. Comments should also specify the costs of compliance with the proposed amendments, and suggest alternatives that would provide the OTC market with more information about the issuers of these securities. In describing the nature of any impact that the proposals would have, empirical data supporting these views should be provided.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed amendments on the economy on an annual basis. In particular, comments should address whether the proposed changes, if adopted, would have a $100,000,000 annual effect on the economy, cause a major increase in costs or prices, or have a significant adverse effect on competition, investment, or innovations. Commenters should provide empirical data to support their views.

Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–3–98; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will also be posted on the Commission's Internet web site (httpp://www.sec.gov).

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Chester A. McPherson, Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, at (202) 942–0772.

VII. Paperwork Reduction Act

Certain provisions of the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA''); [77] the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: ''Publication or submission of quotations without specified information.'' This collection of

[77] 44 U.S.C. 3501 *et seq.*

information has previously been assigned OMB Control No. 3235–0202.

A. Collection of Information Under the Proposed Amendments

Rule 15c2–11 under the Exchange Act currently requires the very first broker-dealer publishing a quotation for certain over-the-counter (''OTC'') securities in a quotation medium to obtain and review the information specified in the Rule. Generally, the Rule applies to securities that are not listed and traded on a national securities exchange or quoted on Nasdaq (''covered OTC securities''). Most covered OTC securities are quoted in the OTC Bulletin Board (''OTCBB''), which is operated by the National Association of Securities Dealers, Inc. (''NASD''), or in the Pink Sheets (containing quotations for equity securities) or Yellow Sheets (containing quotations for debt securities), which are published by the National Quotation Bureau, Inc. (''NQB'').

The proposed amendments to Rule 15c2–11 would require every broker-dealer to collect, review, and retain specific information about the security's issuer before initiating or resuming a quotation for a covered OTC security. Broker-dealers submitting priced quotations for the security would be required to collect, review, and retain the Rule's specified information annually. Broker-dealers would also have to record the sources of their information, the date their review occurred, and the person responsible for the review. Also, the proposals would require broker-dealers publishing quotations for a covered OTC security to collect, review, and retain more information than is required currently.

Under Rule 15c2–11, the information that is collected pursuant to the Rule must be submitted to the NASD at least three business days before any quotation is published.[78] Finally, the proposed amendments would require broker-dealers to provide the information specified to any member of the public that requests it.

B. Proposed Use of Information

Broker-dealers must collect and review the information required under the proposed amendments before publishing a quotation. Moreover, the Rule requires that broker-dealers have a reasonable basis for believing that the information about the issuer and related persons is current, accurate, and from reliable sources. This information collection protects investors by deterring fraudulent or manipulative quotations for thinly-traded securities whose issuers are relatively unknown. Because information about these issuers is not widely disseminated and often is not current, fraudulent and manipulative schemes are easier to perpetrate. Moreover, this collection of information helps broker-dealers guard against becoming unwitting participants in fraudulent or manipulative schemes. The Rule 15c2–11 information gathering requirements also serve an important surveillance function for both the Commission and the NASD. Recently, the Commission has used the Rule 15c2–11 information to suspend trading in the issuers' securities pursuant to Section 12(k) of the Exchange Act where publicly available information about the issuer raised questions about the accuracy and adequacy of the issuers' disclosures.

C. Respondents

The proposed amendments would apply to those broker-dealers that initiate or resume publishing quotations for a covered OTC security in a quotation medium and that are publishing priced quotations as of the annual update requirement. The proposed amendments also indirectly affect issuers that are asked by broker-dealers to provide this information. Most of the Rule 15c2–11 information that would be required for issuers that publicly file periodic reports with the Commission (''reporting issuers'') is available electronically on EDGAR or through the Internet. Thus, the proposals are likely to have a greater paperwork burden when broker-dealers publish quotations for the securities of issuers that do not participate in the Commission's public reporting program (''non-reporting issuers'').

D. Total Annual Reporting and Recordkeeping Burden

The proposed amendments would require broker-dealers to collect, review, retain, and record certain issuer and supplemental information when they initiate or resume publishing quotations of the issuer's securities or continue to publish priced quotations as of the annual anniversary date. The proposed amendments contain an initial information gathering and review requirement for broker-dealers and, in the case of priced quotations, a subsequent annual updating requirement. The discussion below estimates the collection of information burden one year after the anticipated date of effectiveness of the proposed amendments when broker-dealers that publish quotes for covered OTC securities qualifying for the proposed transition provision must fully comply with the Rule's information requirements. The discussion below also provides estimates for the same period for issuers that may be contacted to provide the information. In particular, the following analysis measures the cost to broker-dealers of: (1) collecting, reviewing, recording, and retaining the required issuer information and supplying it to the NASD; (2) responding to requests for issuer information from the public; and (3) starting-up or maintaining systems for the collection and retention of issuer information. The analysis below also addresses the indirect cost to issuers who must furnish information to requesting broker-dealers.

1. Burden-Hours for Broker-Dealers

In 1997, the NASD reports receiving 1,576 applications from broker-dealers to initiate or resume publication of quotations for covered equity securities in the OTCBB and/or the Pink Sheets, and 1,107 of these applications were cleared for publication of quotations. Although there are other OTC quotation mediums, the NASD reports that it generally does not receive any submissions from broker-dealers publishing quotations in these other systems. Data about quotations for covered OTC securities in these other systems is unavailable.

Also, taking into account newly-published quotations in the Yellow Sheets, the Commission estimates that approximately 1,200 new covered OTC securities would be eligible for quotations in the year following the Rule's effective date. Based on information provided by the NASD and NQB, the Commission estimates that as of December 31, 1997, there were approximately 6,200 covered OTC securities quoted in the OTCBB; 3,000 quoted in the Pink Sheets; and 2,000 quoted in the Yellow Sheets for a total of 11,200 covered OTC securities quoted in all three mediums.

According to NASD and NQB estimates, the Commission believes that, on average, there are approximately 4.3 broker-dealers publishing quotations for each of these covered OTC securities, and that at any given time there are no more than 400 broker-dealers that submit quotations for covered OTC securities. Further, according to these estimates, priced quotations are published for approximately 89 percent of the 6,200 (5,518) OTCBB securities, 10 percent of the 3,000 (300) Pink Sheets securities, and 1 percent of the

[78] The NASD has a rule requiring broker-dealers that initiate or resume quotations for covered equity securities to submit verification that they have collected the information necessary to comply with NASD requirements, as well as Rule 15c2–11. See NASD Manual, Marketplace Rules, 6740.

2,000 (20) Yellow Sheets for a total of 5,838 issues with priced quotations. Because the proposed amendments would not require broker-dealers to collect issuer information for priced quotations until the annual update requirement is triggered in the year after the date of the amendments' effectiveness, the Commission estimates that, as of the annual update, approximately 30,263 ((5,838+1,200)×4.3) quotations would be subject to the Rule 15c2–11 proposed amendments.

For purposes of developing a burden estimate, the Commission assumes that each of the 5,838 priced quotations and the 1,200 new applications represent a different issuer. The Commission, therefore, estimates, at most, 7,038 issuers of covered OTC securities will be affected by the proposals in the year following the effective date of the amendments.[79]

Based on information from the NASD and NQB, the Commission estimates that of the 7,038 affected issuers of covered OTC securities, 42 percent (2,956) are reporting issuers, and 58 percent (4,082) are non-reporting issuers. The Commission estimates that it will take a broker-dealer about three hours to collect, review, record, retain, and supply to the NASD the information pertaining to a reporting issuer, and five hours to collect, review, record, retain, and supply to the NASD the information pertaining to a non-reporting issuer. The Commission estimates that broker-dealers will annually require 38,132 (2,956×3×4.3) hours or 95.33 (38,132/400) hours per broker-dealer to collect, review, record, retain, and supply to the NASD the information for the 2,956 affected reporting issuers. The Commission estimates that broker-dealers will annually require 87,763 (4,082×5×4.3) hours or 219.41 (87,763/400) hours per broker-dealer to collect, review, record, retain, and supply to the NASD the information from the 4,082 affected non-reporting issuers. Additionally, the broker-dealers, upon request from the public, must provide the issuer information. Based on information from the NQB, the Commission estimates that broker-dealers will receive 1,000 requests from the public annually, which would take a broker-dealer approximately one-half hour per request to provide for an annual burden of 500 hours. Therefore, the Commission estimates the total annual burden hours to broker-dealers to be 126,395 (38,132+87,763+500), or an average of 316 (126,395/400) burden hours per broker-dealer.

2. Burden-Hours for Issuers

Regarding the burden on issuers to provide broker-dealers with the required information, the Commission estimates that the 2,956 affected reporting issuers of covered OTC securities will not bear any additional hourly burdens under the proposed amendments because such issuers already report the required information to the Commission through periodic filings made pursuant to the federal securities laws. Further, reporting issuer information is widely available to broker-dealers through a variety of media. However, non-reporting issuer information is not widely available, and consequently, these issuers must provide the information required by the proposed amendments to requesting broker-dealers before quotations in their securities can be published. The Commission estimates that the 4,082 affected non-reporting issuers of covered OTC securities will spend an average of nine hours each to collect, prepare, and supply the information required by the proposals to the first broker-dealer that requests this information. Thereafter, the Commission estimates that it will take an average of one hour for an issuer to provide the same information to the remaining 3.3 broker-dealers that request the information. Accordingly, the Commission estimates the 4,082 non-reporting issuers annually will incur 36,738 (4,082×9×1) hours to comply with the first broker-dealer's request for information, and 13,471 (4,082×1×3.3) hours to comply with the subsequent 3.3 broker-dealer requests for an annual total of 50,209 (36,738+13,471) burden hours. On average, therefore, each non-reporting issuer would spend approximately 12 (50,209/4,082) burden hours per year to comply with these requests.

3. Total Burden-Hour Costs to Broker-Dealers and Issuers

For both broker-dealers and issuers combined and in the aggregate, the Commission estimates the collection of information will require approximately 176,604 burden hours annually (126,395+50,209).

4. Capital Cost to Broker-Dealers and Issuers

The Commission believes that broker-dealers that now collect, review, and retain the information required by the current Rule will not incur any significant start-up costs to expand systems already in place. Further, broker-dealers that are collecting the information required by the proposals for other purposes also will not incur significant start-up costs. However, the Commission believes some broker-dealers may not have adequate systems in place to retain issuer information and will incur start-up costs in order to comply with the requirements of the proposed amendments. The Commission assumes that of the 4.3 broker-dealers that provide quotations for each covered OTC security, on average one broker-dealer will incur additional start-up costs, while the remaining 3.3 broker-dealers will only incur incremental costs. Because the information for reporting issuers will be generally available on EDGAR and such availability satisfies the recordkeeping requirements of the proposals, the Commission is assuming that the start-up costs associated with retaining information on reporting issuers will be $6.00 per quotation, whereas the same costs will be $24.00 per quotation for non-reporting issuer information. The Commission estimates that broker-dealers in the aggregate will incur start-up costs of $17,736 (2,956×$6×1) associated with reporting issuer information, and $97,968 (4,082×$24×1) associated with non-reporting issuer information. The total start-up, operating and maintenance cost burden for broker-dealers is estimated to be $115,704 ($17,736+$97,968) or an average of $289 ($115,704/400) per broker-dealer.

The Commission assumes that non-reporting issuers, because they maintain their financial information in compliance with prevailing accounting standards, will not incur any start-up costs to prepare the required information in response to broker-dealers' requests. The Commission also believes that reporting issuers of covered OTC securities will not incur start-up costs as a result of the proposed amendments since such issuers already provide the required information to the Commission under the federal securities laws.

Therefore, the Commission believes issuers will not incur start-up costs as a consequence of the adoption of the Rule amendments, as proposed.

E. General Information About the Collection of Information

The collection of information under the proposed amendments is mandatory and would be required before broker-dealers could initiate or resume publication of quotations in securities that are traded in a quotation medium other than an exchange or Nasdaq and before broker-dealers could continue to

[79] This number overstates the number of affected issuers because some issuers have more than one security with priced quotes.

publish priced quotations when the annual review date occurs. Broker-dealers would be required to retain the information they collect for a period of not less than three years. Information collected under the Rule would not be kept confidential. Any 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 control number.

F. Request for Comments

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. The Commission seeks data about quotations for covered OTC securities in OTC quotation mediums other than the OTC Bulletin Board, Pink Sheets and Yellow Sheets. The Commission asks for comments on its estimate of the number of issuers affected by the proposed Rule. The Commission also seeks comments on the time estimates made for broker-dealers and issuers to comply with the proposals' information collection requirements.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and refer to File No. S7–3–98. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release in the **Federal Register**, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication.

VIII. Statutory Basis and Text of Proposed Amendments and Rule

The rule amendments are being proposed pursuant to Sections 3, 10(b), 15(c), 15(g), 17(a), and 23(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78c, 78j(b), 78o(c), 78o(g), 78q(a), and 78w(a).

List of Subjects in 17 CFR Part 240

Broker-dealers, Fraud, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

In accordance with the foregoing, Title 17, chapter II, part 240 of the Code of Federal Regulations is proposed to be amended as follows:

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

1. The authority citation for part 240 continues to read, in part, as follows:

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

* * * * *

2. Section 240.15c2–11 and the section heading are revised to read as follows:

§ 240.15c2–11. Publication or submission of quotations without current information.

(a) *Unlawful activity.* As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for a broker or dealer, directly or indirectly, to publish or to submit for publication any quotation for a security in any quotation medium unless the broker or dealer complies with the provisions of this section.

(b) *Covered brokers or dealers.* A broker or dealer shall satisfy the requirements of this section prior to publishing or submitting for publication any one of the following kinds of quotations for a security in a quotation medium:

(1) An initial quotation;

(2) An initial or resumed quotation following:

(i) The lapse of five or more consecutive business days during which period the broker or dealer did not publish or submit for publication any quotations for the security in a quotation medium; or

(ii) The termination of a Commission trading suspension ordered pursuant to section 12(k) of the Act (15 U.S.C. 78*l*(k)) in any securities of the issuer; or

(3) A quotation at a specified price following:

(i) The anniversary date of the initial quotation by the broker or dealer; or

(ii) The date that is four months following the end of the issuer's fiscal year; or

(iii) In the case of a foreign private issuer, the date that is seven months following the end of the issuer's fiscal year.

(c) *Requirements.* A broker or dealer subject to paragraph (b) of this section shall:

(1) Review the information described in paragraphs (d) and (e) of this section;

(2) Determine that it has a reasonable basis under the circumstances for believing that the issuer information described in paragraph (d) of this section, when considered in conjunction with the supplemental information in paragraph (e) of this section, is accurate and current in all material respects, and that it is obtained from reliable sources; and

(3) Make a record of:

(i) The information required by paragraph (f) of this section;

(ii) The sources from which it obtained the information described in paragraphs (d) and (e) of this section;

(iii) The date that the broker or dealer reviewed the information required by this section; and

(iv) The person responsible for the broker or dealer's compliance with the requirements of this section.

(d) *Issuer information.* (1) *Issuers with a recent public offering.* For an issuer that has filed a registration statement under the Securities Act, other than a registration statement on Form F–6 (17 CFR 239.36), which became effective less than 90 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium, the prospectus specified by section 10(a) of the Securities Act of 1933 (15 U.S.C. 77j(a)): *Provided,* That such registration statement has not thereafter been the subject of a stop order that is still in effect when the quotation is published or submitted.

(2) *Issuers with a recent Regulation A offering.* For an issuer that has filed a notification under Regulation A and was authorized to commence the offering less than 40 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium, the offering circular provided for under Regulation A under the Securities Act (§§ 230.251 through 230.263): *Provided,* That the offering circular provided for under Regulation A has not thereafter become the subject of a suspension order which

is still in effect when the quotation is published or submitted.

(3) *Certain reporting issuers or exempted insurance companies.* For an issuer required to file reports pursuant to section 13 or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) and that is current in filing such reports, or for an issuer of a security covered by section 12(g)(2) (B) or (G) of the Act (15 U.S.C. 78*l*(g)(2) (B) or (G)), the issuer's most recent annual report filed pursuant to section 13 or 15(d) of the Act or a copy of the annual statement referred to in section 12(g)(2)(G)(i) of the Act, together with any subsequent quarterly and current reports filed under the provisions of the Act by the issuer: *Provided,* That until such issuer has filed its first annual report pursuant to section 13 or 15(d) of the Act or annual statement referred to in section 12(g)(2)(G)(i) of the Act, the broker or dealer obtains and reviews a copy of the prospectus specified by section 10(a) of the Securities Act (15 U.S.C. 77j(a)) included in a registration statement filed by the issuer under the Securities Act that became effective within the prior 16 months, or a copy of any registration statement filed by the issuer under section 12 of the Act that became effective within the prior 16 months (other than a registration statement on Form F–6 (17 CFR 239.36)), together with any quarterly and current reports filed thereafter under section 13 or 15(d) of the Act.

(4) *Certain financial institutions.* For an issuer that is not required to file reports pursuant to section 13 or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) and that is a bank or savings association, as those terms are defined in 12 U.S.C. 1813, a copy of the issuer's most recent annual report and any subsequent reports filed with its ''appropriate Federal banking agency'' or ''State bank supervisor,'' as those terms are defined in 12 U.S.C. 1813.

(5) *Certain foreign issuers.* For an issuer exempt from section 12(g) of the Act (15 U.S.C. 78*l*(g)) by reason of compliance with the provisions of § 240.12g3–2(b), the information furnished by the issuer to the Commission pursuant to § 240.12g3–2(b) since the beginning of the issuer's last fiscal year.

