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The President

Proclamation 7083 of April 17, 1998

National Organ and Tissue Donor Awareness Week, 1998

By the President of the United States of America

A Proclamation

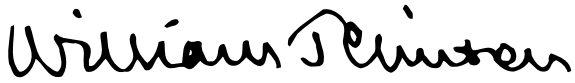
On December 1, 1997, 14-year-old Nicole Hadley was killed when a classmate opened fire inside her high school in Paducah, Kentucky. When doctors told Gwen and Chuck Hadley that their daughter had no hope for recovery, her parents remembered that Nicole believed strongly in organ donation, and in the midst of their own intense grief, the Hadleys made the courageous decision to honor Nicole's wishes and donate her organs. This decision helped to save the lives of at least two people and allowed Nicole's spirit of grace and generosity to live on after her death.

Thousands of families have made the same selfless decision and have given the gift of life to someone in need of an organ or tissue transplantation. Today, approximately 55,000 Americans are on the national organ transplant waiting list, hoping for a second chance. Yet, every day, 10 people will die because organs are not available. These tragic deaths are unnecessary. Our country has a large number of people who qualify as organ donors—but many still have not chosen to become donors.

Last year, to help remedy this situation, Vice President Gore, with the Department of Health and Human Services, launched the National Organ and Tissue Donation Initiative to increase awareness of the urgent need for increased donation. We are working to ensure that all Americans know that by completing and carrying a donor card—and by making their families aware of their decision to donate—they may give the gift of life to other Americans or ease their suffering. And families who have lost their loved ones can gain solace in knowing that they have been able to bring life and comfort to others. This week, I encourage all Americans to honor the memory of Nicole Hadley—and the thousands of other generous people who have donated their organs—by learning more about the benefits of becoming an organ and tissue donor and by filling out a donor card.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 19 through April 25, 1998, as National Organ and Tissue Donor Awareness Week. I urge all health care professionals, educators, the media, public and private organizations concerned with organ donation and transplantation, the clergy, and all Americans to join me in promoting greater awareness and acceptance of this humanitarian action.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of April, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.



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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–056–9]

Mediterranean Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing the quarantined area in Hillsborough County, FL, from the list of quarantined areas. The quarantine was necessary to prevent the spread of Medfly to noninfested areas of the United States. We have determined that the Mediterranean fruit fly has been eradicated from this area and that restrictions on the interstate movement of regulated articles from this area are no longer necessary. As a result of this action, there are no longer any areas in the continental United States quarantined because of the Mediterranean fruit fly.

DATES: Interim rule effective April 17, 1998. Consideration will be given only to comments received on or before June 22, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–056–9, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–056–9. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (contained in 7 CFR 301.78 through 301.78–10 and referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States. Since an initial finding of Medfly infestation in Hillsborough County, FL, in May 1997, the quarantined areas in Florida have included all or portions of Hillsborough, Manatee, Orange, Polk, and Sarasota Counties.

In an interim rule effective on June 16, 1997, and published in the **Federal Register** on June 20, 1997 (62 FR 33537–33539, Docket No. 97–056–2), we added a portion of Hillsborough County, FL, to the list of quarantined areas and restricted the interstate movement of regulated articles from that quarantined area. In a second interim rule effective on July 3, 1997, and published in the **Federal Register** on July 10, 1997 (62 FR 36976–36978, Docket No. 97–056–3), we expanded the quarantined area in Hillsborough County, FL, and added areas in Manatee and Polk Counties, FL, to the list of quarantined areas. In a third interim rule effective on August 7, 1997, and published in the **Federal Register** on August 13, 1997 (62 FR 43269–43272, Docket No. 97–056–4), we further expanded the quarantined area by adding new areas in Hillsborough County, FL, and an area in Orange County, FL, to the list of quarantined areas. In that third interim rule, we also revised the entry for Manatee County, FL, to make the boundary lines of the quarantined area more accurate. In a fourth interim rule effective on September 4, 1997, and published in the **Federal Register** on September 10, 1997 (62 FR 47553–47558, Docket No. 97–056–5), we quarantined a new area in Polk County, FL, and an area in Sarasota County, FL. In a fifth interim rule effective on October 15, 1997, and published in the **Federal Register** on October 21, 1997 (62 FR 54571–54572, Docket No. 97–056–7), we removed all or portions of the quarantined areas in Hillsborough, Manatee, Orange, Polk, and Sarasota Counties, FL, from the list of quarantined areas. In a sixth interim rule effective on November 14, 1997, and published in the **Federal Register** on November 20, 1997 (62 FR 61897–61898, Docket 97–056–8), we removed all of the quarantined area in Polk County, FL, from the list of quarantined areas.

We have determined, based on trapping surveys conducted by the Animal and Plant Health Inspection Service (APHIS) and Florida State and county agency inspectors, that the Medfly has been eradicated from the quarantined area in Hillsborough County, FL. The last finding of Medfly thought to be associated with the infestation in Hillsborough County, FL, was July 15, 1997. Since that time, no evidence of infestation has been found in this area. We are, therefore, removing Hillsborough County, FL, from the list of areas in § 301.78–3(c) quarantined because of the Medfly. As a result of this action, there are no longer any areas in the continental United States quarantined because of the Medfly.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. The portion of Hillsborough County, FL, affected by this document was quarantined to prevent the Medfly from spreading to noninfested areas of the United States. Because the Medfly has been eradicated from this area, and because the continued quarantined status of Hillsborough County, FL, would impose unnecessary regulatory restrictions on the public, immediate

action is warranted to relieve restrictions.

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

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the Medfly regulations by removing an area in Hillsborough County, FL, from quarantine for Medfly. This action affects the interstate movement of regulated articles from this area. There are approximately 292 small entities that could be affected, including 3 transportation terminals, 65 fruit stands, 36 flea markets, 39 farmers markets, 134 food stores, and 15 garbage service firms.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of Florida. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate movement, and the sale of these articles would not be affected by this interim rule.

Therefore, termination of the quarantine in Hillsborough County, FL, should have a minimal economic effect on the small entities operating in this area. We anticipate that the economic impact of lifting the quarantine, though positive, will be no more significant than was the minimal impact of its imposition.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

2. Section 301.78–3, paragraph (c), is revised to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) The areas described below are designated as quarantined areas:

Mediterranean fruit fly is not known to exist in the continental United States.

Done in Washington, DC, this 17th day of April 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–10661 Filed 4–21–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–98–AD; Amendment 39–10367; AD 98–05–06]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–12 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of Airworthiness Directive (AD) 98–05–06, which applies to Pilatus Aircraft Ltd. (Pilatus) Model PC–12 airplanes. AD 98–05–06 requires inspecting the elevator for incorrect rivet lengths and installing new rivets if incorrect rivet lengths are found. This AD also requires inspecting the elevator to assure that an excessive gap (more than .004 inches or .1 millimeters (mm)) does not exist in the rivet shanks, and installing a shim between the rib and skin to fill any excessive gap. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified in this AD are intended to prevent fatigue damage to the elevator, which could result in structural failure and eventual loss of control of the airplane.