(6) *Other issuers.* For an issuer that is not covered by paragraphs (d)(1) through (d)(5) of this section: *Provided,* That this paragraph (d)(6) shall not be available in the case of an issuer that is required to file reports pursuant to section 13 or 15(d) of the Act (15 U.S.C. 78m or 78o(d)), the following information:

(i) The exact name of the issuer and any predecessor;

(ii) The address and telephone number of the issuer's principal executive offices;

(iii) The state of incorporation of the issuer, if it is a corporation;

(iv) The date on which the issuer's fiscal year ends;

(v) A description of each class of the issuer's securities outstanding, including its exact title; the par or stated value of the security; the number of securities or total principal amount outstanding; the class and the number of securities issuable upon exercise, exchange or conversion of a class of the issuer's securities; and the total number of securityholders of record for each class of the issuer's securities as of the end of the issuer's most recent fiscal year or a more recent date;

(vi) The exact title and class of the security that will be quoted;

(vii) The name, address and telephone number of the transfer agent;

(viii) A description of the issuer's business and facilities;

(ix) A description of products or services offered by the issuer;

(x) The full names and business addresses of the executive officers, directors, general partners, promoters, and control persons of the issuer, and the number of securities of each class of the issuer's securities that are beneficially owned by each such person as of the end of the issuer's last fiscal year or a more recent date;

(xi) One of the following alternatives:

(A) A description of any of the following events that occurred during the preceding five years involving any executive officer, director, general partner, promoter, or control person of the issuer:

(*1*) Conviction in a criminal proceeding or being named as a defendant in a pending criminal proceeding (excluding traffic violations and other minor offenses);

(*2*) Entry of an order, judgment, or decree, not subsequently reversed, suspended or vacated, by a court of competent jurisdiction, permanently or temporarily enjoining, barring, suspending or otherwise limiting involvement in any type of business, securities, commodities, or banking activities;

(*3*) Being found by a court of competent jurisdiction (in a civil action), the Commission, the Commodity Futures Trading Commission, or a state securities regulator to have violated federal or state securities or commodities law, and the judgment or finding has not been reversed, suspended, or vacated; and

(*4*) Entry of an order by a self-regulatory organization permanently or temporarily barring, suspending or otherwise limiting involvement in any type of business or securities activities;

(B) A statement from the issuer that none of these has occurred, if none has occurred; or

(C) A statement by the broker or dealer of the steps taken by it to obtain the information contained in paragraph (d)(6)(xi)(A) or (B) of this section from the issuer and that the issuer failed or refused to provide this information;

(xii) The following financial information:

(A) In the case of an issuer other than a foreign private issuer, the issuer's most recent balance sheet, statement of cash flows, statement of comprehensive income, and statement of operations (income), prepared in accordance with U.S. generally accepted accounting principles; or

(B) In the case of a foreign private issuer, the issuer's most recent balance sheet and statement of operations (income), and to the extent prepared by the issuer, statement of cash flows, statement of comprehensive income, and statement of changes in shareholders' equity, prepared in accordance with a comprehensive body of accounting principles.

(xiii) The same financial information required by paragraph (d)(6)(xii)(A) of this section for such part of the two preceding fiscal years as the issuer or any predecessor has been in existence, prepared in accordance with U.S. generally accepted accounting principles (except in the case of a foreign private issuer), *Provided* That in the case of an issuer that has emerged from reorganization pursuant to Chapter 11 of the Bankruptcy Code, the court-approved disclosure statement filed pursuant to 11 U.S.C. 1125 and the information required by this paragraph (d)(6)(xiii) from the date of the entry of the bankruptcy court order confirming the issuer's reorganization plan pursuant to 11 U.S.C. 1129, if the reorganization plan has been effective less than two years; and

(xiv) One of the following alternatives:

(A) A description of any of the following events involving the issuer or its predecessor, or any of its majority-owned subsidiaries, that have occurred in the two years preceding the publication or submission for publication of the quotation:

(*1*) A change in control of the issuer;

(*2*) Increase in equity securities involving 10% or more of the same class of securities outstanding at the time of the offering;

(*3*) Any merger, acquisition, or business combination;

(*4*) Acquisition or disposition of significant assets;

(*5*) Bankruptcy proceedings;

(*6*) Delisting by any securities exchange or the Nasdaq Stock Market; or

(B) A statement from the issuer that none of these events has occurred, if none has occurred; or

(C) A statement by the broker or dealer of the steps taken by it to obtain the information contained in paragraph (d)(6)(xi)(A) or (B) of this section from the issuer and that the issuer failed or refused to provide this information.

(e) *Supplemental information.* (1) A copy of any trading suspension order issued by the Commission pursuant to section 12(k) of the Act (15 U.S.C. 78*l*(k)) for any securities of the issuer or its predecessor (if any) during the 12 months preceding the date of the publication or submission of the quotation, or a copy of the public release issued by the Commission announcing such trading suspension order.

(2) A copy or a written record of any other material information (including adverse information) regarding the issuer which comes to the broker's or dealer's knowledge or possession before the publication or submission of a quotation.

(f) *Significant relationship information.* (1) A statement describing any direct or indirect affiliation between the issuer and the broker or dealer publishing or submitting the quotation for publication, or any of its associated persons.

(2) A statement whether the quotation is being published or submitted on behalf of any other broker or dealer, or any of its associated persons, and, if so, the name of such broker or dealer, or the associated person, and the terms of the arrangement.

(3) A statement whether the broker or dealer has received or has any arrangement to receive any monetary or other consideration from any person in connection with publishing the quotation and, if so, a description of the consideration and the name of the person providing the consideration.

(4) A statement whether the quotation directly or indirectly is being published or submitted for publication on behalf of the issuer, or any executive officer, director, general partner, promoter, control person, or any person, directly or indirectly the beneficial owner of more than 10 percent of the outstanding units or shares of any equity security of the issuer, and, if so, the name of such person, and the basis for any exemption under the federal securities laws for any sales of such securities on behalf of such person.

(g) *Exceptions.* The provisions of this section shall not apply to the publication or submission for publication of a quotation for:

(1) A security admitted to trading on a national securities exchange and which is traded on such an exchange on the same day as, or on the business day next preceding, the day the quotation is published;

(2) A security that is listed in the Nasdaq Stock Market, and such authorization is not suspended, terminated, or prohibited;

(3) An exempted security, as defined in section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)), or a municipal security as defined in section 3(a)(29) of the Act (15 U.S.C. 78c(a)(29)); or

(4) A security, solely on behalf of a customer (other than a person acting as or for a dealer), that represents the customer's order or indication of interest and does not involve the solicitation of the customer's order or interest.

(h) *Preservation of documents and information.* The broker or dealer shall preserve the information specified in paragraphs (d), (e), and (f) of this section in accordance with the provisions of § 240.17a–4(b)(11): *Provided, however,* That if the broker or dealer satisfied the requirements of paragraph (d) of this section by obtaining and reviewing such information on the EDGAR system, the broker or dealer shall be deemed to have preserved the information described in paragraph (d) of this section if the broker or dealer has the means to access such information electronically for the period described by § 240.17a–4(b)(11).

(i) *Information submitted to the NASD.* (1) At least three business days before the quotation is published, the broker or dealer shall submit to the NASD, in accordance with NASD rules, the information required in paragraphs (d), (e), and (f) of this section.

(2) For any security of an issuer included in paragraph (d)(3) of this section:

(i) A broker or dealer shall be in compliance with the requirement to obtain current reports filed by the issuer if the broker or dealer obtains all current reports filed with the Commission by the issuer as of a date up to three business days in advance of the earlier of the date of submission of the quotations to the quotation medium and the date of submission of information to the NASD pursuant to NASD rules; and

(ii) A broker or dealer shall be in compliance with the requirement to obtain the annual, quarterly, and current reports filed by the issuer, if the broker or dealer has made arrangements to receive all such reports when filed by the issuer and it has regularly received reports from the issuer on a timely basis.

(j) *Information available upon request.* A broker or dealer that publishes any quotation for a security pursuant to this section shall make the information specified in paragraphs (d), (e), and (f) of this section promptly available upon request to any person. Providing such information to others pursuant to this paragraph (j) shall not constitute a representation by such broker or dealer that the information is accurate, but it shall constitute a representation by such broker or dealer that the information is current in relation to the date recorded pursuant to paragraph (c)(3)(iii) of this section, that the broker or dealer has a reasonable basis under the circumstances for believing the information is accurate in all material respects, and that the information was obtained from sources which the broker or dealer has a reasonable basis for believing are reliable.

(k) *Definitions.* For purposes of this section:

(1) *Initial quotation* means the first quotation for a security published or submitted for publication in a quotation medium by the broker or dealer.

(2) *Issuer,* in the case of quotations for American Depositary Receipts, means the issuer of the deposited shares represented by such American Depositary Receipts.

(3) *NASD* means the National Association of Securities Dealers, Inc., including its wholly owned subsidiaries (including, but not limited to, NASD Regulation, Inc. and The Nasdaq Stock Market, Inc.).

(4) *Nasdaq Stock Market* means the Nasdaq National Market and the Nasdaq SmallCap Market, both operated by the Nasdaq Stock Market, Inc.

(5) *Promoter* has the same meaning contained in § 230.405 of this chapter.

(6) *Quotation* means any bid or offer at a specified price with respect to a security, or any indication of interest by a broker or dealer in receiving bids or offers from others for a security, or any indication by a broker or dealer that advertises its general interest in buying or selling a particular security.

(7) *Quotation medium* means any:

(i) System of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers; or

(ii) Publication or electronic communications network, or other device that is used by brokers or dealers to make known to others their interest in transactions in any security,

including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

(8) *Securities Act* means the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*).

(l) Unless the broker or dealer knows or has reason to know that more current information is available, the information specified in paragraph (d)(6) of this section will be presumed to be current, if:

(1) The balance sheet is as of a date less than 16 months before the publication or submission of the quotation, the statement of cash flows, statement of comprehensive income, and statement of operations (income) (and in the case of foreign issuers, the statement of changes in shareholders' equity) are for the 12 months preceding the date of such balance sheet; and if such balance sheet is not as of a date less than 6 months before the publication or submission of the quotation, it shall be accompanied by an additional statement of cash flows, statement of comprehensive income, and statement of operations (and in the case of foreign issuers, statement of changes in shareholders' equity) for the period from the date of such balance sheet to a date less than 6 months before the publication or submission of the quotation.

(2) Other information regarding the issuer specified in paragraph (d)(6) of this section is as of a date within 12 months prior to the publication or submission of the quotation.

(m) *Transition provision.* A broker or dealer that was publishing a quotation for a security on the business day immediately prior to [effective date of amendments in the final rule] may continue to publish quotations for such security without complying with paragraph (c) of this section until the occurrence of any of the events set forth in paragraphs (b)(2) or (b)(3) of this section.

(n) This section shall not prohibit any publication or submission of any quotation if the Commission, upon written request or upon its own motion, exempts such quotation either unconditionally or on specified terms and conditions, as not constituting a fraudulent, manipulative or deceptive practice comprehended within the purpose of this section.

3. Section 240.17a–4 is amended by adding paragraph (b)(11) to read as follows:

§ 240.17a–4. Records to be preserved by certain exchange members, brokers and dealers.

* * * * *

(b) * * *

(11) The records required to be obtained pursuant to § 240.15c2–11.

* * * * *

Dated: February 17, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–4460 Filed 2–24–98; 8:45 am]

BILLING CODE 8010–01–P

federal register

Wednesday
February 25, 1998

Part III

Department of Housing and Urban Development

24 CFR Part 570

Hispanic-Serving Institutions Work Study Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 570

[Docket No. FR–4269–I–01]

RIN 2528–AA07

Hispanic-Serving Institutions Work Study Program

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Interim rule.

SUMMARY: On April 9, 1997, HUD published a final rule for the Hispanic-serving Institutions Work Study Program (HSI–WSP). That rule established, among other things, eligibility for the program. Eligibility was limited to certain public and private non-profit two-year institutions of higher education. This interim rule broadens eligibility to a larger universe of these institutions.

DATES: Effective Date: March 27, 1998.
Comment Due Date: April 27, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jane Karadbil, Office of University Partnerships. U.S. Department of Housing and Urban Development, Room 8110, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1537, extension 218. Hearing-or speech-impaired individuals may call HUD's TTY number, (202) 708–1455, or 1–800–877–8399 (Federal Information Relay Service TTY). (Other than the ''800'' number, these are not toll-free numbers.) Ms. Karadbil can also be contacted via the Internet at Jane__.R.__Karadbil@hud.gov.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in this interim rule were submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2528–0182. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

II. Background

The HSI–WSP is authorized by section 107(c) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5307, 88 Stat. 647). This section provides authority to ''* * * make grants to institutions of higher education * * * for the purposes of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time * * * undergraduate programs in community or economic development, community planning, or community management.''

On April 9, 1997 (62 FR 17492), HUD issued a final rule governing the program. The final rule limited eligibility for HUD's HSI–WSP to certain Hispanic-serving Institutions (HSIs). Specifically, only public or private institutions of higher education that offer two-year associate degrees and qualify as HSIs are eligible for HSI–WSP. While the statute authorizing the program does not require it, HUD decided to determine eligibility by using the definition of an HSI contained in section 316 of the Higher Education Amendments of 1992 (20 U.S.C. 1059c; 106 Stat. 448, 473). The Act defines an HSI as: an institution that has an enrollment of undergraduate full-time students that is at least 25 percent Hispanic; in which not less than 50 percent of the Hispanic students are low-income individuals (i.e., 150 percent of the poverty level) who are first generation college students (i.e., whose parent(s) did not complete a baccalaureate degree) and another 25 percent are either low-income individuals or first generation college students. The U.S. Department of Education determines the eligibility of specific institutions as HSIs and issues a list of institutions meeting this definition. HUD's final rule noted that a list of HSI–WSP-eligible community colleges that are included in the U.S. Department of Education's list of HSIs would appear with each Notice of Funding Availability (NOFA) for the program. Only institutions on this list, or HSI–WSP-eligible institutions subsequently added to the U.S. Department of Education's list prior to that NOFA's application deadline, are eligible to apply for HSI–WSP funds.

III. A Change in the Procedure To Determine Eligibility

HUD has decided to eliminate the use of the U.S. Department of Education's list to determine eligibility and, instead, allow institutions to certify that they meet the statutory definition.

The process for an institution to be put on the U.S. Department of Education's list has several steps. First, an institution must apply for and receive Title III (of the Higher Education Amendments of 1992). (This eligibility applies to a broader universe of institutions, not just HSIs, and allows these institutions to compete for Title III grants.) Second, with this eligibility, an institution must apply for the U.S. Department of Education's Hispanic-serving Institutions Program (which is a capacity building program for institutions of higher education, not a work study program). Third, the U.S. Department of Education must receive, as part of the application for their HSI program, a certification from the institution that it meets the statutory HSI definition. Fourth, as a result of this certification, the U.S. Department of Education puts the institution on its HSI list. Based on the language in the HSI–WSP final rule, only when all of these steps have occurred is the institution eligible for HUD's HSI–WSP.

HUD's use of the U.S. Department of Education's list means that some Hispanic-serving institutions are not eligible for HSI–WSP for one of two reasons. First, institutions that meet the eligibility requirements but do not apply for the U.S. Department of Education's program (and are therefore not on the U.S. Department of Education's list) cannot apply for the HUD program. Second, because the U.S. Department of Education had no funding for new grants for its HSI Program in FY 1996, FY 1997, and FY 1998, there was no call for applications for three years, and, thus, no additional determinations of HSI eligibility which could be added to the list of HSIs that Department produces. HUD has determined that it may be unfairly penalizing institutions if it relies on a potentially out-of-date and overly restrictive eligibility list. HUD has, therefore, decided not to base eligibility on the U.S. Department of Education's list, but instead allow applicants to certify to HUD that they are eligible to apply for the HSI–WSP.

IV. Justification for an Interim Rule

In general, HUD publishes a rule for public comments before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for

exceptions from the general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest.'' (24 CFR 10.1)

The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is contrary to the public interest. The purpose of the rule is to expand eligibility to additional institutions of higher education. If the rule were issued for public comment, it could not take effect before the next round of competition, preventing otherwise eligible schools from competing. This, in turn, would deny eligible students from entering these community colleges and moving on to careers in community building. Although the rule will take effect 30 days from the date of publication, HUD solicits comments from the public on this interim rule.

V. Findings and Certifications

Environmental Impact

In accordance with 24 CFR 50.19(b)(9) of the HUD regulations, the policies and procedures contained in this rule relate only to training grants and technical assistance, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Regulatory Flexibility

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing, certifies that it will not have a significant economic impact on a substantial number of small entities. The rule only affects applicants and participants in the Hispanic-Serving Institutions Work Study Program and will not have any meaningful economic impact on any other entity.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. Specifically, the rule solicits participation by institutions of higher education in creating community development work study programs for some of their economically disadvantaged and minority students. The rule does not impinge upon the relationships between the Federal government and State or local governments.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This interim rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

The Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program number is 14.513.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, 24 CFR part 570, subpart E is amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart E—Special Purpose Grants

1. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

2. Section 570.416 is amended by revising the definition of ''Hispanic-serving institution'' in paragraph (b) to read as follows:

§ 570.416 Hispanic-serving institutions work study program.

* * * * *

(b) Definitions. * * *

* * * * *

Hispanic-serving institution is an institution of higher education that certifies to the satisfaction of the Secretary that it meets the criteria set out at 20 U.S.C. 1059c(b)(1), including the following: An institution that has an enrollment of undergraduate full-time students that is at least 25 percent Hispanic; in which not less than 50 percent of the Hispanic students are low-income individuals (i.e., their families' taxable income for the preceding year did not exceed 150 percent of the poverty level) who are first generation college students; and in which another 25 percent are either low-income individuals or first generation college students.

* * * * *

Dated: January 22, 1998.

Paul A. Leonard,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 98–4718 Filed 2–24–98; 8:45 am]

BILLING CODE 4210–62–P

federal register

Wednesday
February 25, 1998

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1000, et al.

Milk in the New England and Other Marketing Areas; Proposed Rule Corrections

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1000

[DA–97–12]

Milk in the New England and Other Marketing Areas; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects four inadvertent errors which were made in a proposed rule published in the **Federal Register** of January 30, 1998 (63 FR 4802), regarding Federal milk marketing orders.

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

Corrections

In proposed rule FR Doc. 98–1758, beginning on page 4802 in the **Federal Register** issue of January 30, 1998, the following corrections to sections 1000.15, 1000.40, 1000.44, and 1000.52 are made.

1. On page 4969, in the third column, § 1000.15, paragraph (b)(1) is corrected to read as follows:

§ 1000.15 Fluid milk product.

(a) * * *

(b) * * *

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or meal replacement, products packaged in all-metal, hermetically-sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

2. Beginning on page 4971, in the third column, § 1000.40, paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (b)(3) and (b)(4), respectively, and a new paragraph (b)(2) is added to read as follows:

§ 1000.40 Classes of utilization.

* * * * *

(b) * * *

(1) * * *

(2) In fluid milk that is packaged in all-metal, hermetically-sealed containers;

§ 1000.44 [Corrected]

3. On page 4974, in the first column, § 1000.44, paragraphs (a)(1)(iv) and (a)(2), the reference ''(a)(3)(iv)'' is corrected to read as ''(a)(3)(v)''.

§ 1000.52 [Corrected]

4. On pages 4976 through 5020, § 1000.52, the following table entries were published incorrectly and are corrected to read as follows:

County/parish	State	Option 1A differential	Option 1B differential (per year)				
			1999	2000	2001	2002	2003 & beyond
ARCHULETA	CO	1.90	2.13	2.06	2.00	1.93	1.86
EL PASO	CO	2.55	2.45	2.18	1.90	1.63	1.35
ELBERT	CO	2.45	2.43	2.13	1.83	1.53	1.23
LA PLATA	CO	1.90	2.13	2.06	1.98	1.91	1.84
LAKE	CO	1.90	2.29	2.08	1.87	1.66	1.45
MONTEZUMA	CO	1.90	2.12	2.04	1.97	1.89	1.81
DE KALB	GA	3.10	2.96	2.83	2.71	2.58	2.46
DECATUR	GA	3.45	3.32	3.24	3.15	3.07	2.99
MACON	GA	3.30	3.15	3.01	2.88	2.74	2.61
MADISON	GA	3.10	2.93	2.79	2.64	2.50	2.35
MARION	GA	3.30	3.16	3.03	2.91	2.78	2.66
LA SALLE	IL	1.80	1.62	1.63	1.65	1.66	1.67
LAKE	IL	1.80	1.43	1.46	1.49	1.52	1.55
MACON	IL	1.80	1.73	1.71	1.70	1.68	1.66
MACOUPIN	IL	2.00	1.86	1.80	1.73	1.67	1.61
MADISON	IL	2.00	1.93	1.85	1.78	1.70	1.62
MARION	IL	2.00	1.84	1.76	1.68	1.60	1.52
MARSHALL	IL	1.80	1.64	1.67	1.70	1.73	1.76
MASON	IL	1.80	1.63	1.65	1.68	1.70	1.72
MASSAC	IL	2.20	2.03	1.96	1.89	1.82	1.75
MCDONOUGH	IL	1.80	1.60	1.59	1.59	1.58	1.57
MCHENRY	IL	1.80	1.37	1.40	1.42	1.45	1.48
MCLEAN	IL	1.80	1.75	1.75	1.74	1.74	1.74
DE KALB	IN	1.80	1.62	1.54	1.45	1.37	1.29
DEARBORN	IN	2.20	1.98	1.85	1.71	1.58	1.45
DECATUR	IN	2.20	1.81	1.73	1.64	1.56	1.47
LA PORTE	IN	1.80	1.65	1.60	1.54	1.49	1.44
LAGRANGE	IN	1.80	1.61	1.52	1.44	1.35	1.26
LAKE	IN	1.80	1.55	1.55	1.56	1.56	1.56
SCOTT	IN	2.20	1.89	1.77	1.66	1.54	1.43
SHELBY	IN	2.00	1.82	1.74	1.66	1.58	1.50
SPENCER	IN	2.20	2.00	1.90	1.79	1.69	1.58
ST. JOSEPH	IN	1.80	1.63	1.55	1.48	1.40	1.33
MARION	KS	2.20	2.10	1.90	1.71	1.51	1.31
MARSHALL	KS	2.00	1.81	1.71	1.60	1.50	1.39
MCPHERSON	KS	2.20	2.10	1.90	1.69	1.49	1.29
MADISON	KY	2.20	1.98	1.85	1.73	1.60	1.47
MAGOFFIN	KY	2.20	2.08	1.97	1.85	1.74	1.63
MARION	KY	2.20	1.97	1.83	1.70	1.56	1.42
MARSHALL	KY	2.40	2.27	2.15	2.04	1.92	1.80
MARTIN	KY	2.20	2.09	1.99	1.89	1.79	1.69
MASON	KY	2.20	1.99	1.88	1.76	1.65	1.53
MCCRACKEN	KY	2.40	2.27	2.15	2.03	1.91	1.79

County/parish	State	Option 1A differential	Option 1B differential (per year)				
			1999	2000	2001	2002	2003 & beyond
MCCREARY	KY	2.40	2.27	2.09	1.92	1.74	1.56
MCLEAN	KY	2.20	2.02	1.92	1.83	1.73	1.64
LA SALLE	LA	3.40	3.19	2.98	2.78	2.57	2.36
LAFAYETTE	LA	3.60	3.44	3.23	3.01	2.80	2.59
LAFOURCHE	LA	3.60	3.41	3.18	2.94	2.71	2.47
SOMERSET	MD	3.00	2.64	2.46	2.27	2.09	1.91
ST. MARY'S	MD	3.00	2.77	2.52	2.26	2.01	1.75
MAHNOMEN	MN	1.65	1.13	1.05	0.98	0.90	0.83
MARSHALL	MN	1.65	1.12	1.05	0.97	0.90	0.82
MARTIN	MN	1.70	1.20	1.20	1.21	1.21	1.21
MCLEOD	MN	1.70	1.14	1.14	1.14	1.14	1.14
SCOTT	MN	1.70	1.15	1.15	1.16	1.16	1.17
SHERBURNE	MN	1.70	1.14	1.14	1.13	1.13	1.13
SIBLEY	MN	1.70	1.14	1.15	1.15	1.16	1.16
ST. LOUIS	MN	1.65	1.18	1.16	1.15	1.13	1.11
MACON	MO	1.80	1.67	1.62	1.56	1.51	1.46
MADISON	MO	2.20	2.09	1.99	1.88	1.78	1.68
MARIES	MO	2.00	2.05	1.92	1.78	1.65	1.51
MARION	MO	1.80	1.65	1.59	1.52	1.46	1.39
MCDONALD	MO	2.20	2.01	1.82	1.64	1.45	1.27
SALINE	MO	2.00	1.84	1.76	1.67	1.59	1.51
MADISON	MT	1.60	1.45	1.31	1.16	1.02	0.87
MCCONE	MT	1.60	1.50	1.40	1.30	1.20	1.10
MADISON	NE	1.80	1.64	1.53	1.41	1.30	1.19
MCPHERSON	NE	1.80	1.27	1.22	1.16	1.11	1.05
SAN JUAN	NM	1.90	2.13	2.06	1.98	1.91	1.84
SAN MIGUEL	NM	2.35	2.26	2.16	2.07	1.97	1.88
SANDOVAL	NM	2.35	2.27	2.19	2.12	2.04	1.96
MACON	NC	2.95	2.76	2.59	2.42	2.25	2.08
MADISON	NC	2.95	2.71	2.50	2.28	2.07	1.85
MARTIN	NC	3.20	3.04	2.86	2.67	2.49	2.30
MCDOWELL	NC	2.95	2.71	2.49	2.27	2.05	1.83
MAJOR	OK	2.40	2.35	2.11	1.87	1.63	1.39
MARSHALL	OK	2.80	2.68	2.37	2.05	1.74	1.42
MAYES	OK	2.40	2.35	2.11	1.86	1.62	1.38
MCCLAIN	OK	2.60	2.50	2.24	1.97	1.71	1.44
MCCURTAIN	OK	2.80	2.71	2.42	2.13	1.84	1.55
MCINTOSH	OK	2.60	2.51	2.25	1.98	1.72	1.46
MARSHALL	SD	1.70	1.15	1.10	1.06	1.01	0.96
MCCOOK	SD	1.70	1.42	1.35	1.27	1.20	1.12
MCPHERSON	SD	1.70	1.15	1.10	1.05	1.00	0.95
DE KALB	TN	2.60	2.43	2.25	2.08	1.90	1.73
DECATUR	TN	2.60	2.47	2.34	2.22	2.09	1.96
MACON	TN	2.60	2.36	2.17	1.97	1.78	1.59
MADISON	TN	2.60	2.49	2.39	2.28	2.18	2.07
MARION	TN	2.80	2.62	2.46	2.31	2.15	2.00
MARSHALL	TN	2.60	2.44	2.27	2.11	1.94	1.78
MAURY	TN	2.60	2.44	2.27	2.11	1.94	1.78
MCMINN	TN	2.80	2.62	2.47	2.33	2.18	2.03
MCNAIRY	TN	2.80	2.63	2.50	2.36	2.23	2.09
DE WITT	TX	3.60	3.34	3.11	2.87	2.64	2.40
DEAF SMITH	TX	2.40	2.28	2.07	1.85	1.64	1.43
DELTA	TX	3.00	2.81	2.46	2.10	1.75	1.40
DENTON	TX	3.00	2.84	2.51	2.19	1.86	1.54
EL PASO	TX	2.25	2.15	1.95	1.75	1.55	1.35
ELLIS	TX	3.00	2.89	2.62	2.35	2.08	1.81
LA SALLE	TX	3.45	2.71	2.62	2.52	2.43	2.34
LAMAR	TX	3.00	2.81	2.46	2.12	1.77	1.42
LAMB	TX	2.40	2.28	2.07	1.85	1.64	1.43
LAMPASAS	TX	3.15	3.02	2.74	2.45	2.17	1.88
MADISON	TX	3.30	3.14	2.92	2.69	2.47	2.25
MARION	TX	3.00	2.88	2.60	2.33	2.05	1.77
MARTIN	TX	2.40	2.71	2.47	2.24	2.00	1.76
MASON	TX	2.80	2.46	2.32	2.18	2.04	1.90
MATAGORDA	TX	3.60	3.38	3.19	2.99	2.80	2.60
MAVERICK	TX	3.30	2.67	2.55	2.42	2.30	2.17
MCCULLOCH	TX	2.80	2.45	2.29	2.14	1.98	1.83
MCLENNAN	TX	3.15	3.05	2.79	2.52	2.26	2.00
MCMULLEN	TX	3.45	2.72	2.64	2.57	2.49	2.41
EMPORIA CITY	VA	3.00	2.87	2.66	2.45	2.24	2.03
FRANKLIN CITY	VA	3.00	2.76	2.60	2.43	2.27	2.10

County/parish	State	Option 1A differential	Option 1B differential (per year)				
			1999	2000	2001	2002	2003 & beyond
FREDERICK	VA	2.80	2.77	2.46	2.15	1.84	1.53
PITTSYLVANIA	VA	2.80	2.70	2.47	2.24	2.01	1.78
POWHATAN	VA	3.10	2.81	2.54	2.27	2.00	1.73
MARION	WV	2.10	1.93	1.86	1.78	1.71	1.64
MARSHALL	WV	2.10	1.92	1.85	1.77	1.70	1.62
MASON	WV	2.20	2.09	1.98	1.88	1.77	1.67
MCDOWELL	WV	2.80	2.56	2.35	2.13	1.92	1.71

Dated: February 19, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–4726 Filed 2–24–98; 8:45 am]

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Corrections

Federal Register

Vol.63, No. 37

Wednesday, February 25, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

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

[DA–97–12]

Milk in the New England and Other Marketing Areas; Proposed Rule and Opportunity to File Comments, Including Written Exceptions, on Proposed Amendments to Marketing Agreements and Orders

Correction

In proposed rule document 98–1758, beginning on page 4802 in the issue of Friday, January 30, 1998, page 4954 was inadvertently omitted. The online version is correct. Page 4954 should read as follows:

* * * * *

administrators be given the authority to adjust shipping requirements in all orders.

A number of comments addressed the issue of where a plant should be regulated and whether there should be a ''lock-in'' provision which would keep a distributing plant regulated under the order where it is located rather than where it may have the most sales. SDFA supports the adoption of lock-in provisions in the consolidated southeast orders. Prairie Farms Dairy, Inc. states that pool distributing plants should be regulated where located rather than where route disposition occurs. Another cooperative association, Milk Marketing Inc. (MMI), states that competition for local milk supply and a competitive pay price with neighboring plants is much more important to both producers and processors than a price that is competitive with other plants that compete for sales in a given area. Therefore, MMI recommends regulating a distributing plant in the market where it is located rather than on the location of its sales. MMI contends that the Federal milk order program should be concerned with attracting milk to a plant, not the retail location. The cooperative states that plants in unregulated areas should continue to be regulated based on sales areas.

Some comments received addressed supply plant requirements. SDFA recommends that for the southeastern orders the supply plant shipping requirement be 60% of a plant's receipts during July through November and 40% during December through June. However, SDFA also acknowledges that specific exceptions to this principle may be necessary to accommodate specific needs and should be considered on a case by case basis.

SDFA states that supply plant performance requirements should not be changed in an effort to allow all Grade A milk to be included in a marketwide pool. Such a change, it contends, would result in disorderly marketing and jeopardize the viability of local supplies. SDFA requested year-round shipping requirements for supply plants under Orders 5, 6, and 7.

SDFA also states that automatic pooling should be provided for manufacturing or receiving plants located in the marketing area if the plant is operated by a cooperative association, but only if the cooperative has a substantial association with the market.

MMI maintains that southeastern orders would be well-served by provisions which allow reserve supply plants in the North and West to participate in higher blend prices throughout the year, in exchange for greater assurance of a milk supply in the short production months when additional milk is needed. Land O'Lakes (LOL) recommended the elimination of shipping requirements for supply plants, but suggested that supply plant operators make a commitment to supply the market when additional milk is needed. LOL also supports the adoption of a ''call'' provision in each order that would allow the market administrator to require supply plant shipments on an as-needed basis.

Another cooperative operating in the Southeast wrote that reserve supply plant qualification should be based on total cooperative performance but that such plants should not be required to be located in the marketing area. This cooperative contends that if a cooperative is performing a balancing function for the market, it should not be discriminated against just because its plant is not located in the marketing area.

Suggestions were also received concerning certain specialty plants that are located in the Southeast. SDFA recommended amending the *route disposition* definition to accommodate a specialty fluid milk plant in Jacksonville that disposes of long shelf life dairy products. SDFA states that although a large portion of its fluid supply is disposed for Class I use, because of the nature of its business, it is likely that the plant would not meet the 50% route disposition requirement for pool status.

Proposal: The Secretary proposes that the pool plant provisions for the Appalachian, Florida, and Southeast orders under consideration should closely follow the provisions now contained in the southeast orders. The performance standards proposed are appropriate for the needs of these seasonally-deficit markets.

Section 7(a) of each Federal milk order describes the pooling standards for a distributing plant. To qualify for pooling under each of the 3 orders, a distributing plant must dispose of 50 percent of the total fluid milk products received at the plant as route disposition. In addition, at least 10 percent of the plant's receipts must be disposed of as route disposition in the marketing area. These standards would indicate that a distributing plant is closely associated with the fluid market and, therefore, should be part of the marketwide pool.

Paragraph (b) of Section 7 would accommodate the pooling of plants that specialize in aseptically-packaged products. There are at least two such plants in the southeast markets: the Ryan Foods Company plants in Jacksonville, Florida and Murray, Kentucky.

Unlike a typical distributing plant, a plant specializing in aseptically packaged products may have a more erratic processing schedule, reflecting the longer shelf life of the products packaged at the plant. Consequently, a plant's Class I utilization may vary considerably from month to month. In the past, such variability has resulted in shifting pool status for some of these plants from one order to another. In some months, the plant may have been partially regulated, even though all of the milk received at the plant was priced under the order. This type of regulatory instability is not conducive to orderly marketing. To guarantee greater regulatory stability for these plants, they should be fully regulated pool plants if they are located in the marketing area and have route disposition in the marketing area. However, if the plant has no route disposition in the marketing area during the month, the plant operator may request nonpool status for the plant.

The Secretary proposes that each of the three orders also should specify pooling standards for a supply plant. For the Appalachian and Southeast orders, a supply plant must ship at least 50 percent of the milk physically received during the month from dairy farmers and cooperative bulk tank handlers. In the case of the Florida order, the shipping percentage should be slightly higher at 60 percent.

Unlike supply plant provisions in other orders, the supply plant provisions in the three southeast orders should not recognize shipments directly from producers' farms as qualifying shipments for a supply plant. At the present time, there are no plants qualifying as ''pool supply plants'' under any of the southeast orders.

Almost all of the plants that balance the fluid needs of the Southeast are operated by cooperative associations. These ''balancing plants'' qualify for pooling based upon the performance of the cooperative association and not based upon shipments from the plant alone. The Secretary proposes that balancing plant provisions should be maintained for the three southeast orders.

A balancing plant may qualify based upon shipments directly from producers' farms as well as shipments from the plant. To qualify as a balancing plant, the plant must be located within the order's marketing area. This requirement ensures that milk pooled through the balancing plant is economically available to processors of fluid milk if needed. However, in the

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Part V

Department of Education

Privacy Act of 1974; Systems of Records; Notice

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Systems of Records

AGENCY: Department of Education.

ACTION: Notice of deleted systems of records under the Privacy Act of 1974.

SUMMARY: The Department deletes 25 systems of records in its inventory of systems of records subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. These deletions are a result of reorganizations, program terminations or transfers to other agencies.

DATES: This notice is effective February 25, 1998.

FOR FURTHER INFORMATION CONTACT: Chiquitta Thomas, Privacy Act Officer, Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, 600 Independence Avenue, SW, Room 5624, General Services Administration (GSA) Regional Office Building #3, Washington, DC 20202–4561. Telephone: (202) 708–9265. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The Department of Education has reviewed its inventory of systems of records and found that 25 of these systems of records are no longer being maintained by the Department due to reorganizations, program terminations or transfers to other agencies that have taken place since the notices were last published. Therefore, the Department deletes these 25 systems of records, listed below, from its inventory of systems of records. These deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of an altered systems report. The Department does not plan to reinstate these systems in the future.

1. The following systems of records are no longer being maintained by the Department of Education and, therefore, are deleted from the Department's inventory of systems of records:

System No.	System name	Publication date
18–05–0002	Elementary School Essays on the Bicentennial of the U.S. Constitution. ED/OHA/DUS	52 FR 8954, March 20, 1987.
18–09–0004	Federal Private Relief Legislation. ED/OGC	46 FR 29605, June 2, 1981.
18–11–0001	Department of Education Motor Vehicle Operator Records. OASM	46 FR 29608, June 2, 1981.
18–11–0022	Volunteer EEO Support Personnel Records. ED/AMS/EEOS	46 FR 29621, June 2, 1981.
18–15–0001	Consultants for Federal Technical Assistance Program, Vocational Rehabilitation Services. ED/OSERS/RSA.	46 FR 29623, June 2, 1981.
18–15–0002	Office of Rehabilitation Services Mailing Lists. ED/OSERS/RSA	46 FR 29623, June 2, 1981.
18–15–0003	Mailing Keys. ED/OSERS/RSA	46 FR 29624, June 2, 1981.
18–15–0004	Correspondence Files. ED/OSERS/RSA	46 FR 29625, June 2, 1981.
18–40–0010	Law Enforcement Education System. ED/OPE/OSFA. The information in this system of records is included under system 18–40–0045—Student Financial Assistance Collection Files.	48 FR 55159, December 9, 1983.
18–40–0011	Upward Bound Information Systems. ED/ASDE/HE	46 FR 29631, June 2, 1981.
18–40–0012	Migration and Refugee Assistance Act of 1962—United States Loan Program for Cuban Students. ED/OPE/OSFA. The information in this system of records is included under system 18–40–0045—Student Financial Assistance Collection Files.	48 FR 55159, December 9, 1983.
18–40–0013	National Defense Direct Student Loan Program—Request for Cancellation of Loan on Ground of Permanent and Total Disability. ED/OPE/OSFA.	48 FR 55159, December 9, 1983.
18–40–0016	Pell Grant Alternate Disbursement System. ED/OPE/OSFA	48 FR 55160, December 9, 1983.
18–40–0034	Teacher Corps Application for Intern Teacher Position. ED/OERI/EPDD	46 FR 29647, June 2, 1981.
18–40–0036	Oral History of the Office of Education as Dictated by Former Commissioners of Education. ED/OL.	46 FR 29648, June 2, 1981.
18–40–0080	Training and Development Awards for Vocational Education Personnel— Applications and Awards. ED/OVAE.	46 FR 29653, June 2, 1981.
18–40–0081	Women Administrators in Vocational Education. ED/OVAE	46 FR 29654, June 2, 1981.
18–42–0016	Northwest Regional Educational Laboratory, Experience Based Career Education Record System. ED/NIE.	46 FR 29655, June 2, 1981.
18–42–0019	Far West Laboratory Experience Based Career Education Records System. ED/OERI/NIE.	46 FR 29656, June 2, 1981.
18–42–0056	National Institute of Education, Sources and Effects of Teacher Expectations. ED/OERI/NIE.	46 FR 29657, June 2, 1981.
18–42–0078	Travel—Official Travel of NIE Personnel. ED/OERI/NIE	46 FR 29658, June 2, 1981.
18–42–0079	NIE Controlled Correspondence. ED/OERI/NIE	46 FR 29658, June 2, 1981.
18–42–0082	National Council on Educational Research Mailing Lists. ED/OERI/NIE	46 FR 29659, June 2, 1981.
18–42–0083	National Council on Educational Research—Current and Past Information on Members of the Council and Consultants. The information in this system of records is included under 18–01–0002—Federal Advisory Council Membership Files.	46 FR 29660, June 2, 1981.