EFFECTIVE DATE: May 29, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with request for comments in the **Federal Register** on March 3, 1998 (63 FR 10299). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA anticipates that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, was received within the comment period, the regulation would become effective on May 29, 1998. No adverse comments were received, and thus this notice confirms that this final rule will become effective on that date.

Issued in Kansas City, Missouri, on April 14, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certfication Service.

[FR Doc. 98–10596 Filed 4–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket Nos. 75N–183F, 75N–183D, and 80N–0280]

RIN 0910–AA01

Status of Certain Additional Over-the-Counter Drug Category II and III Active Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule stating that certain ingredients in over-the-counter (OTC) drug products are not generally recognized as safe and effective or are misbranded. FDA is issuing this final rule after considering the reports and recommendations of various OTC drug advisory review panels and public comments on proposed agency regulations, which were issued in the form of a tentative final monograph (proposed rule). Based on the absence of substantive comments in opposition to the agency's proposed nonmonograph status for these ingredients, as well as the failure of interested parties to submit new data or information to FDA under the regulation, the agency has determined that the presence of these ingredients in an OTC drug product would result in that drug product not being generally recognized as safe and effective or would result in misbranding. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Effective October 19, 1998.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2307.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 7, 1990 (55 FR 46914), FDA published under § 330.10(a)(7)(ii) (21 CFR 330.10(a)(7)(ii)), a final rule on the status of certain OTC drug Category II and III active ingredients. That final rule declared as not generally recognized as safe and effective certain active ingredients that had been proposed as nonmonograph (Category II or Category III) under the agency's OTC drug review. The periods for submission of comments and new data following the publication of a notice of proposed rulemaking (NPRM) had closed and no significant comments or new data had been submitted to upgrade the status of these ingredients. In each instance, a final rule for the class of ingredients involved had not been published to date.

In the **Federal Register** of May 10, 1993 (58 FR 27636), FDA published a final rule establishing that certain additional active ingredients in OTC drug products are not generally recognized as safe and effective or are misbranded. That final rule included active ingredients from a number of OTC drug rulemakings that were not covered by the November 7, 1990, final rule. (See Table I (58 FR 27636 at 27639 to 27641) for a list of OTC drug rulemakings and active ingredients covered by that final rule.)

At that time, there were other OTC drug review rulemakings for which the period for submission of comments and/or new data was still pending. Those periods have now closed, and there are a number of active ingredients for which no significant comments or new data were submitted. In each instance, a final rule for the class of ingredients involved has not been published to date. This final rule addresses some of the Category II and Category III active ingredients in those classes of ingredients, specifically active ingredients considered in the rulemakings for OTC vaginal contraceptive, first aid antiseptic, and antimicrobial diaper rash drug products.

In the advance notice of proposed rulemaking (ANPRM) for OTC vaginal contraceptive drug products (45 FR 82014, December 12, 1980), the Advisory Review Panel on OTC Contraceptives and Other Vaginal Drug Products placed phenylmercuric acetate and phenylmercuric nitrate in Category II for safety and placed dodecaethylene glycol monolaurate (polyethylene glycol 600 monolaurate), laureth 10S, and methoxypolyoxyethyleneglycol 550 laurate in Category III for efficacy. In the tentative final monograph (TFM) for OTC vaginal contraceptive drug products (60 FR 6892, February 3, 1995), the agency proposed that all of these ingredients be nonmonograph. In response to this TFM (NPRM), the agency received no comments or data relating to the safety and effectiveness of these ingredients.

In the ANPRM for mercury-containing drug products for OTC topical antimicrobial use (47 FR 436, January 5, 1982), the Advisory Review Panel on OTC Miscellaneous External Drug Products placed all mercury compounds in Category II for topical antimicrobial use. This included the following ingredients: Ammoniated mercury; calomel (mercurous chloride); merbromin (mercurochrome); mercuric chloride (bichloride of mercury, mercury chloride); mercufenol chloride (ortho-chloromercuriphenol, ortho-hydroxyphenylmercuric chloride); mercuric salicylate; mercuric sulfide (red mercuric sulfide); mercuric oxide, yellow; mercury; mercury chloride; mercury oleate; nitromersol; para-chloromercuriphenol; phenylmercuric nitrate; thimerosal; vitromersol; and zyloxin. In the NPRM for OTC first aid antiseptic drug products (56 FR 33644, July 22, 1991), the agency proposed that all of these ingredients were either Category II or Category III. In response to this NPRM, the agency received no comments or data relating to the safety and effectiveness of these ingredients.

In an amendment to the proposed rulemaking for OTC topical antimicrobial drug products (55 FR 25246, June 20, 1990), the agency proposed that p-chloromercuriphenol and all other ingredients containing mercury were Category II for the treatment and prevention of diaper rash. In response to this NPRM, the agency received no comments or data relating to the safety and effectiveness of these ingredients.

II. Affected Rulemakings and Category II and III Ingredients

Table I of this document lists the titles and docket numbers of the specific rulemakings containing active ingredients that are addressed in this document, together with the publication dates of the ANPRM and the NPRM, as well as the closing dates for comments and submission of new data for each rulemaking. FDA advises that the active ingredients discussed in this document (see Table II of section II of this document) will not be included in the relevant final monographs because they have not been shown to be generally recognized as safe and effective for their intended use. The agency further advises that these ingredients should be eliminated from OTC drug products 6 months after the date of publication in the **Federal Register** of this final rule regardless of whether further testing is undertaken to justify future use.

The agency points out that publication of a final rule does not preclude a manufacturer's testing an ingredient. New, relevant data can be submitted to the agency at a later date as the subject of a new drug application that may provide for prescription or OTC marketing status. (See part 314 (21 CFR part 314).) As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in an appropriate citizen petition to amend or establish a monograph, as appropriate. (See § 10.30 (21 CFR 10.30).)

TABLE I.—OTC DRUG RULEMAKINGS COVERED BY THIS FINAL RULE

Rulemaking and action	Publication date	Comment closing date	New data closing date
(1) *Vaginal contraceptive drug products*			
(Docket No. 80N–0280)			
Advance notice of proposed rulemaking (ANPRM)	December 12, 1980	March 12, 1981	Not applicable (N/A)
Notice of proposed rulemaking (NPRM)	February 3, 1995	June 5, 1995	February 5, 1996
(2) *First aid antiseptic drug products*			
(Docket No. 75N–0183)			
ANPRM	January 5, 1982	April 5, 1982	N/A
(Docket No. 75N–183F)			
NPRM	July 22, 1991	January 2, 1992	July 22, 1992
(3) *Antimicrobial diaper rash drug products*			
(Docket No. 75N–0183)			
ANPRM	September 7, 1982	December 6, 1982	January 5, 1983
(Docket No. 75N–183D)			
NPRM	June 20, 1990	December 17, 1990	June 20, 1991

Based on the criteria discussed above, FDA concludes that the following ingredients are not generally recognized as safe and effective and are misbranded when labeled as OTC drugs for the following uses:

TABLE II.—INGREDIENTS COVERED BY THIS FINAL RULE

Rulemaking and ingredients	Ingredient classification	
	Advance notice of proposed rulemaking	Notice of proposed rulemaking
(1) *First aid antiseptic drug products*:		
(Docket No. 75N–183F)		
Ammoniated mercury	II	II
Calomel (mercurous chloride)	II	III
Merbromin (mercurochrome)	II	III
Mercufenol chloride (ortho-chloromercuriphenol, ortho-hydroxyphenylmercuric chloride)	II	III
Mercuric chloride (bichloride of mercury, mercury chloride)	II	II
Mercuric oxide, yellow	II	II
Mercuric salicylate	II	II
Mercuric sulfide, red	II	II
Mercury	II	II
Mercury oleate	II	II
Mercury sulfide	II	II
Nitromersol	II	II
Para-chloromercuriphenol	II	II
Phenylmercuric nitrate	II	III
Thimerosal	II	II
Vitromersol	II	II
Zyloxin	II	II
(2) *Vaginal contraceptive drug products*:		
(Docket No. 80N–0280)		
Dodecaethylene glycol monolaurate) (polyethylene glycol 600 monolaurate)	III	III
Laureth 10S	III	III
Methoxypolyoxyethyleneglycol 550 laurate	III	III
Phenylmercuric acetate	II	II
Phenylmercuric nitrate	II	II
(3) *Antimicrobial diaper rash drug products*:		
(Docket No. 75N–183D)		
Para-chloromercuriphenol	NA	II
Any other ingredient containing mercury	NA	II

III. The Agency's Final Conclusions on Certain OTC Drug Category II and III Ingredients

No substantive comments or additional data have been submitted to the OTC drug review to support any of the ingredients listed in Table II of this document as being generally recognized as safe and effective for the specified OTC uses. The agency has determined that these ingredients should be deemed not generally recognized as safe and effective for OTC use before a final monograph for each respective drug category is established. Accordingly, any drug product containing any of these ingredients and labeled for the OTC use identified in Table II of this document will be considered nonmonograph and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations is required for marketing. As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in a citizen petition to amend the appropriate monograph to include any of the above ingredients in OTC drug products in Table II of this document. (See § 10.30.) Any OTC drug product containing any of the ingredients in Table II of this document and labeled for the use identified in Table II of this document initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule that is not the subject of an approved application will be in violation of sections 502 and 505 of the act and, therefore, subject to regulatory action. Further, any OTC drug product subject to this final rule that is repackaged or relabeled after the effective date of the rule would be required to be in compliance with the rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze significant regulatory options that would minimize any significant impact of the rule on small entities.

Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this final rule is consistent with the principles set out in the Executive Order and in these two statutes. The purpose of this final rule is to act on the proposed nonmonograph status of certain ingredients in advance of finalization of other monograph conditions in order to expedite completion of the OTC drug review. There are a limited number of products currently marketed that will be affected by this rule. Of the 17 mercury active ingredients included in the final rule, the agency is aware of 12 OTC drug products containing merbromin, 1 product containing phenylmercuric nitrate, and 7 products containing thimerosal. These products are marketed by eight different manufacturers, most of which are considered small entities, using the U.S. Small Business Administration designation for this industry (750 employees). The agency is not aware of any topical antimicrobial diaper rash or vaginal contraceptive drug products containing any of the active ingredients included in this final rule.

Manufacturers of these products will no longer be able to market products containing the ingredients included in this final rule after its effective date. While the manufacturers will incur a loss of revenue for these products, the agency believes the economic impact will be minimal for several reasons. A. C. Nielsen (Nielsen), a recognized provider of market research business information and analysis, maintains product data from a sample of 4,000 retail outlets selected to represent the geographical and retail characteristics of the U.S. OTC market. Based on these Nielsen data, the agency estimates that total sales for these products represent less than 0.1 percent of all sales of OTC first aid drug products. For the affected companies, these product sales comprised less than 1 percent of OTC drug revenues. The industry has been aware of the status of these products since 1982, and all of the manufacturers identified by FDA also produce products containing ingredients proposed for inclusion in the monograph. The lost sales from the nonmonograph products are expected to be offset by increased sales of the substitute products.

The agency considered, but rejected, not acting on these ingredients in advance of the finalization of other monograph conditions. The final monographs for OTC topical antimicrobial and vaginal contraceptive drug products are not expected to be completed for a period of time. The agency also considered publishing an additional notice specifying that the determinations on the ingredients in this final rule would be included in a final rule prior to publication of a final rule including the determinations on ingredients for which new data and information have been submitted. However, safety and effectiveness have not been established for the ingredients included in this current final rule and manufacturers have not submitted the necessary data in response to earlier opportunities. The agency's experience has been that under these circumstances companies have not submitted data in response to yet another opportunity. Consumers will benefit from the early removal from the marketplace of products containing ingredients for which safety and effectiveness have not been established. Consumers can then purchase products containing only ingredients proposed for monograph status. Manufacturers who choose to reformulate or replace affected products will be able to use alternative ingredients that are proposed as monograph conditions without incurring any additional expense of clinical testing for those ingredients. As noted previously, FDA believes that most manufacturers currently produce such products.

While this final rule may cause manufacturers to discontinue marketing or to reformulate some products prior to issuance of the applicable final monograph, these manufacturers have known for some time that if adequate data were not submitted to support safety and effectiveness, cessation of marketing of the current products would be required, in any event, when the final monographs are published. Because this rule imposes no additional reporting or recordkeeping requirements, no additional professional skills are necessary to comply.

The analysis shows that this final rule is not economically significant under Executive Order 12866 and that the agency has considered the burden to small entities. Based on the above analysis, the agency does not believe that the majority of manufacturers will incur a significant economic impact. However, there may be a few that could incur significant reformulation costs or inventory losses. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's final regulatory flexibility analysis, as required under the Regulatory Flexibility Act. Finally, this analysis shows that the Unfunded Mandates Reform Act does not apply to the final rule because it would not result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

V. Environmental Impact

The agency has determined under 21 CFR 25.31(c) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

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

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

2. Section 310.545 is amended by adding paragraphs (a)(27) and (a)(28), by revising paragraph (d) introductory text, by reserving paragraphs (d)(26) and (d)(27), and by adding paragraph (d)(28) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(27) *Topical antimicrobial drug products*—(i) *First aid antiseptic drug products.*

Ammoniated mercury
Calomel (mercurous chloride)
Merbromin (mercurochrome)
Mercufenol chloride (ortho-chloromercuriphenol, ortho-hydroxyphenylmercuric chloride)
Mercuric chloride (bichloride of mercury, mercury chloride)
Mercuric oxide, yellow
Mercuric salicylate
Mercuric sulfide, red
Mercury
Mercury oleate
Mercury sulfide
Nitromersol
Para-chloromercuriphenol
Phenylmercuric nitrate
Thimerosal
Vitromersol
Zyloxin

(ii) *Diaper rash drug products.*

Para-chloromercuriphenol
Any other ingredient containing mercury

(28) *Vaginal contraceptive drug products.*

Dodecaethylene glycol monolaurate (polyethylene glycol 600 monolaurate)
Laureth 10S
Methoxypolyoxyethyleneglycol 550 laurate
Phenylmercuric acetate
Phenylmercuric nitrate
Any other ingredient containing mercury

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction to interstate commerce after the dates specified in paragraphs (d)(1) through (d)(28) of this section.