2. The following system of records was transferred to another Federal agency, and, therefore, is deleted from the Department of Education's inventory of systems of records:

System No.	System name	Publication date
18–40–0018	Mutual Educational and Cultural Exchange Act/Teacher Exchange Participants and Applicants. ED/OPE/IE. This program was transferred to USIA in 1983.	47 FR 16832, April 20, 1982.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Dated: February 19, 1998.

Donald Rappaport,

Chief Financial and Chief Information Officer.

[FR Doc. 98–4794 Filed 2–24–98; 8:45 am]

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federal register

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February 25, 1998

Part VI

International Development Cooperation Agency

Overseas Private Investment Corporation

Request for Comments on Draft Environmental Handbook; Notice

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Request for Comments on Draft Environmental Handbook; Notice.

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Notice of publication and request for comments.

SUMMARY: The Overseas Private Investment Corporation (OPIC, or the ''Corporation'') has published a second version of its Environmental Handbook (Handbook) which represents the current environmental policies and procedures in use at the Corporation. Section 231(n) of the Foreign Assistance Act of 1961 (22 U.S.C. 2191(k)(2), as amended), requires OPIC to: ''Refuse to insure, reinsure, guarantee, or finance any investment in connection with a project which the Corporation determines will pose an unreasonable or major environmental, health, or safety hazard, or will result in the significant degradation of national parks or similar protected areas.''

An earlier draft of the Handbook was published as a notice in the **Federal Register** on February 6, 1997. Based on the comments received in response to that notice, OPIC has revised the Handbook. Comments are now invited on the revised version of the Handbook that appears in this document.

The Handbook consolidates a number of sources of information into a single, easy-to-review and easily accessible document. The Handbook is also available on OPIC's Internet web site at WWW.OPIC.GOV.OPIC will consider further revision of the Handbook based on the comments we receive.

DATES: Comments must be received on or before June 25, 1998.

ADDRESSES: Comments should be submitted to Mr. Jonathan Sohn, Department of Financial Management and Statutory Review, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527, or via Internet e-mail at JSOHN@OPIC.GOV.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Sohn by telephone at (202) 408–6265, by facsimile transmission at (202) 218–0288, or via Internet e-mail at JSOHN@OPIC.GOV.

SUPPLEMENTARY INFORMATION: Message from OPIC President George Muñoz:

OPIC has a 27-year history of mobilizing private capital and skills in the economic and social development of less developed nations while supporting the foreign policy and economic goals of the United States. OPIC is releasing this draft of its Environmental Handbook for public comment as part of a process to ensure we are meeting the mandate of our statute to decline support for ''a project which * * * will pose an unreasonable or major environmental, health or safety hazard.'' OPIC has been a leader among agencies in international investment in fairly applying environmental standards. The new draft guidelines were developed to clarify current policies and strengthen them where appropriate.

While it is difficult to address all concerns, our goal is a fair balance between the public's interest in environmental safeguards and business' legitimate need to make prompt decisions as they consider international projects—projects which are critical for the fulfillment of OPIC's mission. OPIC is also mindful that companies supported by our foreign counterparts often do not have to meet comparable environmental standards. This will be an important issue going forward. OPIC is committed to leveling the playing field through international harmonization of standards for all countries.

Developing nations are confronted with a range of environmental challenges. We believe that in the long run a transparent decision-making process involving public disclosure of environmental impact assessments is good for business and good for sustainable development. It can promote consensus building and broad support for the long-term economic and environmental sustainability of OPIC-supported projects in developing countries.

The new draft guidelines include:

- A 60-day public comment period to review a project's environmental impact assessment;
- Adoption of the new 1997 World Bank draft guidelines;
- Clarification of prohibitions; and
- An independent audit requirement for environmentally sensitive projects.

OPIC welcomes comments from all interested members of the public. OPIC will make use of the information highway to broaden its reach and to accommodate input in its decision making; OPIC may be contacted via Internet e-mail at WWW.OPIC.GOV. There will be a 120-day comment period from the date hereof before the guidelines are made final. OPIC will carefully review comments on the draft guidelines and will be particularly interested in hearing views on the importance of the guidelines in ensuring fulfillment of OPIC's mission.

OPIC looks forward to your thoughts and comments.

OPIC Environmental Handbook

February 1998 Edition

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OPIC'S Mission Statement

OPIC's mission is to mobilize and facilitate the participation of United States private capital and skills in the economic and social development of less developed countries and areas, and countries in transition from nonmarket to market economies. In accomplishing its mission, OPIC will promote positive U.S. effects and host country development effects. OPIC will assure that the projects it supports are consistent with sound environmental and worker rights standards. In conducting its programs, OPIC will also take into account guidance from the Administration and Congress on a country's observance of, and respect for, human rights. In accomplishing its mission, OPIC will operate on a self-sustaining basis.

Introduction: Statement of Purpose and Objectives

This Handbook is intended to provide information to OPIC's users, as well as the interested public, with respect to the general environmental guidelines, assessment and monitoring procedures that OPIC applies, in its discretion, to prospective and ongoing investment projects. The standards and procedures described in this Handbook generally reflect existing practice at OPIC as it has evolved since the enactment in 1985 of

statutory environmental provisions applicable to OPIC. (The environmental provisions contained in OPIC's statute are reprinted in Appendix A.) (OPIC is also subject to Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions.'' Environmental Assessment Procedures for EO 12114 are included in Appendix A, as well as a reprint of a 1979 FR notice implenting the EO.) Additionally, the Handbook reflects general policy initiatives announced by President Clinton at the United Nations Special Session on the Environment in June of 1997 as well as comments from OPIC's users and other members of the public in response to OPIC's publication of the Handbook in the **Federal Register** as a notice on February 6, 1997. OPIC received comments on that notice for four months after its publication. The provisions noted in this Handbook apply to all political risk insurance, project finance and OPIC-supported financial intermediaries unless otherwise noted.

Since 1985, OPIC has been required by statute to assess the environmental impacts of projects under consideration for political risk insurance and financing. OPIC's authorizing statute was also amended at that time to direct the Corporation to decline assistance to projects posing an ''unreasonable or major hazard to the environment, health or safety'' or resulting in the ''significant degradation of a national park or similar protected area.'' OPIC was also directed to operate its programs consistent with the intent of sections 117, 118 and 119 of the Foreign Assistance Act relating to environmental impact assessment, tropical forests, biological diversity and endangered species. Then and since Congress has continued to express its intent that ''great care * * * be paid to assuring the environmental soundness of U.S. Government supported foreign assistance projects.'' This is particularly important given OPIC's self-sustaining mandate. OPIC strongly supports these principles on their own merits.

Over the years OPIC has worked with counterpart organizations providing similar services to investors in the U.S., overseas and on a multilateral basis as environmental procedures were developed. Many of the OPIC standards and procedures described in this Handbook are also applied by organizations such as the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA), both affiliates of the World Bank; the European Bank for Reconstruction and Development (EBRD); and the U.S. Export-Import Bank (US Exim). In OPIC's experience, the progressive harmonization of standards and procedures similar to those used by these and other similar organizations worldwide has facilitated co-financing and co-insurance arrangements and made it simpler for clients to address environmental requirements.

The Handbook is not designed to be a static document but rather an evolving process. OPIC welcomes comments from business and public interest organizations seeking to enhance OPIC's environmental assessment and management process.

Summary of OPIC Environmental Procedures

OPIC projects receive thorough yet efficient environmental review, following the process described below. Applicants should carefully review the entire Environmental Handbook, including all Appendices, to ensure full understanding of OPIC's Environmental Procedures.

(1) OPIC screens the application to determine whether its support of the project would violate any categorical prohibitions required by OPIC's statute or policy (See ''Categorical Prohibitions'', Appendix F) to the extent possible at this early stage. If the project is ineligible, OPIC informs the applicant immediately so as to avoid any unnecessary effort or expense on the part of the applicant.

(2) If the project is not categorically ineligible, OPIC continues to screen the application to determine the level of environmental sensitivity associated with the industry sector or site involved (See '' Environmental Screening'') and to request the appropriate type of information from the applicant.

(3) If the project is identified as a Category A project, an Environmental Impact Assessment (EIA) or Initial Environmental Audit (IEAU) is required. Category B projects are subject to internal OPIC assessment based on information supplied by the applicant that need not take the form of an EIA. Category C projects do not have material impacts on the environment and are not subject to environmental assessment (See ''Environmental Assessment'').

(4) OPIC requires that applicants for Category A projects submit the EIA or IEAU in a form that can be made public without compromising business confidential information. With the consent of the applicant, the country and industry sector involved in a Category A project (but not the name of the applicant), are listed on OPIC's Internet Web Site and the EIA or IEAU is made publicly available on request for a designated comment period of 60 days prior to any final OPIC commitment to a project. No application for a Category A project can be processed without this public disclosure and review process. Environmentally sensitive projects are also subject to host government notification prior to final commitment (See ''Public Consultation and Disclosure'' and Appendix H).

(5) Concurrent with this public notification process, OPIC conducts an internal assessment of the project based on the EIA and other available information, including any comments it receives from the public. Category B projects are also subject to an internal environmental assessment. Through this review process, OPIC environmental staff assess the impacts of the project and the standards and mitigative conditions applicable to OPIC support (See ''Environmental Standards'').

(6) These conditions are discussed with the applicant and included as representations, warranties and covenants in the loan agreement or political risk insurance contract (See ''Conditionality'').

(7) OPIC monitors project compliance with contractual conditions throughout the term of the OPIC loan agreement or insurance contract (See ''Monitoring and Compliance'').

(8) Category A projects are also required to conduct at least one independent environmental audit during the first three years of OPIC support (See ''Compliance Audit'').

Similar procedures, but with restrictions on public disclosure and consultation, apply to OPIC consideration and support of projects supported by an OPIC-guaranteed investment fund or other financial intermediaries (See ''''Investment Funds Policy'').

Environmental Screening

Environmental screening is the process of identifying, at the earliest stage possible, the potential adverse environmental impacts of a proposed project that could preclude OPIC support on categorical grounds. If a project is determined to be categorically prohibited, OPIC will promptly notify the investor that the application cannot be considered for environmental clearance and ultimate project approval. Examples of such projects include large dams that disrupt natural ecosystems, infrastructure and raw material extraction in primary tropical forests and other protected or ecologically fragile areas. (A complete list of Categorical Prohibitions is provided in Appendix F.)

For projects that are not categorically ineligible for further consideration,

OPIC continues its screening process to determine the level of effort and public disclosure required for the satisfaction of OPIC's environmental assessment requirements. OPIC's Environmental Unit assigns each project to one of the following categories:

Category A: The appropriate category for projects likely to have significant adverse environmental impacts that are sensitive (e.g., irreversible, affect vulnerable population groups, involve involuntary resettlement, affect cultural heritage sites, etc.), diverse, or unprecedented.[1] Such projects can be readily identified on the basis of industry sector or site sensitivity. They require a full-scale EIA or IEAU, as well as an EMMP or ENR. A fairly comprehensive list of industries and sites within this category is provided in Appendix E.

Category B: The appropriate category for projects likely to have adverse environmental impacts that are less significant than those of Category A projects, meaning that few if any of the impacts are likely to be irreversible, that they are site-specific, and that mitigatory measures can be designed more readily than for Category A projects.[2] The EA normally consists of a limited environmental review, identifying suitable mitigating and management measures, and incorporating them into the project. Projects not included in Categories A, C, D or E (as defined below) can be expected to belong to Category B. Examples of such project categories include: agriculture, electrical distribution, electronics, food processing, light manufacturing, telecommunications (involving infrastructure such as new telephone lines with rights of way and towers, or that manufacture telecommunications equipment), textiles and tourism. Information required from the applicant typically includes the following: site description; processes involved; materials used and stored on site; air, liquid, and solid wastes generated in relation to applicable standards; and occupational health and safety measures.

Category C: The appropriate category for projects that are likely to have minimal or no adverse environmental impacts. Projects in this category that are normally exempt from all environmental assessment.[3] Examples of such projects include branch banking, computer software development and telecommunications (involving privatization of existing service or other projects involving no infrastructure).

Category D: This category includes financial intermediaries (FIs) that make investments in or provide financing (loans, leases, etc.) to identifiable projects or enterprises (''subprojects'') engaged in activities within categories A and B. OPIC screens these subprojects to determine the type of environmental review required. Also taken into account is the nature and size of the FI's involvement in the subproject. Expedited reviews are conducted for Category B subprojects involving less than $5.0 million in investment, subject to further review if the FI proceeds with additional investments in the same subproject. (See section on Investment Funds' Policy.)

Category E: This category includes small-scale, stand-alone business ventures that have demonstrable environmentally beneficial impacts.[4] Such projects may seek to promote conservation of natural ecosystems or biological diversity and attempt to involve local indigenous peoples and non-governmental organizations (NGOs) in the management process. Ecotourism (as defined below) projects are an example of this category of project. Certain Category E projects may be subject to OPIC's public consultation and disclosure processes, as described on page A–13, due to site sensitivity.

Category F: Categorical Prohibitions: This category includes projects that OPIC will not support due to negative environmental impacts or siting concerns. If a project is determined to be categorically prohibited, OPIC will promptly notify the investor that the application cannot be considered for environmental clearance and ultimate project approval. Examples of such projects include large dams that disrupt natural ecosystems, infrastructure or raw material extraction in primary tropical forests and other protected or ecologically fragile areas. (A complete list of Categorical Prohibitions is provided in Appendix F.)

Environmental Assessment (EA)

The primary purpose of OPIC's environmental review is to determine the eligibility of the project based on OPIC's statutory obligation to decline support for projects posing ''unreasonable or major environmental, health or safety hazards.'' OPIC interprets ''health or safety'' to apply both to project employees and to the affected public living or working in the vicinity of the project.

In addition, OPIC is also required by statute to operate its programs in a manner consistent with Sections 117, 118 and 119 of the Foreign Assistance Act (FAA). These provisions pertain to environmental assessment, and the protection of tropical forests, biodiversity and endangered species, respectively.

Grounds for Declining Assistance to Projects. In addition to the Categorical Prohibitions outlined above (See Screening and Appendix F) there are several other circumstances under which OPIC will decline support for a project on environmental grounds:

- The applicant fails to provide OPIC with an EIA for a Category A project or with adequate information about a Category B project to conduct a review sufficient to determine project eligibility on environmental grounds.
- The project will, in OPIC's determination, result in

—Significant degradation of a national park, similar protected area or tropical rainforest;
—The destruction of or significant degradation in the habitat of an endangered species; and/or
—Other ''unreasonable or major environmental health or safety hazards.''

Environmental assessment (EA) is the tool used by OPIC to make these determinations and is the process of evaluating the environmental and social impacts of a project and identifying ways to improve the project by preventing, minimizing, mitigating, remediating or compensating for adverse impacts as a condition of OPIC support. In a broader sense, EA is the process of managing the environmental aspects[5] of a policy, strategy, program or project, from the earliest stages of identifying potential actions to their completion and evaluation. The process encompasses identification of potential adverse environmental impacts; assessment of these impacts and comparison with impacts of alternative approaches; design and implementation of measures and plans to avoid, minimize, mitigate, or compensate for adverse impacts; and design and implementation of associated management and monitoring measures.

[1] World Bank Group Pollution Prevention and Abatement Handbook, September 1997.

[2] World Bank Group Pollution Prevention and Abatement Handbook, September 1997.

[3] World Bank Group Pollution Prevention and Abatement Handbook, September 1997.

[4] Projects that seek to environmentally enhance particular aspects of a larger project are not screened into Category E.

[5] World Bank Group Pollution Prevention and Abatement Handbook, September 1997. The term 'environment' encompasses the natural environment (air, water, and land); human ecology and health and safety; and sociocultural aspects (including involuntary resettlement and indigenous peoples) and transboundary and global environmental aspects.

EA considers natural and social aspects in an integrated way.

By statute, OPIC is required to provide some degree of EA to every project considered for insurance or finance in determining whether to provide support for the project. This requirement extends to subprojects undertaken by OPIC-supported investment funds and on-lending facilities. (See the discussion of financial intermediaries, below.) OPIC cannot provide a final commitment to a project (i.e., issue an insurance contract, disburse a loan, or approve a transaction by a financial intermediary) until its environmental assessment is complete and a determination is made by OPIC that the environmental, health and safety impacts of the project are acceptable.

Different types of EAs are conducted by the applicant depending on the nature of the project. The actual work may be conducted by the applicant/sponsor or by a third party, such as an environmental consultant. On the basis of its considerable experience reviewing such materials, OPIC can advise applicants regarding many aspects of EA preparation. OPIC can provide technical guidance to small businesses as well as first time applicants on the scope and resources available for preparing an assessment.

EAs and other environmental reports must be provided to OPIC as early as possible in the application process. This enables OPIC to identify environmental issues that may require additional attention before the EA can be considered complete. Collaboration between OPIC and other official and private lenders and insurers (which begins after OPIC receives consent from the applicant) in reviewing environmental information is in the interest of the applicant as it expedites the review process and avoids delays and needless duplication with the requirements of other lenders and insurers.

OPIC will make every effort to review the material thoroughly and efficiently taking public comment period requirements (see below, p. A–13) for Category A projects into account. In circumstances where OPIC confronts a particularly full project pipeline, OPIC may contract for outside expertise to enable it to complete the review process in a timely manner. Any consultant hired to assist in the review would be required to sign a confidentiality agreement to protect business sensitive information.

In all cases, the cost of preparing the original EA is borne by the applicant, sponsor or foreign enterprise. When OPIC engages independent consultants to review all or part of the EA materials submitted by the investor, to undertake an original assessment of the project and/or to undertake a site visit as part of the environmental review process, it requires the applicant to reimburse the associated costs.

OPIC may require one or more of the following documents to satisfy a project's EA requirements:

Environmental Impact Assessment (EIA). An EIA is a comprehensive assessment of the diverse impacts of a project on the natural and human environment. It includes a detailed description of pre-existing conditions (''baseline assessment''), all project activities having a potential environmental impact (from pre-construction through decommissioning and site reclamation), and the net impacts of the project, taking into account alternative mitigative measures. It also considers the relationship of the project to the natural and human environment in the affected area and the cumulative impacts of those activities. The content and format for an EIA will vary depending on industry sector, the site and other project-specific factors. (A generic format for an EIA is provided in Appendix B). If requested by the client, OPIC will provide guidance with regard to the content of the EIA.

Environmental Management and Monitoring Plan (EMMP). An EMMP is designed to specify in detail the actions—both technical and managerial—that the applicant or sponsor will undertake in order to mitigate anticipated adverse impacts of the project on the environment, health and safety. It also describes the technology and methodology used to monitor the actual impacts of the projects on the environment and the standards and procedures to be used for adjusting mitigative measures as necessary to maintain impacts within an acceptable range. (A generic format for an EMMP is suggested in Appendix C). While ISO 14000 Environmental Management Systems implementation is not a substitute for a project-specific EMMP, a project sponsor's adherence to the ISO criteria can facilitate the process of developing an acceptable EMMP.

Major Hazard Assessment (MHA). An MHA is a specialized form of EA designed to identify and assess the risks of catastrophic events resulting from the operation of an industrial facility. For projects requiring an MHA, OPIC requires completion of the MHA, preferably as part of the EIA process, but no later than the commencement of project operations. The categories of facilities subject to an MHA as well as the content and format of an MHA are outlined in the ''World Bank Guidelines for the Identification, Analysis and Control of Major Hazard Installations in Developing Countries,'' a copy of which is available from OPIC.

Initial Environmental Audit (IEAU). If the investment involves the acquisition of a pre-existing facility or a site on which industrial activity previously occurred, the project may also be subject to an IEAU. An IEAU is designed to identify pre-existing adverse environmental, health or safety conditions that could affect future impacts from the facility or site. (A generic format for an IEAU is suggested in Appendix D.) ISO Environmental Auditing criteria are a useful adjunct to, although not a substitute for, performance-based auditing that is required to meet OPIC IEAU requirements.

Environmental Remediation Plan (ENR). The project may involve the remediation of environmentally adverse conditions at a site. In this case the applicant will be required to provide OPIC with an ENR, similar in format to an EMMP, and designed to address the issues raised in the audit.

An EMMP, IEAU or ENR may be included as part of an EIA. Other documents prepared to satisfy the requirements of other lenders may be submitted to OPIC so long as the documentation addresses the substantive issues needed for OPIC to complete its review of the project.

Environmental Impact Statement (EIS). By statute and Executive Order (EO) 12114 (See Appendix A), OPIC is required to prepare, and to take fully into account, an EIS for any project ''significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica).'' Given the discrete nature of projects assisted by OPIC, it is considered unlikely that any single project assisted by OPIC would meet the test of ''significant impact'' on the global commons to warrant an EIS. However, the cumulative impacts of several large projects could conceivably have an impact on extraterritorial waters or the atmosphere sufficient to trigger the requirement.

As prescribed by EO 12114, such an EIS should be concise and no longer than necessary to permit an informed consideration of the environmental effects of the proposed project and the reasonable alternatives. It should include the following sections: (1) Purpose and need for the proposed project; (2) a sufficient description of the environment of the global commons affected by the proposed action; (3) an

analysis, in comparative form, of the environmental consequences on the global commons of the proposed action; and (4) reasonable alternative means of structuring the project.

In lieu of preparing a new EIS, the Executive Order permits OPIC to rely on one of the following: a pre-existing EIS for the same project or a project involving similar environmental issues; a generic EIS covering a number of similar projects; or an EIS obtained by other agencies.

Public Consultation and Disclosure

The environmental assessment process has become an increasingly public and transparent process among environmental regulatory agencies in the United States and in some, although not all, foreign countries. Likewise, multilateral development agencies that provide assistance to governments and other public sector clients have also made their activities more transparent to the public in both donor and host countries.

OPIC recognizes the added value that interested and well-informed members of the public can bring to the environmental assessment process undertaken by its clients as well as by OPIC itself. Host country as well as international non-governmental organizations (NGOs) often have access to information and perceptions about potential environmental impacts and resulting social, economic and cultural impacts that need to be carefully considered as early as possible in the assessment process. As a result, OPIC provides the public with a full opportunity to comment on all Category A projects before making a final commitment to such projects. A final commitment takes the form of a contract or loan agreement for an insurance or finance project respectively.

At the same time, certain aspects of the plans and proposals of private sector investors may contain sensitive business information. While OPIC is subject to the disclosure requirements of the Freedom of Information Act, those requirements contain an exemption for business confidential information that is protected from disclosure under the Trade Secrets Act.[6]

Because OPIC's goal is to provide the public with a level of comfort about its environmental process, applicants for OPIC assistance for Category A insurance and finance projects are required to submit Environmental Impact Assessments or Initial Environmental Audits (to be distinguished from the independent third-party compliance audit) in a form that can be shared with the public. In an effort to save copying time and expenses, OPIC encourages applicants to provide the EIA on a ''read only'' computer disc.

Applicants must sign a waiver agreeing to public release of their EIA or IEAU. Because EIAs and IEAUs are the property of the applicant, OPIC cannot release these documents if the applicant does not consent. However, if an applicant does not agree to EIA or IEAU release, OPIC will be unable to proceed with further consideration of the application.

In submitting project-specific information to OPIC, including audits, management and remediation plans as well as monitoring reports, applicants must specify which information has been or will be made public in any format, including in the host country. Any additional information that is identified as a public document will be treated as such by OPIC in response to a specific request for such information. Business confidential information will be accorded confidential treatment to the full extent permitted by law.

World Wide Web Posting. The first step in OPIC's public consultation and disclosure process is posting a notice of OPIC's potential support for a Category A project on the World Wide Web. When OPIC's Environmental Unit receives an environmental clearance request in connection with an insurance or finance application for a Category A project or subproject, OPIC will list the nature of the project and its location (but not the name of the applicant or sponsor, e.g. ''Gas-Fired Power Plant, Turkey'') on OPIC's Home Page on the World Wide Web (HTTP://WWW.OPIC.GOV). No business confidential information will be disclosed. This list will be updated at least monthly, and any comments received will be considered in OPIC's processing of the application. Additional information about projects may be provided to OPIC at any time throughout the term of the project.

Comment Period. As a second step in the public consultation and disclosure process, OPIC will provide the public with a full opportunity to comment on all Category A projects before making a final commitment to such projects. OPIC will consider all public comments received and take them into account in its environmental assessment and decision-making process. Should additional information be required based on comments received, OPIC will pass these requests to the applicant. The comment period varies depending on the type of support an investor seeks:

Project Finance & Political Risk Insurance. Before making a final decision to support a Category A project with political risk insurance, OPIC will disclose the applicant's EIA or IEAU to the public for a comment period of 60 days. OPIC will indicate on its World Wide Web site and on a list server[7] when OPIC receives a publicly releasable copy of the EIA or IEAU, thus commencing the 60 day comment period. OPIC also encourages the sponsor to release the EIA or IEAU in the host country whenever feasible. A 60 day comment period is consistent with the comment periods applied by multilateral institutions that issue project finance and political risk insurance.

Financial Intermediaries (FIs). For FI investments: (A) OPIC will post the nature of the investment and country where it is located on OPIC's World Wide Web site and on a list server as soon as a request for approval of a Category A investment is received. FI investments are identified by an asterisk (*) unless only one fund is active in a given country or the identity of the fund is self-evident by the nature of the project. (B) OPIC will indicate when the EIA or IEAU for investments has been received by OPIC on the World Wide Web site. OPIC recognizes that the competitive nature of investment fund portfolio activity may require more restrictive treatment of fund EIAs, etc. than is the case for conventional investments.

Host Country Notification. In addition to public consultation, when OPIC supports an environmentally sensitive project, OPIC notifies appropriate host country government officials of all applicable environmental, health and safety standards applicable to the project (See Appendix H).

Annual OPIC Report. OPIC will report annually to Congress and the public regarding its implementation of and compliance with internal, national and international environmental policies, laws, treaties and agreements to which its programs are subject. No confidential business information will be disclosed in these reports.

Environmental Standards

In determining whether a project will pose an unreasonable or major environmental, health or safety hazard,

[6] Certain requests for information may have to be obtained through Freedom of Information Act (FOIA) requests. For more information about OPIC's FOIA process visit OPIC's web page: HTTP://WWW.OPIC.GOV/SUBDOCS/CONTACT/FOIA.HTM

[7] A list server is a mechanism for automatically updating OPIC users of new Category A projects via the internet.

or will result in significant degradation of national parks or similar protected areas, Congress advised OPIC to ''rely primarily upon guidelines and standards adopted by international organizations such as the World Bank * * * and nongovernmental organizations with expertise in this area.'' (House Report 99–285, September 23, 1985, page 5.)

1997 World Bank Group Pollution Prevention and Abatement Handbook. In an effort to strengthen its standards, OPIC will rely on the most current version of the World Bank standards for the majority of its projects. The most current version was issued by the World Bank Group in September of 1997 for the majority of industrial categories.

The 1997 Handbook received extensive review by several governments (including U.S. federal environmental agencies), branches of the United Nations, non-governmental organizations, industry associations and individual companies.[8]

Use of international standards is consistent with the current practice of the IFC, MIGA and other organizations involved in international investment. For particular industries not included in the 1997 draft, OPIC will consider compliance with the 1994 draft guidelines acceptable. As the Bank continues to update its guidelines, OPIC will substitute more current versions of particular guidelines on a case-by-case basis by industry. (See Appendix G.)

Where there are gaps in World Bank standards on a given environmental or natural resource issue, OPIC incorporates U.S. federal standards, World Health Organization standards, and standards set by other international authorities in its environmental assessment and decision making process. In addition, OPIC has adopted particular standards with respect to Ecotourism and Forestry.

Host Country Standards. All projects must comply with host country environmental regulations. Therefore, whenever possible, applicants must provide OPIC with summaries or copies of applicable host country regulations as part of their EIS or EIA (for Category A projects) or as information provided in support of their application (for Category B projects). Government permits and certifications of compliance are necessary in this regard, although not always sufficient to establish compliance.

Cumulative and Associated Impact Assessment. In considering project applications, OPIC takes into account in its decision-making process the overall environmental effects of which its involvement is part. The agency will avoid support where OPIC involvement in a project results in cumulative or associated impacts that violate OPIC standards. In the environmental assessment process, the term ''cumulative impacts'' means recognition of the total environmental impact of pre-existing projects, the proposed project, and imminent future projects.[9] Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Assessing associated impacts recognizes that certain other industrial processes are directly and indirectly linked with the project being assessed and their environmental impacts must be incorporated into the environmental assessment.[10]

Other Applicable Standards

In addition to the World Bank Group 1997 Pollution Prevention and Abatement Handbook, the Bank has issued policies on Natural Habitats, Involuntary Resettlement, Pest Management, Dams and International Waterways. OPIC uses these policies to the extent applicable to private sector investments.[11]

Protected Area Standards

With respect to the identification of national parks and similar protected areas, OPIC relies on World Bank guidelines and standards stated in Operational Policy (OP) 4.04 on ''Natural Habitats'' issued in September 1995. World Bank OP 4.04 defines ''critical natural habitats'' as ''protected areas and areas officially proposed by governments as protected areas (e.g. reserves that meet the criteria of International Union for the Conservation of Nature [IUCN][12] classifications) * * * as indicated in Guidelines for Protected Area Management Categories (Gland, Switzerland, and Cambridge, UK: IUCN/1994) and the United Nations List of National Parks and Protected Areas or by a similar list acceptable to the Bank, published by another competent organization.''

United Nations List of National Parks and Protected Areas (UN List). The UN list was first issued in December 1962, and most recently in 1993. For purposes of the UN list, a protected area was defined as an ''area of land and/or sea [no smaller than 1,000 hectares] especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means.'' The UN list is compiled by the IUCN and the World Conservation Monitoring Centre (WCMC). Projects in or adversely impacting areas on the UN List are categorically prohibited. (See Appendix F.) Projects that are near national parks and protected areas have the potential to adversely impact such areas.

In 1994 the IUCN published its Guidelines for Protected Area Management, the purpose of which was to establish international standards for the definition, identification and management of protected areas. The relevant categories and primary management objectives of each are summarized below:

Category	Designation	General management objectives
Category 1a	Strict Nature Reserve	Managed mainly for science, preservation of species and genetic diversity.
Category 1b	Wilderness Area	Managed mainly for wilderness protection.

[8] World Bank Group Pollution Prevention and Abatement Handbook, September 1997.

[9] International Finance Corporation, ''Environmental Analysis and Review of Projects,'' September 1993. World Bank OD 4.00-Annex A. In addition, regional environmental assessments are applied by the World Bank where a number of significant development activities with potentially cumulative impacts are planned for a reasonably localized area.

[10] World Bank Operational Directive 4.00-Annex A: ''Indirect impacts are induced consequences of the project which occur later or in another part of the environment.'' Direct effects are caused by the action and occur at the same time and place. Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

[11] World Bank/IFC policies on Indigenous Peoples and Cultural Properties are forthcoming.

[12] The IUCN is a quasi-governmental organization established in 1948 and is comprised of governments (including the U.S., Japan, UK, Brazil, Sweden, etc.), government agencies, and international and local non-governmental organizations. The U.S. Government is an active participant in the IUCN. Six U.S. Government agencies are members of the IUCN (State Department, Interior Department, Agriculture Department, Commerce Department, Environmental Protection Agency, and the U.S. Agency for International Development). The IUCN's Commission on National Parks and Protected Areas (CNPPA) is the leading international scientific and technical body concerned with the selection, establishment and management of national parks and other protected areas.

Category	Designation	General management objectives
Category II	National Park	Managed mainly for ecosystem protection and recreation.
Category III	Natural Monument	Managed mainly for conservation of specific natural features.
Category IV	Habitat/Species Management Area.	Managed mainly for conservation through management intervention.
Category V	Protected Landscape/Seascape	Managed mainly for landscape/seascape conservation and recreation.
Category VI	Managed Resource Protected Area.	Managed mainly for the sustainable use of natural ecosystems.

OPIC applies the IUCN's management category definitions to derive two general categories of protected areas:

(1) *Management Categories I–IV.* Strict Nature Reserves/Wilderness Areas, National Parks, Natural Monuments and Habitat/Species Management Areas. Projects in or impacting these sensitive locations are categorically prohibited unless determined to be Category E projects. (See Appendix F.)

(2) *Management Categories V–VI.* Protected Landscape/Seascapes, Managed Resource Protected Areas. Projects in or impacting these two areas, including any extractive projects, must be consistent with IUCN management objectives. For example, projects in Category V areas must be consistent with recreation and conservation objectives in those areas. Likewise, projects in Category VI areas must be consistent with sustainable use of natural ecosystem objectives in those areas.

Resettlement Standards

Projects that require large-scale (more than 5,000 persons) involuntary resettlement are categorically prohibited (See Appendix F). For any potential project involving the resettlement of 100 or more households, OPIC will assess the ability of the project sponsor to carry out an effective resettlement program consistent with IFC Operational Policy 4.12: Involuntary Resettlement and any subsequent policy revisions or updates from the IFC. Copies of the Involuntary Settlement Policy are available from OPIC.

Hydroelectric Dam Standards

OPIC does not support the construction of large dam projects that disrupt natural ecosystems or the livelihoods of local inhabitants (See Appendix F).

All other hydroelectric dam projects must, at a minimum, address the issues noted in U.S. Export-Import Bank's Guidelines for Hydropower and Water Resources Management (Dams & Reservoirs) as well as the World Bank/IUCN Checklist For Key Potential Environmental & Social Impacts Caused By Large Dam Projects.[13] Copies of the Ex-Im guidelines and the World Bank/IUCN checklist are available from OPIC.

Costs and benefits of large dams have been debated for many years. Proponents note that dams provide electric power, irrigation for agriculture, and water supply to developing areas. Critics claim that project sponsors, public and private, systematically downplay the adverse environmental, social and economic impacts of dams.[14] Negative impacts associated with hydroelectric dams have included population decline in certain species, involuntary resettlement of indigenous people and reduced water quality.[15] As a result, certain large dam projects are categorically prohibited by OPIC. (See Appendix F.)

World Commission on Dams. At a Workshop in Gland, Switzerland in April 1997 jointly hosted by the World Bank and IUCN, stakeholder representatives from governments, civil society organizations, international financial institutions, and the private sector agreed to establish a World Commission on Dams. An independent commission was established and has a two year mandate to review the development effectiveness of large dams and develop standards, criteria and guidelines to advise future decision making. Pending completion of the commission's report, EIAs prepared for hydroelectric dam projects should, at a minimum, address the issues noted above.

Forestry Standards/Certification

Infrastructure and extractive projects, including commercial timber harvesting, in primary tropical forests are categorically prohibited (See Appendix F).

Due to the difficulty of implementing consistent sustainability across a broad range of ecological conditions, all other OPIC-supported projects involving extraction from natural forests, including all boreal/temperate forests and all secondary forests, must be and remain certified by an independent non-governmental organization. Such organizations must be accredited by an international accreditation body (such as the Forest Stewardship Council) that can hold the certifier accountable to a common set of principles and procedural protocols, including periodic review and re-accreditation. Accredited certifiers are required to adhere to an internationally agreed set of forest management performance standards which incorporate a comprehensive range of environmental and social criteria developed by a diverse group of interests, organizations and stakeholders. Any forest product labeling associated with a certified forest must be guaranteed by a separate certification that credibly connects the labeled product to its certified forest-of-origin.

Ecotourism Standards

All ecotourism projects should address the following issues: (1) A comprehensive plan to protect ecological integrity and enhance community participation. (2) Local community capacity building that provides necessary skills for ecotourism development, while ensuring that this development merges with traditional practices. (3) The primary revenue source of the project must be directly linked to the conservation effort. As a result, OPIC-supported ecotourism projects can be a profitable conservation and community development model.

Ecotourism is a means of enabling tourist dollars to flow into local communities in developing countries while simultaneously conserving ecosystems and wildlife through responsible travel that preserves cultures and natural environments.

Tourism in natural areas can generate significant adverse impacts beyond those normally associated with large-scale tourism in commercial areas. The World Bank Guideline on Tourism and Hotels is designed for tourism in a conventional setting and does not address the specialized impacts of tourism in natural ecosystems. OPIC-

[13] World Bank Group/IUCN, Large Dams: Learning Frm the Past, Looking at the Future, Workshop Proceedings, Gland Switzerland, April 11–12, 1997.