* * * * *

(28) October 22, 1998, for products subject to paragraphs (a)(27) and (a)(28) of this section.

Dated: April 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–10578 Filed 4–21–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–112–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: OSM is approving, with certain exceptions, a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the Pennsylvania program to incorporate changes made by Pennsylvania House Bill 1075 and subsequent Pennsylvania law Act 1994–114. The amendment is intended to provide special authorization for coal refuse disposal in areas previously affected by mining which contain pollutional discharges.

EFFECTIVE DATE: April 22, 1998.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Pennsylvania Program

On July 31, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background information on the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of the Amendment

By letter dated September 14, 1995 (Administrative Record Number PA 837.01), Pennsylvania submitted an amendment to the Pennsylvania program. The amending language is contained in Pennsylvania House Bill 1075 and was enacted into Pennsylvania law as Act 1994–124. The amendments change Pennsylvania's Coal Refuse Disposal Act (of September 24, 1968 (P.L. 1040, No. 318) and amended on October 10, 1980 (P.L. 807, No. 154)) to provide for authorization for refuse disposal in areas previously affected by mining which contain pollutional

discharges. The proposed amendments are modeled after Pennsylvania's approved program rules at Chapter 87, Subchapter F. (87.201) and Chapter 88, Subchapter G. (88.501). These subchapters allow previously affected sites with pollutional discharges to be reaffected provided the pollution abatement plan will result in a reduction of the baseline pollution load and represents best technology economically achievable.

The proposed amendment was published in the October 16, 1995, **Federal Register** (60 FR 53565), and in the same notice, OSM opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on November 15, 1995. A public hearing was held on December 5, 1995.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Pennsylvania program.

The standards by which the proposed amendments will be evaluated are as follows. Section 503(a) of SMCRA provides that State regulatory program laws must be in accordance with the requirements of SMCRA, and that State regulatory program rules must be consistent with the regulations issued pursuant to SMCRA. The terms ''in accordance with'' and ''consistent with'' are defined at 30 CFR 730.5. With regard to SMCRA, the proposed State laws and rules must be no less stringent than, meet the minimum requirements of, and include all applicable provisions of SMCRA. With regard to the implementing Federal regulations, the proposed State laws and rules must be no less effective than the Federal regulations in meeting the requirements of SMCRA. The Director's findings are discussed below.

1. Section 1 Findings and Declaration of Policy

This section is amended by adding policy statements that clarify Pennsylvania's rationale for authorizing coal refuse disposal on areas previously affected by mining which contain pollutional discharges. While there is no direct Federal counterpart to the added policy statements regarding coal refuse disposal, the Director finds that Pennsylvania's rationale for encouraging coal mining activities that will result in the improvement of previously mined areas with preexisting pollutional discharges is reasonable and not inconsistent with SMCRA at section 102 concerning the purposes of SMCRA.

2. Section 3 Definitions

This section is amended to provide definitions for the following terms: ''Abatement plan,'' ''Actual improvement,'' ''Baseline pollution load,'' ''Best technology,'' ''Coal refuse disposal activities,'' ''Pollution abatement area,'' and ''Public recreational impoundment.'' Two of these definitions, ''Coal refuse disposal activities'' and ''Public recreational impoundment,'' are new to the Pennsylvania program, while the others are similar to approved definitions at Chapters 87.202 and 88.502 concerning remining areas with pollutional discharges. The proposed definitions will apply to section 6.2 of Pennsylvania's Act 1994–114.

''Abatement plan'' is defined as any individual technique or combination of techniques, the implementation of which will result in reduction of the baseline pollution load. The Director finds that this language is identical in substance to the definition of ''abatement plan'' contained in 25 Pa. Code §§ 87.202 and 88.502, which were approved by OSM as part of Pennsylvania's standards for treatment of preexisting discharges on remined areas. See 51 FR 5997, February 19, 1986.

''Actual improvement'' is defined as the reduction of the baseline pollution load resulting from the implementation of the approved abatement plan except that any reduction of the baseline pollution load achieved by water treatment may not be considered as actual improvement: Provided, however, that treatment approved by the department of the coal refuse before, during or after placement in the coal refuse disposal area shall not be considered to be water treatment. This definition, except for the proviso which is new, is identical in substance to definitions at 25 Pa. Code §§ 87.202 and 88.502, which were approved by OSM as part of Pennsylvania's standards for treatment for preexisting discharges on remined areas. See 51 FR 5997, February 19, 1986.

''Baseline pollution load'' is defined to mean the characterization of the pollutional material being discharged from or on the pollution abatement area, described in terms of mass discharge for each parameter deemed relevant by Pennsylvania, including seasonal variations and variations in response to precipitation events. This proposal is identical in substance to the definition of ''baseline pollution load'' found at 25 Pa. Code §§ 87.202 and 88.502, which was approved by OSM as part of Pennsylvania's standards for treatment of preexisting discharges on remined areas. See 51 FR 5997, February 19, 1986.

''Best technology'' is defined to mean measures and practices which will abate or ameliorate, to the maximum extent possible, discharges from or on the pollution abatement area. This proposal is identical in substance to the definition of ''best technology'' found at 25 Pa. Code §§ 87.202 and 88.502, which was approved by OSM as part of Pennsylvania's standards for treatment of preexisting discharges on remined areas. See 51 FR 5997, February 19, 1986.

''Coal refuse disposal activities'' is defined to mean the storage, dumping or disposal of any waste coal, rock, shale, slurry, culm, gob, boney, slate, clay, underground development wastes, coal processing wastes, excess soil and related materials, associated with or near a coal seam, which are either brought above ground or otherwise removed from a coal mine in the process of mining coal or which are separated from coal during the cleaning or preparation operations. The term shall not include the removal or storage or overburden from surface mining activities.

The proposed State definition includes two terms, ''coal mine waste'' and ''underground development waste,'' which are defined in the Federal regulations at 30 CFR 701.5. The Federal regulations define ''underground development waste'' to include waste-rock, mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved and disposed of from underground workings in connection with underground mining activities. The proposed State definition concerns the disposal of materials similar to those listed in the Federal definition of underground development waste. The Federal regulations define ''coal processing waste'' as ''earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.'' The State also limits the definition of ''coal refuse disposal activities'' by clarifying that overburden from surface mining activities is not included. That is, only materials separated from coal during cleaning or preparation and materials derived from underground workings are included under the definition of coal refuse disposal activities. The proposed definition is unclear, however, in its use of the term ''excess soil and related materials.''

The remaining terms of the definition do not have Federal counterparts, but the Director finds that this proposed definition is not inconsistent with SMCRA and the Federal regulations in general, and is consistent with the Federal definitions of ''coal mine waste'' and ''underground development waste,'' except for the reference to ''excess soil and related materials.'' Therefore, the Director is requiring that Pennsylvania further amend its program to clarify the meaning of the term ''excess soil and related materials.''

''Pollution abatement area'' means that part of the permit area which is causing or contributing to the baseline pollution load, which shall include adjacent and nearby areas that must be affected to bring about significant improvement of the baseline pollution load and which may include the immediate location of the discharges.

This proposed definition is identical in substance to the definition of ''pollution abatement area'' found at 25 Pa. Code §§ 87.202 and 88.502, which was approved by OSM as part of Pennsylvania's standards for treatment of preexisting discharges on remined areas. See 51 FR 5997, February 19, 1986.

''Public recreational impoundment'' is defined to mean a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water and which is owned, rented or leased by the Federal Government, the Commonwealth or a political subdivision of the Commonwealth and which is used for swimming, boating, water skiing, hunting, fishing, skating or other similar activities. There is no direct Federal counterpart to this definition. The Director finds, however, that the proposed definition is consistent with the definition of ''impoundment'' contained in the Federal regulations at 30 CFR 701.5, and is not inconsistent with any other provision of SMCRA or the Federal regulations.

3. Section 3.2 Powers and Duties of the Environmental Quality Board

New subsection (b) requires Pennsylvania's Environmental Quality Board (EQB) to enact regulations to implement Section 6.2 (concerning coal refuse disposal activities on previously affected areas). Proposed Section 3.2(b) also provides that the new regulations to be developed to implement Section 6.2 must be consistent with the requirements of section 301(p) of the Federal Water Pollution Control Act and the State remining regulations for surface coal mining activities.

To the extent that the proposed provision requires the EQB to adopt implementing coal refuse disposal regulations, the Director finds the proposed language to be consistent with SMCRA section 503(a)(7) concerning authority of State regulatory programs to enact rules and regulations to carry out the provisions of SMCRA.

The remaining portion of this provision, pertaining to the Federal Water Pollution Control Act, is outside the scope of SMCRA and its implementing regulations. Therefore, the Director's approval of this remaining portion is unnecessary.

4. Section 4.1 Site Selection

This new section is added to establish the criteria for selecting sites for coal refuse disposal. Subsection (a) provides that preferred sites shall be used for coal refuse disposal unless the applicant demonstrates to the regulatory authority that another site is more suitable based on engineering, geology, economics, transportation systems and social factors and is not adverse to the public interest. Where, however, the adverse environmental impacts of the preferred site clearly outweigh the public benefits, the site shall not be considered a preferred site. A preferred site is one of the following:

(1) A watershed polluted by acid mine drainage.

(2) A watershed containing an unreclaimed surface mine but which has no mining discharge.

(3) A watershed containing an unreclaimed surface mine with discharges that could be improved by the proposed coal refuse disposal operation.

(4) Unreclaimed coal refuse disposal piles that could be improved by the proposed coal refuse disposal operation.

(5) Other unreclaimed areas previously affected by mining activities.

There is no direct Federal counterpart to the proposed State language. However, the establishment of criteria to be used for selecting sites for coal refuse disposal is not itself inconsistent with the intent of SMCRA. SMCRA at sections 102(d) and 102(h) encourages both sound coal mining operations that protect the environment, and the reclamation of mined areas left without adequate reclamation prior to the enactment of SMCRA on August 3, 1977. The proposed criteria are reasonable, not inconsistent with the provisions of SMCRA, and will likely encourage the reclamation of environmentally damaged lands. The Director finds, therefore, that subsection (a) can be approved.

Subsection (b) provides that, except if the site is a preferred site, coal refuse disposal shall not occur on prime farmland; in sites known to contain Federal threatened or endangered plants or animals or State threatened or endangered animals; in watersheds designated as exceptional value under 25 PA Code Chapter 93 (relating to water quality standards); in areas hydrologically connected to and which contribute at least five percent of the drainage to wetlands designated as exceptional value under 25 Pa. Code Chapter 105 (relating to dam safety and waterway management) unless a larger percentage is approved by the department in consultation with the Pennsylvania Fish and Boat Commission; and, in watersheds less than four square miles in area upstream of the intake of public water supplies or the upstream limit of public recreational impoundments.

By letter to the U.S. Environmental Protection Agency (EPA) dated March 8, 1996 (Administrative Record Number PA 837.59), the State explained the intent and limitations of proposed subsection 4.1(b). The State explained that while section 4.1(b) does not prohibit coal refuse disposal in sites known to contain Federal threatened or endangered plants or animals, neither does it, by itself, authorize disposal in such areas. That is, in order to receive authorization to conduct coal refuse disposal operations on preferred sites (whether or not the sites contain threatened or endangered species), a coal refuse disposal permit must be obtained in accordance with the Pennsylvania program's permitting process. All coal refuse disposal permit applications must comply with Chapter 86 (regulations that apply to all coal mining activities) and Chapter 90 (regulations that apply to coal refuse disposal operations). One element of the permit review process, the State letter explained, is that a determination must be made that the coal refuse disposal activity will comply with §§ 86.37(a)(15) and 90.150(d), regulations that require compliance with the Federal Endangered Species Act.

Therefore, proposed subsection 4.1(b) categorically prohibits the disposal of coal refuse on non-preferred sites known to contain Federal threatened or endangered plants or animals or State threatened or endangered animals. If the proposed coal refuse disposal site is a preferred site, coal refuse disposal on the site may be possible, but only after a finding by the State that the proposed coal refuse disposal permit application is in compliance with §§ 86.37(a)(15) and 90.150(d) concerning endangered

species. These Pennsylvania program provisions are approved counterparts to the Federal regulations at 30 CFR 773.15(c)(10) and 816/817.97(b), respectively.

By letter dated January 27, 1997 (Administrative Record Number PA–837.61), PADEP submitted a copy of its revised Coal Refuse Disposal Program Guidance. The draft guidance was subsequently revised on April 1, 1997 (Administrative Record Number PA–837.65). The guidance document was finalized and made effective dated February 23, 1998 (Administrative Record Number PA–837.68). The Coal Refuse Disposal Program Guidance is intended to further clarify what PADEP stated in its March 8, 1996, letter concerning the implementation of proposed § 4.1(b). The Coal Refuse Disposal Program Guidance specifically clarifies the intended implementation of § 4.1(b) related to threatened or endangered species. Pennsylvania's policy concerning the implementation of § 4.1(b) is as follows:

> With respect to preferred sites, the Department will not approve (via the site selection process) or permit (via the permitting process) a site that is known or likely to contain federally listed threatened or endangered species, unless the Department concludes and the U.S. Fish and Wildlife Service concurs that the proposed activity is not likely to adversely affect federally listed threatened or endangered species or result in the ''take'' of federally listed threatened or endangered species in violation of Section 9 of the Endangered Species Act.