[14] World Bank Group/IUCN World Commission on Dams.

[15] World Bank Gruop/IUCN World Commission on Dams, April 1997 Conference Report.

supported Ecotourism projects seek to balance profitability with ecological sustainability and respect for indigenous cultures.

Best Practices. OPIC does not attempt to prescribe to its potential users the choice of technologies or processes they must use to meet the applicable guidelines. However, standards of best practice developed by governments, industry and non-governmental organizations can be useful in providing guidance to OPIC and its users in assessing alternatives and their feasibility. For this purpose OPIC makes use of international best practice guidelines for sectors of particular importance to OPIC's environmental mandate.

Climate Change and Renewable Energy

In 1992 the U.S. signed the UN Framework Convention on Climate Change (FCCC) and committed the U.S. to ''stabilization of greenhouse gas concentrations at a level that would prevent dangerous anthropogenic interference with the climate system.'' In December 1997, agreement was reached at Kyoto requiring mandatory limitations and reductions in greenhouse gases by developed countries. However, it is important to note that the U.S. Government recognizes that any effective international effort to reduce greenhouse gas emissions must include meaningful participation of developing countries.[16] OPIC seeks to support this policy via the following mechanisms:

Joint Implementation. To encourage U.S. companies, particularly small business, to participate in efforts to reduce global greenhouse gas emissions, OPIC will provide customized pricing for small business projects intended to reduce such emissions, in particular those projects certified by the U.S. Initiative for Joint Implementation (the sharing of technology and resources, particularly transfers from Developed to Developing nations, to limit and reduce GHG emissions). OPIC will continually strive to make its portfolio more climate friendly by proactively seeking renewable energy projects and by seeking to harmonize its approach to climate change issues with that of other U.S. Government entities.

Climate Change Reporting. In an effort to support the management of global greenhouse gas emissions, OPIC tracks and reports, on an aggregate basis, the annual greenhouse gas emissions from its power sector projects. OPIC will track and report, on an aggregate basis, the annual greenhouse gas emissions from other greenhouse gas emitting projects to the extent an appropriate framework is available. Aggregate tracking results will be available to the public and reported annually to Congress.

Conditionality

In many cases, determinations of eligibility rely on critical representations made by the client with respect to baseline environmental conditions, mitigative measures and net impacts of proposed projects. In addition to the EMMP or ENR submitted by the applicant, OPIC may require the application of additional mitigative measures in order to ensure that a project will not pose an unreasonable or major environmental, health or safety hazard. These critical representations and those undertakings agreed to by the applicant or sponsor may be included in OPIC project documentation as preconditions to contract execution, conditions of disbursement and/or ongoing covenants, depending on the type of agreement entered into between OPIC and the applicant. Where OPIC insures an institutional lender, contract conditions are incorporated into the loan documentation.

Environmental conditions and covenants are developed in close consultation with the client to minimize the cost to the project and to ensure that they are consistent with the host country's legal framework, objectively measurable and verifiable, and allow for sufficient flexibility to address issues if circumstances change. Upon approval and in response to public requests, OPIC documents its determination as to applicable substantive/technical standards and conditions in an EA Summary.

Monitoring and Compliance

OPIC's environmental assessment process is an ongoing one and continues through the full term of OPIC's relationship with the project sponsor.

Monitoring. OPIC reserves the right to monitor projects' compliance with environmental representations and undertakings throughout the term of its insurance or financing. Monitoring may take the form of self-reporting by the investor of summaries and, in specified cases, raw data obtained from monitoring a project's environmental performance (emissions, effluents or other waste discharges) as well as its environmental impacts (e.g., on ambient conditions and biological resources). OPIC requires investors to submit annual self-monitoring reports for Category A projects. These annual reports must provide OPIC with regular testing results for any emission standards, effluent standards, ambient air limitations or water quality limitations that were represented by the investor. Monitoring may also take the form of third party evaluation, including compliance information developed by host government authorities, co-lenders and independent auditors.

OPIC routinely conducts on-site monitoring of projects, using OPIC staff and/or consultants, for environmental and environmentally-based social impacts as well as U.S. economic and host country development effects. OPIC endeavors to monitor all Category A projects on-site at least once during the first three years of project commitment, and more frequently depending on the environmental sensitivity of the project. Category B, D and E projects are also subject to monitoring on a random and selective basis.

Compliance Audits. OPIC requires project sponsors to conduct third-party independent audits for all Category A projects. These audits are designed to take place after an OPIC supported project begins construction or is operational.[17] The purpose of these audits is to evaluate a project's compliance with all environmental and social conditions (and underlying representations) that are reflected in OPIC's environmental or related social requirements with respect to the project and to validate the methodology used for all self-monitoring reports. At least one independent third-party audit must be conducted generally within the first three years of all Category A projects and the sponsor must provide certification to OPIC that OPIC's contract conditions have been met. OPIC retains the right to review all compliance audits.

Category A projects will be required to conduct further certified independent audits if the investor fails to submit contractually required annual self-monitoring reports in a timely manner or if monitoring trips or other information indicates a need for further independent audits.

Business confidential information in these audits will be accorded confidential treatment to the full extent permitted by law.

Independent third-party compliance audits allow OPIC-supported projects to be evaluated in an objective and

[16] Speech of President Clinton on July 24, 1997; Byrd-Hagel Resolution on Climate Change (S. Res. 98).

[17] The independent third-party audit is distinct from the IEAU conducted during the application process for existing projects. It is further distinguished because the IEAU may be conducted by the sponsor, whereas the compliance audit is to be conducted by an independent third-party.

systematic manner based on defined criteria. Proper execution of an audit requires active cooperation of project owners and/or managers, good coordination of all interviews and sampling activities in order to reduce costs and a carefully documented inspection to support all findings and recommendations.[18]

Non-compliance, Remediation and Termination. Material misrepresentation or non-compliance with environmental undertakings may constitute an event of default under the terms of OPIC insurance contracts and loan agreements. Depending on the severity and reversibility of the environmental impact and the investor's responsibility and due diligence in attempting to prevent the default and in curing the problem, OPIC may treat the default as curable or incurable. In the case of a curable default, OPIC works with the investor to develop a feasible timetable for remediation. In the case of an incurable default, OPIC may require contract termination in the case of insurance, or acceleration of repayment or other available lenders' remedies, in the case of a loan. If an equity investment on the part of a financial intermediary (FI) is involved, divestiture by the FI may be required. Additionally, failure to meet contractually required reporting requirements can constitute a default. In all cases, OPIC seeks to work cooperatively with investors and lenders to arrive at an equitable resolution of the situation, taking into account the requirements of other lenders and insurers.

Investment Funds Policy

The investment funds are one type of OPIC-supported FI. OPIC provides financing to support a number of privately owned and managed direct investment funds that have the capability to provide equity capital to facilitate business formation and expansion. The investment funds are privately owned, privately managed, and make their own commercially based investment decisions. Typically, OPIC-supported investment funds invest in five to forty percent of the equity capital of each of their portfolio companies (although they may hold a majority position), and may hold equity interests in ten to twenty companies when fully invested. It has been OPIC's experience that the majority of Category A projects involve the expansion or acquisition of existing projects as opposed to ''greenfield'' projects.

All Category A investment fund projects are subject to a full Environmental Impact Assessment or Audit and resulting terms and conditions unique to the project. Additionally, where a fund proposes to invest in a company rather than a specific project, the fund must narrow the scope of the company's proposed use of the proceeds of the fund's investment to specific projects that can readily be assessed.

All non-Category A portfolio investments involving a fund commitment greater than $5 million require OPIC screening and assessment in accordance with the procedures noted in this Handbook.

All non-Category A portfolio investments involving a fund commitment of $5 million or less (a ''Non-Sensitive Small Project'' or ''NSSP'') can be invested in by the Fund prior to receiving formal environmental clearance subject to the following conditions:

- The fund must explicitly request that the proposal be reviewed under an expedited process.
- OPIC may ask follow-up questions for five business days following the date of initial submission of the subproject, in order to determine whether the proposed investment qualifies for expedited review.
- The fund must represent that it has taken commercially reasonable efforts to obtain and provide all relevant environmental information to OPIC and has no reason to believe that the project would pose an unreasonable or major environmental, health or safety hazard. Furthermore, the fund must represent that it will continue to obtain and disclose to OPIC any material supplemental environmental, health or safety information as received.
- Any follow-on investment in the project will be subject to OPIC review and clearance prior to the date of such further investment.
- At OPIC's discretion, further review of an NSSP may occur within a reasonable time period following the date of investment. Possible outcomes of this review are:

i. Class I—The project is satisfactory and no further conditions are placed on the NSSP.

ii. Class II—The project poses certain non-critical environmental, health or safety issues. A remediation plan must be developed and implemented. No further fund investment in the project will be authorized prior to development of the remediation plan.

iii. Class III—The project poses unreasonable or major environmental, health or safety hazards. No further investments in the project are authorized and divestment must occur.

Finally, following OPIC review, investments may be authorized for non-Category A investments involving a fund commitment greater than $5 million (and for follow-on investments in Class I and II NSSP projects) that do not initially meet World Bank Guidelines, under the following terms and conditions:

- A detailed and time-sensitive remediation plan is developed;
- The remediation plan is incorporated into the fund's investment arrangements with the portfolio company in a manner that provides the fund with legally binding enforcement rights in the event of material non-compliance;
- At a minimum, the fund reports annually to OPIC regarding implementation of the remediation plan;
- OPIC will require the fund to implement its enforcement rights or divest its position in the event of material non-compliance with the approved remediation plan.

Appendix A—OPIC Statute (Environmental Provisions) and Executive Order 12114 (and Reprint of a 1979 FR Notice Implementing the EO)

All references are to the Foreign Assistance Act of 1961, as amended, most recently by the Jobs Through Exports Act of 1992.

Section 231 * * *. The Corporation, in determining whether to provide insurance, financing or reinsurance for a project, shall especially—

(3) Ensure that the project is consistent with the provisions of section 117, (as so redesignated by the Special Foreign Assistance Act of 1986), section 118, and section 119 of this Act relating to the environment and natural resources of, and tropical forests and endangered species in, developing countries, and consistent with the intent of regulations issued pursuant to sections 118 and 119 of this Act.

In carrying out its purpose, the Corporation, utilizing broad criteria, shall undertake—(n) to refuse to insure, reinsure, guarantee or finance any investment in connection with a project that the Corporation determines will pose an unreasonable or major environmental, health or safety hazard, or will result in the significant degradation of national parks or similar protected areas.

Section 237. General Provisions Relating to Insurance, Guaranty and Financing Programs

(m)(1) Before finally issuing insurance, reinsurance, guarantees, or financing under this title for any environmentally sensitive investment in connection with a project in a country, the Corporation shall notify appropriate government officials of that country of—

(A) all guidelines and other standards adopted by the International Bank for Reconstruction and Development and any other international organization relating to

[18] World Bank Group Pollution Prevention and Abatement Handbook, September 1997.

the public health and safety or the environment which are applicable the project; and

(B) to the maximum extent practicable, any restriction under any law of the United States relating to public health or safety or the environment that would apply to the project if the project were undertaken in the United States.

The notification under the preceding sentence shall include a summary of the guidelines, standards and restrictions referred to in subparagraphs (A) and (B), and may include any environmental impact statement, assessment, review or study prepared with respect to the investment pursuant to section 239(g).

Section 239. General Provisions and Powers

(g) The requirements of section 117(c) of this Act relating to environmental impact statements and environmental assessments shall apply to any investment which the Corporation insures, reinsures, guarantees, or finances under this title in connection with a project in a country.

Environmental Assessment Procedures For Executive Order 12114

On January 4, 1979 the President issued Executive Order 12114 (44 FR 1957) entitled ''Environmental Effects Abroad of Major Federal Actions''. The Executive Order requires federal agencies taking action encompassed by the Order, and not exempted from it, to effectuate procedures to implement the Order. The Overseas Private Investment Corporation (OPIC) is implementing the Executive Order by the adoption of the following procedures to take effect on September 4, 1979.

Section 1. Purpose

As required by Executive Order 12114. issued January 4, 1979, which is incorporated herein by reference, the following procedures shall be used by OPIC to ensure that all significant environmental effects of its actions outside the United States are considered by OPIC in its review of proposed insurance and finance projects. These procedures shall supplement OPIC's existing environmental procedures and guidelines required by the Foreign Assistance Act as amended (the ''Act''), as set forth in OPIC Board of Directors and the ''OPIC Environmental Handbook.''

Section 2. Definition

A. Application. The term ''application'' means a formal request to OPIC in the manner specified by OPIC for assistance under an OPIC program from an eligible private party interested in investing in a project in a foreign nation.

B. Environment. The term ''environment'' means the natural and physical environment and excludes social, economic, and other environments.

C. Global Commons. the term ''global commons'' means areas outside the exercise of any national jurisdiction.

D. Host Country. The term ''host country'' means the foreign country in which a project for which OPIC assistance is sought is or will be located.

E. Major Action. The term ''major action'' means a contractual commitment by OPIC to provide assistance under an OPIC program involving at least $ 1 million of insured investment, loan guaranties or direct loans. If the applicant therefor has or will have sufficient control over the design and/or operation of the project to mitigate environmental concerns raised by OPIC.

F. OPIC Programs. The term ''OPIC programs'' includes OPIC's insurance, direct loan and loan guaranty programs as authorized by the Act.

G. Significant Effects. With respect to effects on the environment outside the United States, a proposed action has a significant effect on the environment if it does significant harm to the environment even though on balance the action is believed to result in beneficial effects on the environment.

Section 3. Applicability of Procedures

A. Scope. Except as provided in Subsections B, C, and D below, these procedures shall apply with respect to OPIC's review of each new application for assistance under an OPIC program, whether for new projects or expansions of existing projects, if a favorable decision on such application will result in a major action by OPIC.

B. Exemptions. If upon the initial review of an application the OPIC insurance or finance officer making such review determines that the project for which OPIC assistance is sought has no significant effects upon the environment outside the United States, these procedures shall not apply. If upon further review of the application, and prior to taking action, it is determined that the project may have a significant effect upon the environment, this exemption shall no longer apply. Also exempt from these procedures are actions falling within the categories listed in Section 2–5(ii) through (vii) of the Executive Order, as limited by Section 2–5(d). A concise administrative record will be prepared to document these determinations.

C. Categorical Exclusions. These procedures shall not apply to the review of an application for any project falling within the scope of any category of projects that are determined to involve no significant effects on the environment. OPIC's Investment Committee shall have the authority to establish such categorical exclusions.

D. Special Exemptions. These procedures shall not apply to the review of any application for which the General Counsel determines that an exemption is necessary as a result of emergency circumstances, situations involving exceptional foreign policy or national security sensitivity or other special circumstances (except as limited by Section 2–5(d) of the Executive Order). In utilizing any such special exemption, OPIC, through its designated Environmental Officer, shall consult as soon as feasible with the Department of State and the Council of Environmental Quality.

Section 4. Initial Determinations

A. With respect to any application for OPIC assistance falling within the scope of Section 3(A) above, the OPIC officer reviewing such application shall make the following determinations that shall be documented by a concise administrative record:

1. Whether the proposed project is likely to have a significant effect on the environment of the global commons;

2. Whether the proposed project is likely to have a significant effect on the environment of a foreign country other than the host country; and

3. Whether the proposed project is likely to have a significant effect on the environment of a foreign country because it would provide to that country;

(a) a product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk, such as asbestos, vinyl chloride, acrylonitrile, isocyanates, polychlorinated biphenyls, mercury, beryllium, arsenic, cadmium, and benzene; or

(b) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

4. Whether the proposed project is likely to have a significant effect on natural or ecological resources of global importance hereafter designated for protection by the President or in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State.

B. The determination required in Subsection A above shall be based upon the information contained in the application, information reasonably available to OPIC and such additional information from the applicant as deemed necessary by the reviewing officer.

C. In the event that the reviewing officer makes a positive determination with respect to any of the categories specified in Subsection A above (i.e. that a significant effect is likely to result), and such determination is not reversed upon review by a supervisory officer or by the Investment Committee, the finance or insurance department, as the case may be, in consultation with OPIC's Environmental Officer, shall take the following actions, as appropriate, prior to acting on the application:

1. If the harmful effect is of the type described in Subsection A(1) above, an environmental impact statement shall be obtained in the manner specified in Section 5 below. Such an environmental impact statement shall consider only the effects described in Subsection A(1), regardless of whether the project would result in other kinds of environmental effects.

2. If the harmful effect is of the type described in Subsection A(2), A(3) or A(4) above, an environmental study or an environmental review shall be prepared in the manner specified in Section 6 below.

Section 5. Environmental Impact Statement

A. If a department within OPIC is required by Section 4(C)(1) to cause the preparation of an environmental impact statement for a particular project, it shall do so in accordance with Subsection B below. If an environmental impact statement for the proposed project, a project involving similar environmental issues or a generic statement

covering a host of similar projects already exists, no new environmental impact statement shall be required. When one or more other agencies are also involved in a particular project requiring an environmental impact statement OPIC may rely upon an environmental impact statement obtained by one or more of the other agencies.

B. Environmental impact statements shall be concise and no longer that necessary to permit an informed consideration of the environmental effects of the proposed project and the reasonable alternatives. The statement shall include a section on the consideration of the purpose of and need for the proposed project; a section that provides a succinct description of the environment of the global commons affected by the proposed action: and a section that analyzes, in comparative form, the environmental consequences on the global commons of the proposed action and of reasonable alternative means of structuring the project.

Section 6. Environmental Studies and Reviews

A. If a department is required under Section 4(C)(2) to produce an environmental study or review, it shall, in consultation with the Environmental Officer, determine whether an environmental study as described in Subsection B below which deals with the environmental aspects of the proposed project is available or will be undertaken elsewhere. If no relevant environmental study is or will be available, the OPIC department, in consultation with the Environmental Officer, shall undertake the preparation of an environmental review as described in Subsection C below with, as appropriate, the assistance of the applicant and of other federal agencies having jurisdiction by law or special expertise. If an environmental review for the proposed project or a project involving similar environmental issues or a generic review covering a class of similar projects already exists, no new environmental review shall be required hereunder. When one or more agencies are involved with OPIC on a particular project, a lead agency may be designated to prepare the environmental review.

B. An environmental study shall consist of a bilateral or multilateral study by the United States and one or more foreign nations or by an international body or organization in which the United States is a member or participant.

C. An environmental review shall consist of a concise analysis of important environmental issues relating to a proposed project, including identification of such issues and of the significant effects to the environment. The department involved in the preparation of an environmental review shall consider the following factors in deciding the scope, substance, and timing of review and the availability of the review to other agencies:

1. The need to avoid infringement or the appearance of infringement on the sovereign responsibilities and internal affairs of another government;

2. The availability of meaningful information on the environment of a foreign nation;

3. The need to protect confidential business information and trade secrets of the applicant;

4. The desirability of acting promptly upon applications under OPIC programs;

5. The desirability of the project in terms of its export promotion and developmental effects;

6. OPIC's ability to influence the design and/or implementation of the proposed project; and

7. The need to protect sensitive foreign affairs information and information received from another government with the understanding that it will be protected from disclosure.