The Federal regulations at 30 CFR 816/817.97 concerning the protection of fish and wildlife and related values, require the minimization of disturbance and adverse impacts and enhancement where practicable, and consultations with State and Federal fish and wildlife resource agencies. For example, 30 CFR 816/817.97(b) provides that no mining activity, including disposal of coal refuse, shall be conducted which is likely to jeopardize the continued existence of listed endangered or threatened species, or which is likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended. 30 CFR 780.16/784.21(a)(1) provide that the scope and level of detail of fish and wildlife information to be provided in the permit application shall be determined by the regulatory authority in consultation with State and Federal agencies with responsibilities for fish and wildlife.

By letter dated July 18, 1996 (Administrative Record Number PA 837.60) the U.S. Fish and Wildlife Service (USFWS) stated that OSM has received no incidental take statement from the USFWS exempting OSM from the ''take'' prohibitions of § 9 of the Endangered Species Act. USFWS also noted that no consultations on Pennsylvania's coal mining program, including the delegation of the program to the State by OSM, or amendments to the State's mining law or regulations, have occurred between USFWS and OSM. USFWS concluded, therefore, that there are no legal means by which OSM or the State can issue a mining permit which would allow for the take of a Federally listed species. USFWS further concluded that both OSM and the State must interpret the permitting provision in Pennsylvania's mining regulations at 25 Pa. Code § 86.37(a)(15) (relating to Federally listed species) to mean that no proposed activity may be permitted by the State which ''may affect'' threatened or endangered species, or result in the ''take'' of threatened or endangered species in violation of § 9 of the Endangered Species Act.

However, by letter dated April 7, 1998 (Administrative Record Number PA 837.70) the USFWS concluded, after informal consultations with OSM, Pennsylvania, and the EPA, and after reviewing the State's Coal Refuse Disposal Program Guidance, that OSM approval of the amendments which are the subject of this rulemaking is not likely to adversely affect federally listed species in Pennsylvania. See the Agency Comments section below for a complete discussion of the USFWS comments.

There is no direct Federal counterpart to the proposed provision. However, based on the information discussed above (including the State's Coal Refuse Disposal Guidance quoted above, and the concurrence letter from the USFWS), the Director finds that the proposed site selection provision at subsection 4.1(b) is not inconsistent with the Federal regulations. The Director is approving subsection 4.1(b), however, only to the following extent:

With respect to preferred sites, the State will not approve (via the Site Selection process) or permit (via requirements in Chapters 86 or 90) a site that is known or likely to contain Federally listed threatened or endangered species, unless the State demonstrates and the USFWS concurs that the proposed activity is not likely to adversely affect Federally listed threatened or endangered species or results in the ''take'' of Federally listed or endangered species in violation of Section 9 of the Endangered Species Act.

Further, § 86.37(a)(15) of the Pennsylvania program concerning criteria for permit approval or denial, shall still apply to all permits, including coal refuse disposal operations on preferred sites. Section 86.37(a)(15) provides the following:

> A permit or revised permit application will not be approved unless the application affirmatively demonstrates and the Department finds, in writing, on the basis of the information in the application or from information otherwise available, which is documented in the approval, and made available to the applicant, that the following exist: * * * (15) The proposed activities would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat as determined under the Endangered Species Act of 1973 (16 U.S.C.A. §§ 1531–1544).

In § 86.37(a)(15), the phrase ''would not affect the continued existence of'' will be interpreted by OSM and Pennsylvania to mean that no mining activity may be permitted by the State which ''may affect'' threatened or endangered species unless the USFWS concurs that the proposed activity is not likely to adversely affect Federally listed threatened or endangered species or result in the ''take'' of Federally listed threatened or endangered species in violation of Section 9 of the Endangered Species Act.

The Director also notes that § 87.50, § 88.33, § 89.74, and § 90.18 (concerning Fish and Wildlife Resource Information related to Surface Mining; Anthracite Coal; Underground Mining of Coal and Coal Preparation Facilities; and Coal Refuse Disposal, respectively) still apply to all permits. In order to ensure that accurate and adequate information is obtained to make permit decisions with respect to Federally listed species, and to ensure compliance with § 86.37(a)(15) as interpreted above, review of certain permits by USFWS is necessary to ensure that proposed permits (i.e., new, revised, and renewal) are ''not likely to adversely affect'' threatened or endangered species. At least annually, the USFWS will provide a listing of those geographic areas (e.g., counties) in Pennsylvania which have known or likely occurrences of Federally listed species. The PADEP shall provide the USFWS's Pennsylvania Field Office with copies of proposed mining permits for review as part of the normal permit review process. The USFWS will provide preliminary endangered species comments to the State, with copies of those comments to OSM. Prior to publication in the *Pennsylvania Bulletin*, the State shall resolve with the USFWS all concerns related to

threatened and endangered species to ensure that Federally listed species are not likely to be adversely affected by the proposed action. This review mechanism will allow for concurrent review by the natural resource agencies, and will also minimize the number of permits to be sent by the State and reviewed by the USFWS.

The Director also notes that § 90.150 (c) and (d) concerning protection of fish, wildlife, and related environmental values continues to apply to all coal refuse disposal permits.

Subsection 4.1(c) requires the identification of alternative sites that were considered within a one mile radius for new refuse disposal areas that support existing mining. Where there are no preferred sites within a one mile radius or where the applicant demonstrates that a nonpreferred site is more suitable, the applicant shall demonstrate the basis for the exclusion of other sites, and shall demonstrate the suitability of the recommended site. Where the adverse environmental impacts of the proposed site clearly outweigh the public benefits, the State shall not approve the site.

The Federal regulations at 30 CFR 816/817.81 through 816/817.84 authorize the storage of coal mine waste (at 30 CFR 817.81 and 817.84) on permitted areas. The storage of coal mine waste can result in large storage structures of potentially hazardous materials, and the Federal regulations provide specific provisions to assure that such storage facilities are constructed in an environmentally sound manner. Pennsylvania has, at Chapter 90, approved counterparts the Federal regulations concerning the storage of coal refuse.

While the proposed Pennsylvania provision provides some incentive to use preferred sites (i.e., environmentally damaged sites) that are close to the existing mining operations, it does not require the use of preferred sites. This is not inconsistent with the Federal regulations if the State authorizes the placement of coal refuse storage piles on permitted areas and in accordance with the rules at Chapter 90 concerning coal refuse disposal. There is nothing in the proposed State language that nullifies the applicability of Chapter 90.

The proposed State provision requires a demonstration of site suitability on the basis of several factors, including environmental factors. Any such demonstration of environmental suitability must, of course, consider factors such as protection of the hydrologic balance and threatened or endangered species as required by the Federal regulations and the counterpart Pennsylvania rules. The Director notes that there is nothing in the proposed language that would negate the applicability of these approved State rules.

Because Pennsylvania will continue to apply the provisions of 25 Pa. Code Chapter 90, which correspond to the Federal regulations at 30 CFR 816/817.81 through 816/817.84, to the disposal of all coal refuse, the Director finds that the proposed revisions are not inconsistent with SMCRA or the Federal regulations.