Section 7. Decision

The required environmental documents developed in accordance with these Procedures shall accompany the application through the review process to enable officers responsible for approving an application and, if necessary, the Board of Directors, to be informed and to take account of the environmental consideration covered by such documents.

Section 8. Availability

Subject to the consideration of Section 6(C), environmental documents developed under these procedures shall be available to the Department of State, Council on Environmental Quality and other federal agencies and shall be included in the public information files for the pertinent applications. Foreign governments affected thereby may also be informed of such documents after coordinating with the Department of State regarding such communication with the foreign government.

Effective Date. These procedures became effective on September 4, 1979.

Dated: August 27, 1979.

J. Bruce Llewellyn,

President.

Appendix B—Recommended Content and Format for Environmental Impact Assessment Category A Projects

I. Executive Summary
- A. Concise project description
- B. Identification of project sponsors, operators and contractors
- C. Baseline environmental conditions
- D. Applicable environmental standards
- E. Proposed mitigation measures
- F. Net environmental impacts

II. Policy, Legal and Administrative Framework
- A. Applicable host country environmental and occupational safety and health laws and regulations
- B. Relevant international agreements
- C. Requirements of potential investors, lenders and insurers

III. Baseline Conditions in Area Potentially Affected by Project (''Project Area'')
- A. Designation of project area perimeters
- B. Physical geography (climate, geology, topography)
- C. Natural events history (earthquakes, floods, fires, storms, volcanic eruptions, etc.)
- D. Biological environment
  - 1. Proximity to national parks and other protected areas
  - 2. Identification of unique or sensitive natural habitats of internationally or locally recognized rare, threatened or endangered species
  - 3. Renewable and non-renewable natural resources
- E. Human environment
  - 1. Distribution of residential and occupational population in project area
  - 2. Description of previous, current and planned land use activities in or near project area
  - 3. Habitation or use of project area by indigenous peoples
- F. Environmental quality of project area
  - 1. Ambient air conditions (including seasonal variations)
    - (a) Sulfur dioxide
    - (b) Particulates
    - (c) Nitrogen oxides
    - (d) Carbon monoxides
    - (e) Airborne toxics
  - 2. Water supply, quality and end use (human consumption agriculture, plant and animal habitat)
    - (a) Marine waters including estuaries
    - (b) Surface waters (rivers, streams, lakes)
    - (c) Groundwater
  - 3. Noise levels
  - 4. Soil conditions including contamination from previous or current activities
- G. Archaeological, historical or cultural resources

IV. Potential (Unmitigated) Environmental, Health and Safety Impacts
- A. Sources and volumes of untreated airborne, liquid, and solid waste and potential impacts of unmitigated discharge on the environment
- B. Potential impacts on natural and biological resources
- C. Potential human impacts:
  - 1. Positive: employment, services, economic opportunities
  - 2. Negative: resettlement and economic displacement
- D. Potential occupational health and safety hazards
- E. Potential for major safety and health hazards beyond the workplace

V. Proposed Environmental Prevention and Mitigation Measures (including a thorough discussion of alternatives and justifications for measures selected)
- A. Waste minimization measures
- B. Waste treatment and disposal measures
- C. Natural resource management (*e.g.* sustainable management of biological resources and protection of endangered species and their habitats)
- D. Mitigation of human impacts: compensation, training, etc.
- E. Occupational safety and health measures
- F. Major hazard prevention and emergency response

VI. Projected Net Environmental Impacts (post-mitigation)
- A. Physical impacts (*e.g.* topography, ground and surface water supply, soil conservation)
- B. Biological impacts (flora, fauna and related habitat with particular attention to threatened and endangered species; natural resources, *e.g.* primary forests, coral reefs, mangroves, etc.)
- C. Net discharges of airborne, liquid and solid wastes and resulting ambient

impacts as compared to applicable host country, World Bank and other relevant regulatory standards and guidelines
D. Net exposures by workers to safety and health hazards
E. Net potential for major hazards
F. Consistency with applicable international agreements
VII. Appendices
A. Permits issued and pending from environmental authorities
B. Author information
1. Names, affiliations and qualifications of project team
2. Relationship of authors to project sponsors
C. Record of meetings held as part of EIA, including public hearings and consultations with government and non-governmental organizations
D. Reference bibliography
E. Technical data not included in text

Appendix C—Recommended Content and Format for Environmental Management and Monitoring Plan

I. Applicable Regulatory Standards and Guidelines
A. Host country laws and regulations
B. Sponsor, investor, lender and insurance requirements
C. International agreements
II. Environmental Management Measures
A. Potential impacts and corresponding preventive and mitigative measures
B. Equipment specifications for preventative and mitigative measures
C. Operational and maintenance procedures
III. Organizational Responsibilities and Management Issues
A. Operations
B. Supervision
C. Internal enforcement
D. Monitoring
E. Remedial actions
IV. Training Requirements
V. Monitoring and reporting procedures
A. Perimeters to be monitored
1. Airborne emissions and corresponding ambient air impacts
2. Liquid effluents and corresponding ambient impacts on receiving water
3. Physical impacts
4. Natural resource and biological impacts
5. Human impacts
(a) Standard of living of local inhabitants
(b) Impact on local economy
(c) Perceptions and attitudes of local inhabitants
6. Workplace conditions
(a) Accident frequency and severity
(b) Worker exposures to hazardous substances
7. Impacts on dedicated offsite infrastructure and facilities
B. Frequency of monitoring
C. Monitoring techniques and procedures
1. Equipment and instrumentation
2. Quality assurance/quality control (QA/QC procedures)
3. Personnel and training requirements
D. Reporting procedures
1. Internal
2. External (*e.g.* to local authorities)

Appendix D—Recommended Content and Format for Initial Environmental Audit (IEAU)

I. Executive Summary
A. Environmental, safety and health areas of concern
B. Recommended mitigation measures/enhancement opportunities: priorities
C. Implementation schedule
II. Project Description
A. location
B. past operations history
C. current operations
III. Applicable regulations and guidelines
IV. Audit procedure (protocol)
A. historical research
B. records review
C. interviews
D. site inspections
E. sampling and analysis (quality assurance and control) procedures
V. Review of environmental management
A. environmental management structure
B. emergency, security and safety plans
C. company-community interaction program
D. handling of complaints and media coverage
VI. Environmental Impacts
A. air emissions
B. liquid effluents
C. solid (non-hazardous) waste treatment
D. hazardous materials and management
E. noise and vibration
F. groundwater and soil contamination
VII. Occupational Safety and Health
A. summary of accident reporting, recording and investigation
B. health and safety management safety procedures
D. medical monitoring program
E. air quality
F. noise level exposure
G. chemical/material handling
H. temperature exposure
I. personal protective equipment
J. emergency response capability
K. fire protection
L. training programs
VIII. Conclusions
IX. Mitigation Recommendations
A. Identify appropriate measures
B. Priorities
C. Implementation schedule
X. Environmental Enhancement Opportunities
A. energy and energy conservation
B. waste minimization
C. cleaner technology initiatives
D. training programs
XI. Annexes
A. names of those responsible for preparing audit
B. written material references used
C. records of consultations
D. other data

Appendix E—Category A: Projects Requiring Environmental Impact Assessment

Any projects supported by OPIC in this Category that subsequently change in nature from the description provided in application materials, and will thereby cause material impacts to the environment, shall be required to submit additional EA documents to OPIC that must be acceptable to OPIC in its sole discretion.

I. Industrial categories
A. Large-scale industrial plants
B. Industrial estates
C. Crude oil refineries
D. Large thermal power projects (200 megawatts or more)
E. Major installations for initial smelting of cast iron and steel and production of non-ferrous metals
F. Chemicals
1. manufacture and transportation of pesticides
2. manufacture and transportation of hazardous or toxic chemicals or other materials
G. All projects which pose potential serious occupational or health risks
H. Transportation infrastructure
1. roadways
2. railroads
3. airports (runway length of 2,100 meters or more)
4. large port and harbor developments
5. inland waterways and ports that permit passage of vessels of over 1,350 tons
I. Major oil and gas developments
J. Oil and gas pipelines
K. Disposal of toxic or dangerous wastes
1. incineration
2. chemical treatment
L. Landfill
M. Construction or significant expansion of dams and reservoirs not otherwise prohibited
N. Pulp and paper manufacturing
O. Mining
P. Offshore hydrocarbon production
Q. Major storage of petroleum, petrochemical and chemical products
R. Forestry/large scale logging
S. Large scale wastewater treatment
T. Domestic solid waste processing facilities
U. Large-scale tourism development
V. Large-scale power transmission
W. Large-scale reclamation
X. Large-scale agriculture involving the intensification or development of previously undisturbed land
Y. All projects with potentially major impacts on people or serious socioeconomic concerns
Z. Projects, not categorically prohibited, but located in or sufficiently near sensitive locations of national or regional importance to have perceptible environmental impacts on:
1. wetlands (not covered by the RAMSAR Convention).
2. areas of archeological significance
3. areas prone to erosion and/or desertification
4. areas of importance to ethnic groups/indigenous peoples
5. primary temperate/boreal forests

6. coral reefs
7. mangrove swamps
8. nationally-designated seashore areas
9. Managed resource protected areas, Protected Landscape/seascape (IUCN categories V and VI) as defined by IUCN's Guidelines for Protected Area Management Categories; additionally, these projects must meet IUCN's management objectives and follow the spirit of IUCN definitions.

Appendix F—Categorical Prohibitions

I. Infrastructure and extractive projects located in primary tropical forests (see Glossary). Extractive projects include oil, gas, mineral resources, steam/geothermal and surface resources such as timber.

II. Projects involving the construction of 'large dams' that significantly and irreversibly: (A) disrupt natural ecosystems upstream or downstream of the dam, or (B) alter natural hydrology, or (C) inundate large land areas, or (D) impact biodiversity, or (E) displace large numbers of inhabitants (5,000 persons or more) or (F) impact local inhabitants' ability to earn a livelihood.

III. Projects involving the commercial manufacturing of ozone-depleting substances or the production or use of persistent organic pollutants. Investors may obtain a list of these substances and chemicals from OPIC.

IV. Projects that require resettlement of 5,000 or more persons.

V. Projects in or impacting areas protected by the RAMSAR Convention (Designated wetlands of international importance).

VI. Projects in or impacting natural World Heritage Sites (Areas of significant ecological value that have been internationally recognized as necessary for strict protection by members of the World Heritage Convention).

VII. Projects in or impacting areas on the United Nations List of National Parks and Protected Areas.

VIII. Extraction or infrastructure projects in or impacting Strict Nature Reserves/ Wilderness Areas, National Parks, Natural Monuments or Habitat/Species Management Areas as defined by the World Conservation Union's (IUCN) Guidelines for Protected Area Management Categories, with the exception of projects specifically intended to improve the environment and those meeting recognized environmentally appropriate ecotourism guidelines. Investors may obtain a copy of these guidelines from OPIC.

Appendix G—1997 World Bank Group: Pollution Prevention and Abatement Handbook

1. Aluminum Manufacturing
2. Base Metal and Iron Ore Mining
3. Breweries
4. Cement Manufacturing
5. Chlor-Alkali Plants
6. Coal Mining and Production
7. Coating Manufacturing (in preparation)
8. Coke Manufacturing
9. Construction Terminals (in preparation)
10. Copper Smelting
11. Dairy Industry
12. Detergent Manufacturing (in preparation)
13. Dye and Pigment Manufacturing
14. Electronics Manufacturing
15. Engine-Driven Power Plants
16. Foundries
17. Fruit and Vegetable Processing
18. Fish and Shellfish Industries (in preparation)
19. Forestry Operations (in preparation)
20. General Manufacturing
21. Geothermal Power Plants (in preparation)
22. Glass Manufacturing
23. Hazardous Waste Management (in preparation)
24. Heavy Machinery (in preparation)
25. Industrial Estates
26. Infrastructure (in preparation)
27. Iron and Steel Manufacturing
28. Lead and Zinc Smelting
29. Meat Processing and Rendering
30. Medical Waste Management (in preparation)
31. Metal Fabrication (in preparation)
32. Mini Steel Mills
33. Mixed Fertilizer Plants
34. Monitoring
35. Municipal Waste Management (in preparation)
36. Nickel Smelting and Refining
37. Nitrogenous Fertilizer Plants
38. Oil and Gas Development-Onshore
39. Oil and Gas Development-Offshore (in preparation)
40. Pesticides Formulation
41. Pesticides Manufacturing
42. Petrochemicals Manufacturing
43. Petroleum Refining
44. Pharmaceuticals Manufacturing
45. Phosphate Fertilizer Plants
46. Pipelines and Terminals (in preparation)
47. Plywood and Wood Products Industry (in preparation)
48. Precious Metal Industry (in preparation)
49. Printing
50. Pulp and Paper Mills
51. Rubber and Plastic Manufacturing (in preparation)
52. Small Boilers (in preparation)
53. Sugar Manufacturing
54. Tanning and Leather Finishing
55. Textiles
56. Thermal Power-Guidelines for New Plants
57. Thermal Power-Guidelines for Existing Plants
58. Tourism and Hospitality Development
59. Vegetable Oil Processing
60. Wood Preserving

Appendix H—Format for Host Government Notification Letter

[date]
Minister of State for Environment,
Republic of _____

Dear Mr./Ms. Minister: The Overseas Private Investment Corporation (OPIC) is proposing to issue financing and insurance for an investment in [name of host country] by a U.S. company. OPIC is an agency of the United States Government, with the mandate of facilitating economically productive and environmentally sound U.S. private investments in developing countries and emerging economies.

OPIC is required by U.S. law to notify appropriate host government authorities of investments under consideration for OPIC assistance, which have the potential to pose significant consequences for the environment. The project that is the subject of this notification involves an investment by [name of applicant] in the construction and operation of [concise description of project].

The potential environmental hazards associated with [industry sector] includes [air, water, solid/hazardous waste, etc./].

Based on information provided to us by the investor, the project does not appear to pose significant hazards to the environment, public health, or safety resulting from the diverse impacts of [industry sector].

OPIC is also required to provide your government with information about standards and guidelines applicable to such investments that have been developed by international organizations or by federal environmental regulatory authorities of the United States. The relevant World Bank and U.S. Environmental Protection Agency (EPA) guidelines are attached for your information.

We understand, of course, that the project will be subject to the laws of [name of host country] with respect to the protection of the environment as well as occupational health and safety.

If you have any questions about OPIC's environmental assessment of this project, you may contact OPIC's Director of Environmental Affairs at the above address.

Sincerely yours,

[Name],

President and Chief Executive Officer.

Enclosures

APPENDIX I—GLOSSARY

Environmental Assessment (EA)—analytical tool used to anticipate potential impacts of particular activities on the natural environment and on humans dependent on that environment

Initial Environmental Audit (I+EAU)—assessment of environmental and related human impacts of pre-existing or ongoing activities

Environmental Impact Assessment (EIA)—comprehensive analytical effort designed to anticipate environmental impacts of major projects having the potential to have significant, diverse and irreversible impacts on the natural environment and on humans dependent on that environment

Environmental Impact Statement (EIS)—comprehensive analytical effort designed to anticipate environmental impacts of major federal actions affecting the global commons outside of the jurisdiction of any nation

Environmental Management and Monitoring Plan (EMMP)—systematic program designed to prevent, mitigate and monitor anticipated environmental and related human impacts of prospective and ongoing activities

Environmental Remediation Plan (ENR)—systematic program designed to reverse adverse environmental impacts of previous activities at a site

European Bank for Reconstruction and Development (EBRD)—multilateral development bank established in 1990 to assist in the economic, social and political development of Central and Eastern Europe and the New Independent States of the former Soviet Union. Other members include the European Community and the United States.

Export-Import Bank of the United States (Exim)—independent U.S. government agency that helps finance the overseas sales of U.S. goods and services

Financial Intermediary (FI)—investment funds, bank or other financial institution that lends directly to projects or investment funds guaranteed or insured by OPIC that invest in projects (''subprojects'') subject to OPIC approval on policy grounds.

Foreign Assistance Act (FAA)—Foreign Assistance Act of the United States

International Finance Corporation (IFC)—affiliate of the World Bank group that makes loans to and investments in private sector projects in developing countries and emerging markets

ISO 14000—basic elements of an effective environmental management system as developed by the Technical Committee of the International Organization for Standardization (ISO) to provide organizations worldwide with a common approach to environmental management.

Major Hazard Assessment (MHA)—analytical tool used for identifying, analyzing and controlling potential major hazards to human health and safety resulting from storage and processing of toxic and hazardous substances

Natural Forests—An area in which the cover has evolved naturally so as to provide significant economic and/or ecological benefits, or one that is sufficiently advanced in regeneration and recovery from disturbance as to be judged in near-natural condition. Forests that are not the result of man-made plantations, tree farms or similar operations. All primary and secondary forests are considered natural forests.

Primary Forests—Relatively intact forest that has been essentially unmodified by human activity for the past sixty to eighty years; an ecosystem characterized by an abundance of mature trees. Human impacts in such forests have been limited to low levels of artisanal hunting, fishing and harvesting of forest products, and, in some cases, to low density, migratory shifting agriculture.[19]

World Bank (WB)—International Bank for Reconstruction and Development.

(Authority: 22 U.S.C. § 2191(k)(2), as amended)

James R. Offutt,

Assistant General Counsel for Administrative Affairs.

[FR Doc. 98–4802 Filed 2–24–98; 8:45 am]

BILLING CODE 3201–01–U

[19] Tropical dry forest is deciduous to semi-evergreen during the dry season, has a canopy with few epiphytes, and ranges from 2 to 40 meters in height in its undisturbed state. In the rainy season it receives 500 to 3500 millimeters of precipitation, and the rain-free dry season is 4 to 8 months long. Tropical moist forests is generally defined as forest in areas that receive not less than 100mm of rain in any month for two out of three years and have an annual mean temperature of 24 degrees Celsius or higher. Also included in this category, however, are some forests (especially in Africa) where dry periods are longer but high cloud cover causes reduced evapotranspiration. Rene Dubos Center for Human Environment's Environmental Encyclopedia; IFC OP 4.36, ''Forestry.''

federal register

Wednesday
February 25, 1998

Part VII

Environmental Protection Agency

Certain Chemicals; Premanufacture Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51875; FRL–5756–9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from September 15, 1997 to September 19, 1997. This document also includes a premanufacture notice that was inadvertently omitted and was received in the week of August 25, 1997 to August 29, 1997. It will appear first in ''(I) PMNs received...''.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51875]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51875]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51875]'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to

indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 20 Premanufacture Notices Received From: 09/15/97 to 09/19/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–1023	08/26/97	11/24/97	CBI	(G) Inhibitor	(G) Phosphonomethylated polyamine
P–97–1058	09/15/97	12/08/97	Jowat Corporation	(S) Production of hot melts	(G) Polyisoxyanate of 2,4′ and 4,4′-diphenylmethane-diisocyanate and hydroxy terminated polyethers
P–97–1059	09/16/97	12/15/97	Engelhard Corporation	(S) Coatings; plastics; inks	(G) Naphthol red pigment
P–97–1060	09/16/97	12/15/97	CBI	(G) Catalyst for automotive polymers	(G) Sodium salt of phenol
P–97–1061	09/16/97	12/15/97	CBI	(G) Catalyst for automotive polymers	(G) Sodium salt of phenol
P–97–1062	09/16/97	12/15/97	CBI	(G) Catalyst for automotive polymers	(G) Sodium salt of phenol
P–97–1063	09/15/97	12/14/97	CBI	(S) Curative for epoxy resin	(G) Polyamide
P–97–1064	09/15/97	12/14/97	CBI	(G) Open, non-dispesive use	(G) Methacrylate polymer
P–97–1065	09/16/97	12/15/97	CBI	(G) Open, non-dispersive use in a coating application	(G) Aqueous polyurethane dispersion
P–97–1066	09/15/97	12/14/97	Akzo Nobel Resins	(S) Resin used to manufacture industrial coatings	(S) Fatty acid, $C_{16–18}$, polymers with bu acrylate, hexahydro-1,3-isobenzofurandione, 2-hydroxyethyl methacrylate, styrene, 3,5,5-trimethylhexanoic acid and trimethylolpropane
P–97–1067	09/18/97	12/17/97	CBI	(G) Fiber treatment chemical-intermediate	(G) Ethoxylated phosphoric acid
P–97–1068	09/17/97	12/16/97	Cytec Industries	(G) Polymeric coating additive	(G) Vinyl alkyl polyester copolymer
P–97–1069	09/16/97	12/15/97	Cytec Industries	(G) Polymeric coating additive	(G) Alkyl polyester polymer
P–97–1070	09/18/97	12/17/97	CBI	(G) Fiber treatment chemical	(G) Ethoxylated phosphoric acid ester salts
P–97–1071	09/18/97	12/17/97	CBI	(G) Fiber treatment chemical	(G) Ethoxylated phosphoric acid ester salts
P–97–1072	09/18/97	12/17/97	CBI	(G) Fiber treatment chemical	(G) Ethoxylated phosphoric acid ester salts
P–97–1073	09/18/97	12/17/97	CBI	(G) General use coating	(G) Polymer of an alkoxy functional silanes, siloxanes, acrylics, silicones, and fluorinated alcohol
P–97–1074	09/17/97	12/16/97	CBI	(G) UV radiation cure agent	(G) Aliphatic acrylate
P–97–1075	09/18/97	12/17/97	Henkel Corporation (Emery Group)	(G) Synethetic fiber lubricant	(S) Amides, from acetic acid, $C_{5–9}$ carboxylic acids and diethylene triamine-ethyleneimine polymer
P–97–1076	09/18/97	12/17/97	Henkel Corporation (Emery Group)	(G) Synethetic fiber lubricant	(S) Amides, from acetic acid, $C_{5–9}$ carboxylic acids and diethylene triamine-ethyleneimine polymer, acetates

II. 19 Notices of Commencement/Import Received Date 09/15/97 to 09/19/97

Case No.	Received date	Commencement/ Import	Chemical
P–91–0732	09/16/97	08/20/97	(G) Ammonium organo phosphonate
P–96–0021	09/15/97	08/18/97	(G) Polyalkenyl succinic anhydride, reaction products with polyethylenepolyamine and alkylalde hyde; metalated
P–96–0022	09/15/97	08/18/97	(G) Polyalkenyl succinic anhydride, reaction products with polyethylenepolyamine and alkylalde hyde metalated
P–96–1029	09/16/97	08/26/97	(S) Polymer of: 1,3,5-triazine-2,4,4(1*h*,3*h*,5*h*)-trione,1,3,5-tris(2-hydroxyethyl)-, polymer with 2-aminoethanol, 2,2-dimethyl-1,3-propanediol, 2,5-furandione and 3*a*,4,7,7*a*-tetrahydro-1,3-isobenzofurandione (9cl)
P–96–1276	09/18/97	09/09/97	(G) Substituted heterocycle
P–96–1325	09/16/97	08/30/97	(G) Substituted benzene, [[[polysubstituted-heterominocycle]-(substituted)-oxoalkyl]amino]-
P–97–0122	09/15/97	08/22/97	(G) Adipamide
P–97–0367	09/16/97	08/22/97	(G) Ethylene oxide, polymer with propylene oxide, alkylphenol, formaldehyde and alkenoic acids

II. 19 Notices of Commencement/Import Received Date 09/15/97 to 09/19/97—Continued

Case No.	Received date	Commencement/ Import	Chemical
P–97–0566	09/19/97	09/05/97	(S) 2-Propenedoic acid, 2-methyl,2-(1-oxy-4-azoptrol (4,5)dec-4-yl)ethyl ester, polymer with butyl -2-propenoate (1,2-propenoate, mono-2-propenoat, 2,2 ′ azobis 1-2,methylbutylbutanenitrile initiated
P–97–0630	09/15/97	08/19/97	(G) Epoxy acid ester
P–97–0631	09/18/97	09/11/97	(G) Alkoxy silane ester
P–97–0632	09/18/97	09/11/97	(G) Alkoxy silane ester
P–97–0633	09/18/97	09/11/97	(G) Alkoxy silane ester
P–97–0634	09/18/97	09/11/97	(G) Alkoxy silane ester
P–97–0726	09/15/97	09/08/97	(G) Sodium salt of aromatic sulfonic acid formaldehyde condensate
P–97–0770	09/15/97	09/10/97	(G) Acrylic emulsion polymer
P–97–0771	09/15/97	09/10/97	(G) Acrylic emulsion polymer
P–97–0772	09/15/97	09/10/97	(G) Acrylic emulsion polymer
P–97–0773	09/15/97	09/10/97	(G) Acrylic emulsion polymer

List of Subjects

Environmental protection, Premanufacture notices.

Dated: February 18, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–4808 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51876; FRL–5757–1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from September 22, 1997 to September 26, 1997.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51876]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51876]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION''.

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SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

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printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

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In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

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EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; (II) TMEs received; and (III) Notices of Commencement to manufacture/import.

I. 12 Premanufacture Notices Received From: 09/22/97 to 09/26/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–1077	09/23/97	12/22/97	CBI	(G) Component of manufactured consumer article-contained use	(G) Benzenesulfonamide, 3-[(3-substituted-4,5-dihydro-5-oxo-1-phenyl-1*H-pyrazol-4-yl)azo]-N–N*-bis[3-[[[3-(5,5-dimethyl-3-octadecyl-2-thiazolidinyl) 4-hydroxyphenyl]sulfonyl]aminopropyl]-
P–97–1078	09/23/97	12/22/97	Dow Corning	(S) Silicone fabic softener	(G) Amide-functional siloxane
P–97–1079	09/22/97	12/21/97	CBI	(G) Automatic transmission fluid	(G) Alkyl methacrylate copolymer
P–97–1080	09/22/97	12/21/97	Insulating Materials Incorporated	(S) Electrical insulating varnish for motor, generators, transformers, etc.; same use and functions	(S) 1,3-propanediol, 2-ethyl-2-(hydroxymethyl), polymer with benzoic acid, 4-hydroxy, ethanol, 2,2′-oxbis, 2,2-dimethyl-1,3-propanediol, 1,3-benzenedicarboxylic acid, hexanedioic acid, and 5-isbenzofuran carboxylic acid, 1,3-dihydro-1,3-dioxo
P–97–1081	09/23/97	12/22/97	Dover Chemical Corporation	(S) Extreme pressure lubricant add.	(S) Amines, C_{12}–C_4-tert-alkyl, amidosulfites
P–97–1082	09/22/97	12/21/97	Reichhold Chemicals Inc.	(G) Polyurethane reactive hot melt adhesive	(G) Polyurethane adhesive
P–97–1083	09/23/97	12/22/97	Engelhard Corporation	(S) A colorant for plastics	(G) Metallized azo yellow pigment
P–97–1084	09/25/97	12/24/97	CBI	(S) UV or electron beam radiation cure agent used in the formulation of radiation curable inks and varnishes for metal container exterior surface coatings	(G) Alkoxylated acrylic acid polyester
P–97–1085	09/25/97	12/24/97	CBI	(S) Intermediate in the manufacture of acrylic acid adduct	(G) Alkoxylate polyether
P–97–1086	09/24/97	12/23/97	Firestone Building Products Company	(G) Rubber primer used for application onto epmd membrane; rubbersplice adhesive used for adhering epdm membrane to itself	(G) Brominated isobutylene-isoprene-synthetic polyurethane
P–97–1087	09/25/97	12/24/97	Dow Corning	(S) Petrochemical processing aid	(G) Alkyl me siloxanes
P–97–1088	09/24/97	12/23/97	CBI	(S) Leuco sulfur dye for dyeing cellulosic fibers	(G) Substituted diphenylamine reaction product with sodium sulfides, reduced

II. 3 Test Marketing Exemption Notices Received 09/22/97 to 09/26/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–97–0012	09/22/97	11/06/97	Reichhold Chemicals Inc.	(G) Adhesive for panel and profile lamination	(G) Polyurethane adhesive
T–97–0013	09/22/97	11/06/97	Reichhold Chemicals Inc.	(G) Adhesive for panel and profile lamination	(G) Polyurethane adhesive
T–97–0014	09/22/97	11/06/97	Reichhold Chemicals Inc.	(G) Adhesive for panel and profile lamination	(G) Polyurethane adhesive

III. 2 Notices of Commencement/Import Received Date 09/22/97 to 09/26/97

Case No.	Received Date	Commencement/ Import	Chemical
P–96–1629	09/23/97	08/23/97	(G) Substituted aminophenol
P–97–0791	09/22/97	08/16/97	(G) Halo alkene

List of Subjects

Environmental protection, Premanufacture notices.

Dated: February 17, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–4809 Filed 2–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51877; FRL–5768–5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from September 29, 1997 to October 3, 1997.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51877]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

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In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 33 Premanufacture Notices Received From: 09/29/97 to 10/03/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–1099	09/30/97	12/29/97	BASF Corporation	(S) Thermoset coatings; chemical intermediate	(G) Poly-lactone derivative
P–97–1100	09/30/97	12/29/97	CBI	(S) Automotive coatings	(G) Polyacrylic resin
P–97–1101	09/30/97	12/29/97	BASF Corporation	(S) Thermoset coatings	(G) Lactone-derived carbamate functional resin
P–97–1102	09/30/97	12/29/97	BASF Corporation	(S) Thermoset coatings	(G) Lactone-derived carbamate functional resin
P–97–1103	09/30/97	12/29/97	Ciba Specialty Chemicals Corporation	(S) Intermediate fine chemical	(G) Substituted 2-amino diethyl sulfide
P–97–1104	09/30/97	12/29/97	Nagase California Corporation	(S) Material for photoresist	(G) Substituted triphenyl sulfonyl ester
P–97–1105	09/30/97	12/29/97	Nagase California Corporation	(S) Material for photoresist	(G) Substituted phenol tetrakis sulfonyl ester
P–98–0001	10/01/97	12/30/97	CBI	(G) Surface active agent	(G) Alkarylsulfonic acid, alkylamine salt*
P–98–0002	10/01/97	12/30/97	CBI	(G) Contained use- battery additive	(G) Metal oxide
P–98–0003	10/01/97	12/30/97	ABCO Industries Inc	(S) Adhesion promotoer for textile warps sizes	(S) 1,3-benzenedicarboxylic acid, 5-sulfo-, monosodium salt, polymer with 1,3-benzenedicarboxylic acid, 1,3-dihydro-1,3-dioxo-5-isobenzofurancarboxylic acid, 1,2-ethanediol and 2,2′-oxybis [ethanol]
P–98–0004	10/03/97	12/30/97	3m Company	(G) Coating additive	(G) Acrylate polymer
P–98–0005	10/01/97	12/30/97	CBI	(G) Coating curative	(G) Polyamine adducts
P–98–0006	10/01/97	12/30/97	CBI	(G) Coating curative	(G) Polyamine adducts
P–98–0007	10/01/97	12/30/97	CBI	(G) Coating curative	(G) Polyamine adducts
P–98–0008	10/01/97	12/30/97	CBI	(G) Coating curative	(G) Polyamine adducts
P–98–0009	10/01/97	12/30/97	CBI	(G) Coating curative	(G) Polyamine adducts
P–98–0010	10/01/97	12/30/97	CBI	(G) Coating curative	(G) Polyamine adducts
P–98–0011	10/02/97	12/31/97	Union Carbide Corporation	(G) Combination of alkoxyl groups	(G) Sodium alkyl alkoxide
P–98–0012	10/02/97	12/31/97	Union Carbide Corporation	(G) Combination of alkoxyl groups	(G) Sodium alkyl alkoxide
P–98–0013	10/02/97	12/31/97	CBI	(G) Open, non-dispersive use	(G) Acetoacetate oligomer

I. 33 Premanufacture Notices Received From: 09/29/97 to 10/03/97—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–98–0014	10/02/97	12/31/97	Loctite Corporation	(S) Component in adhesive formulations	(S) 1,2,4-benzenetricarboxylic acid, mixed hexyl and oxtyl triesters
P–98–0015	10/02/97	12/31/97	H. B. Fuller Company-World Headquarters	(S) Fabric adhesive	(G) Polyester isocyanate prepolymer
P–98–0016	10/02/97	12/31/97	H. B. Fuller Company-World Headquarters	(S) Fabric adhesive	(G) Polyester polyether prepolymer
P–98–0017	10/02/97	12/31/97	H. B. Fuller Company-World Headquarters	(S) Fabric adhesive	(G) Polyester polyether isocyanate prepolymer
P–98–0018	10/02/97	12/31/97	H. B. Fuller Company-World Headquarters	(S) Fabric adhesive	(G) Polyester polyether isocyanate prepolymer
P–98–0019	10/02/97	12/31/97	CBI	(G) Destructive use	(G) Monocyclic aldehyde
P–98–0020	10/02/97	12/31/97	CBI	(G) Destructive use	(G) Monocyclic aldehyde
P–98–0021	10/02/97	12/31/97	CBI	(G) Destructive use	(G) Tricyclic terpene
P–98–0022	10/02/97	12/31/97	CBI	(G) Destructive use	(G) Tricyclic terpene
P–98–0023	10/02/97	12/31/97	Toagosei America Inc	(S) Powder coating automobile	(G) Saturated polyester resin
P–98–0025	10/03/97	01/01/98	CBI	(S) Curing agent for epoxy coating systems	(G) Polyamine adduct

II. 15 Notices of Commencement Received Date 10/01/97 to 10/03/97

Case No.	Received Date	Commencement/ Import	Chemical
P–95–1905	10/01/97	09/03/97	(G) Cobalt aluminum complexes
P–96–0250	10/10/97	09/29/97	(G) Neutralized waterborne acrylic polymer
P96–1595	10/02/97	09/20/97	(G) Vinyl chloride, polymer with vinyl acetate and sulfonate salt monomer
P96–1596	10/02/97	09/20/97	(G) Vinyl chloride, polymer with vinyl acetate and sulfonate salt monomer
P–97–0008	10/01/97	09/26/97	(S) Polymer of: ethanol,2,2′-oxybis; 1,2-propanediol; 2-butenedioic acid; 1,3,-isobenzofurandione, 3a,4,7,7a-tetrahydro-; 1-butanol, 2,2-bis[(2-propenyoloxy)methyl]-
P–97–0190	10/09/97	09/30/97	(S)
P–97–0427	10/01/97	09/18/97	(G) Polyamide
P–97–0444	10/10/98	10/04/97	(S) 2,7-Naphthalenedsulfonic acid, 6-((4-chloro-6-(substituted amino)-1,3,5-triazin-2-yl(amino)-3-((6-((2,3-dibromo-1-oxopropyl)amino amino)-2-sulfonophenyl[azo)4-hydroxy-, sodium salt
P–97–0577	10/08/97	10/02/97	(G) Benzenesulfonic acid, diamino)-3-(4-2-sulfoxyethyl sulfoxyy) phenyl azo)-5-(4-(2-sulfoxyethyl)-sodium-potassium salt-
P–97–0582	10/06/97	09/29/97	(G) Substituted heteroaromatic -2([(4-(dimethylamino) phenyl]azo-3-methyl-, salt
P–97–0614	10/10/97	09/18/97	(G) Polyester resin
P–97–0710	10/06/97	09/21/97	(G) Cycloaliphatic polyisocyanate
P–97–0745	10/30/97	09/08/97	(G) Alaki metal salts of fatty acid distilation residues
P–97–0761	10/08/97	09/16/97	(G) Aromatic boron complex with halide
P–97–0794	10/02/97	09/26/97	(G) Carboxylic acid amides

List of Subjects

Environmental protection, Premanufacture notices.

Dated: February 17, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–4810 Filed 2–24–98; 8:45 am]

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AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Onions grown in—
- Texas; published 2-24-98

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Bensulfuron methyl; published 2-25-98
- Kaolin; published 2-25-98
- Norflurazon; published 2-25-98
- Thiabendazole; published 2-25-98

Toxic substances:
- Significant new uses—
  - Poly (oxy-1,2-ethanediyl), alpha substituted-omega-hydroxy-, C16-20 alkyl ethers, etc.; correction; published 2-25-98

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Copyright arbitration royalty panels; arbitrator names list; published 2-25-98

NUCLEAR REGULATORY COMMISSION

Production and utilization facilities; domestic licensing:
- Light-water power reactors; criticality accident requirements; withdrawn; published 2-25-98

POSTAL SERVICE

International Mail Manual:
- Global package link (GPL) service—
  - Japan; maximum size and weight limits increase; published 2-25-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Dornier; published 2-10-98
- McDonnell Douglas; published 2-10-98
- Pratt & Whitney; published 2-25-98

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
- Occupant crash protection—
  - Safety belt systems designed to transport prisoners in rear seats of law enforcement vehicles; published 1-26-98

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AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Grapes grown in California; comments due by 3-2-98; published 12-31-97

Meats, prepared meats and meat products:
- Grading and certification services fees; comments due by 3-2-98; published 12-31-97

Milk marketing orders:
- New England et al.; comments due by 3-2-98; published 1-30-98

Onions grown in—
- Texas; comments due by 3-2-98; published 12-30-97

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
- Mexican fruit fly, etc.; high-temperature forced-air treatments for citrus fruits; comments due by 3-2-98; published 12-30-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Permits, recordkeeping, and reporting requirements; comments due by 3-6-98; published 2-19-98
- Caribbean, Gulf, and South Atlantic fisheries—
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