Subsection (d) requires the identification, within a 25 square mile area (about a three-mile radius), of alternative sites that were considered, and the basis for their consideration, as new refuse disposal areas that support proposed new coal mining activity. Where there are no preferred sites within the 25-square mile area or the applicant demonstrates that a nonpreferred site is more suitable, this provision requires a demonstration of the basis for the exclusion of other sites, and a demonstration, based on reasonably available data, that the proposed site is more suitable. Where the adverse environmental impacts of the proposed site clearly outweigh the public benefits, the site will not be approved.

There are no direct Federal counterparts to these proposed site selection criteria. However, the Director finds that the proposed revisions are not inconsistent with SMCRA or the Federal regulations, since Pennsylvania will continue to apply the state counterparts to the Federal requirements, at 30 CFR 816/817.81 through 816/817.84, to the disposal of all coal refuse.

Subsection (e) provides that the alternatives analyses required by section 4.1 satisfies the Dam Safety and Encroachments Act (November 26, 1978 (P.L. 1375, No. 325)). Since the Dam Safety and Encroachments Act is outside the scope of the approved State program, the Director's approval of subsection (e) is not necessary.

5. Section 6.1 Designating Areas Unsuitable for Coal Refuse Disposal

a. Subsection (h)(5) is amended to provide for a variance to the 100-foot stream buffer zone provision for coal refuse disposal. This provision provides for a demonstration by the operator that the variance will not result in significant adverse hydrologic or water quality impacts. This provision also provides for public notice of the requested variance, a public hearing concerning the application for a variance, the consideration of comments submitted by the Pennsylvania Fish and Boat Commission, and a written finding by the regulatory authority that specifies the methods and techniques that must be employed to prevent or mitigate adverse impacts.

While SMCRA itself is silent concerning stream buffer zones, a 100-foot stream buffer zone and variances thereto are authorized at 30 CFR 816/817.57(a). Such stream buffer zone variances are authorized provided: (1) The regulatory authority finds that the mining activities will not cause or contribute to the violation of water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and (2) any stream diversions will comply with 30 CFR 817.43 concerning diversions.

The criteria for the variance as proposed in subsection (h)(5) are less effective than the criteria contained in 30 CFR 816/817.57. Specifically, the proposed term, ''significant'' renders the proposal less effective because it is a lesser standard than the Federal requirement that the proposed activities will not cause or contribute to the violation of water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream. That is, whereas the Federal regulations prohibit any adverse effects on water quality and quantity, or on other environmental resources of the stream, the proposed regulations only prohibit ''significant'' adverse impacts.

Therefore, the Director is approving subsection (h)(5) only to the extent that it authorizes stream buffer zone variances for coal refuse disposal activities that will not cause or contribute to the violation of water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream. In effect, the Director is not approving the term ''significant.'' Also, the Director is requiring Pennsylvania to amend its program to authorize stream buffer zone variances for coal refuse disposal activities only where such activities will not cause or contribute to the violation of applicable State or Federal water quality standards, and will not adversely affect water quality and quantity, or other environmental resources of the stream.

Subsection 6.1(h)(5) also requires public notice in two newspapers of general circulation in the area of the proposed variance for two successive weeks. This notice would be in addition to the public notice required by § 86.31 concerning public notices of filing of permit applications, and is consistent

with the notice required for steam buffer zone variance applications, at 25 Pa. Code § 86.102(12).

The remaining portions of subsection 6.1(h)(5), pertaining to written orders, public hearings, and consideration of comments by the Pennsylvania Fish and Boat Commission, have no Federal counterparts. However, since they are in addition to the public notice requirements for stream buffer zone variance applications, at 26 Pa. Code § 86.102(12), the Director finds that they are not inconsistent with SMCRA or the Federal regulations.

Subsection 6.1(i) is added to provide that all new coal refuse disposal areas shall include a system to prevent adverse impacts to surface and ground water and to prevent precipitation from contacting the coal refuse.

The system for preventing precipitation from contacting the coal refuse shall be installed: as phases of the coal refuse disposal area reach capacity; as specified in the permit; when the operator temporarily ceases operation of the coal refuse disposal area for a period in excess of ninety days unless the State, for reasons of a labor strike or business necessity, approves a longer period that shall not exceed one year, or when the operator permanently ceases operation of the coal refuse disposal area. The system shall allow for revegetation and the prevention of erosion.

The proposed language requiring installation of a system to prevent adverse impacts to surface and ground water and to prevent precipitation from contacting the coal refuse has several counterparts in SMCRA. For example, SMCRA § 515(b)(11), concerning surface disposal of mine wastes, provides that such wastes shall be placed in designated areas and compacted in layers with the use of incombustible and impervious materials if necessary. SMCRA § 515(b)(10), concerning protection of the hydrologic balance, requires the avoidance of acid or other toxic mine drainage. SMCRA § 515(b)(14) requires that acid-forming and toxic-forming materials be treated or buried and compacted or otherwise deposited in a manner designed to prevent contamination of ground or surface waters.

Despite the fact that the proposed language allows delays in completing the installation of the preventive system for reasons such as strikes and business necessity, the State rules at Chapter 90 concerning coal refuse disposal operations continue to apply at all times without delay. For example, § 90.122 continues to provide that coal refuse disposal areas shall be maintained to ensure that the leachate and surface runoff from the permit area will not degrade surface water or groundwater, or exceed the effluent limitations of § 90.102.

The Director finds the proposed language is consistent with SMCRA § 515(b)(10) concerning protection of the hydrologic balance, and 30 CFR 816/817.81(a)(1) concerning coal mine waste, protection of surface and groundwater from leachate and surface water runoff.

6. Section 6.2 Coal Refuse Disposal Activities on Previously Affected Areas

This is a new section. Subsection (a) provides that a special authorization may be requested to engage in coal refuse disposal activities on areas with preexisting pollutional discharges resulting from previous mining. This subsection also provides that all of the provisions of Pennsylvania's Coal Refuse Disposal Act (P.L. 1040, No. 318, September 24, 1968 and amended October 10, 1980 (P.L. 807. No. 154)) apply to special authorizations to conduct coal refuse disposal activities on areas with preexisting pollutional discharges, except as modified by this new section 6.2.

Subsection (b) provides the criteria under which the State may grant a special authorization to engage in such coal refuse disposal. The State may grant the special authorization if such special authorization is part of:

(1) A permit issued under section 4 of the State's Coal Refuse Disposal Act, except for permit transfers after the effective date of this section, if the request is made at the time of submittal of a permit application or prior to a State decision to issue or deny that permit; or

(2) A permit revision pursuant to State regulation, but only if the operator affirmatively demonstrates to the satisfaction of the State that:

(i) The operator has discovered pollutional discharges within the permit area that came into existence after its permit application was approved;

(ii) The operator has not caused or contributed to the pollutional discharges;

(iii) The proposed pollution abatement area is not hydrologically connected to any area where coal refuse disposal activities have been conducted pursuant to the permit;

(iv) The operator has not affected the proposed pollution abatement area by coal refuse disposal activities; and

(v) The State has not granted a bonding authorization and coal refuse disposal approval for the area.

Subsection (c) provides that the State may not grant a special authorization unless the operator seeking a special authorization for coal refuse disposal demonstrates all of the following:

(1) Neither the operator nor any officer, principal shareholder, agent, partner, associate, parent corporation, subsidiary or affiliate, sister corporation, contractor or subcontractor or any related party:

(i) Has any legal responsibility or liability as an operator under section 315 of the Pennsylvania Act of June 22, 1937 (P.L. 1987, No. 394), known as ''The Clean Stream Law,'' for treating the pollutional discharges from or on the proposed pollution abatement area; or

(ii) Has any statutory responsibility or liability for reclaiming the proposed pollution abatement area.

(2) The proposed pollution abatement plan will result in a significant reduction of the baseline pollution load and represents best technology.

(3) The land within the proposed pollution abatement area can be reclaimed.

(4) The coal refuse disposal activities on the proposed pollution abatement area will not cause any additional surface water pollution or groundwater degradation.

(5) The coal refuse disposal activities on permitted areas other than the proposed pollution abatement area will not cause any surface water pollution or groundwater degradation.

(6) There are one or more preexisting pollutional discharges from or on the pollution abatement area.

(7) All requirements of Pennsylvania's Coal Refuse Disposal Control Act and its implementing rules that are not inconsistent with section 6.2 have been met.

Subsection (d) provides that a special authorization may be denied if granting it will or is likely to affect any legal responsibility or liability for abating the pollutional discharges from or near the pollution abatement area.

Subsection (e) provides that, except as specifically modified by section 6.2, an operator requesting special authorization shall comply with the permit application requirements of sections 4 and 5 of Pennsylvania's currently approved Coal Refuse Disposal Act. The operator must also provide additional information as required by the State, relating to delineation of the pollution abatement area (including the location of preexisting discharges), a description of the hydrologic balance of the pollution abatement area (including water quality and quantity monitoring data), and a

description of the abatement plan that represents best technology.

Subsection (f) provides that an operator who is granted a special authorization shall implement the approved water quality and quantity monitoring program and abatement plan, notify the State immediately prior to the completion of each step of the abatement plan, and provide progress reports to the State within 30 days after the completion of each step of the abatement program in a manner described by the State.

The proposed special authorizations must comply with 40 CFR part 434 concerning performance standards for coal mining point source discharges, and with § 301(p) of the Federal Water Pollution Control Act (33 U.S.C. 1311(p)) concerning modified permits for coal remining operations. The effluent limitation standards will be identified jointly by the EPA and the State on a permit-by-permit basis during the development of the National Pollutant Discharge Elimination System (NPDES) permit. The Director notes that the EPA has provided its concurrence with the proposed amendments. See the Environmental Protection Agency section below for a discussion of all EPA comments and conditions on their approval of these amendments. The Director finds that the proposed provisions at Section 6.2(a) through (f) have no Federal counterparts. However, the Director finds that these subsections are not inconsistent with SMCRA and can be approved, provided that nothing in this approval authorizes the State to adopt revised effluent limitations without approval by the EPA pursuant to the Clean Water Act.

Subsection (g)(1) specifies that an operator granted special authorization under section 6.2 shall be responsible for the treatment of discharges in the following manner:

(i) Except for preexisting discharges which are not encountered during coal refuse disposal activities or the implementation of the abatement plan, the operator shall comply with all applicable regulations of the State.

(ii) The operator shall treat preexisting discharges which are not encountered during coal refuse disposal activities or implementation of the abatement plan to meet the baseline pollution load when the baseline pollution load is exceeded according to the following schedule:

(A) Prior to final bond release, if the operator is in compliance with the pollution abatement plan, where the State demonstrates that the operator has caused the baseline pollution load to be exceeded; the State shall have the burden of proving that the operator caused the baseline pollution load to be exceeded;

(B) Prior to final bond release, if the operator is not in compliance with the pollution abatement plan, unless the operator affirmatively demonstrates that the reason for exceeding the baseline pollution load is a cause other than the operator's coal refuse disposal and abatement activities; and

(C) Subsequent to final bond release where the department demonstrates that the operator has caused the baseline pollution load to be exceeded; the department shall have the burden of proving that the operator caused the baseline pollution load to be exceeded.

Subsection (g)(1)(ii)(A) allocates the burden of proof in a manner which, at first blush, appears to be inconsistent with the Federal regulations at 43 CFR 4.1171(b).

That Federal provision states that ''the ultimate burden of persuasion shall rest with the applicant for review'' of any notice of violation or cessation order. In addition, the legislative history of SMCRA clearly states that the applicant for review of a notice or order carries the ultimate burden of proof in the administrative review proceeding. S. Rep. No. 128, 95th Cong., 1st Sess. 93 (1977). However, this proposal shifts the burden of proof to the State Regulatory Authority only where it issues an enforcement action for exceeding the baseline pollution load for a preexisting, unencountered discharge. As noted below, the EPA states in its concurrence that discharges unaffected by and diverted around or piped under fills (not encountered) would not be subject to the effluent guidelines at 40 CFR part 434—subpart B. Because these preexisting unencountered discharges are not subject to the requirements of 40 CFR part 434, they are likewise not regulated under 30 CFR 816/817.42. Moreover, since it proposes to regulate pollutional discharges and take enforcement actions in a manner which is beyond the scope of, but not inconsistent with, SMCRA, Pennsylvania is free to allocate the burden of proof in administrative review proceedings of such enforcement actions in a different manner than is provided for in 43 CFR 4.1171(b). Therefore, subsection (g)(1)(ii)(A) can be approved.

Subsection (g)(2) provides that an allegation that the operator caused the baseline pollution load to be exceeded under subclause (ii) of clause (1) shall not prohibit the State from issuing, renewing or amending the operator's license and permits or approving a bond release until a final administrative determination has been made of such alleged violation.

This subsection is no less stringent than SMCRA, so long as it applies only to bond releases for permits other than the permit for which the allegation of exceeding the baseline pollution load is pending. If it were interpreted to allow bond release on the permit for which the allegation is pending, subsection (g)(2) would be less stringent than section 519(c)(3) of SMCRA, 30 U.S.C. 1269(c)(3), which allows a final bond release only after all reclamation requirements of SMCRA have been met. However, subsection 6.2(j)(3) of this amendment, discussed below, prohibits final bond release of special authorization permits where the operator has caused the baseline pollution load to be exceeded after phase two of bond release, or within five years of the discontinuance of treatment of a preexisting, unencountered discharge. As such, any allegation that the operator caused the baseline pollution load to be exceeded would, in accordance with subsection 6.2(j)(3), prevent final bond release until the allegation is found to be untrue. Therefore, subsection (g)(2) is approved to the extent that it applies to final bond releases on permits other than the permit for which the allegation that the baseline pollution load has been exceeded is pending.

Subsection (g)(3) provides that, for this subsection, the term ''encountered'' shall not be construed to mean diversions of surface water and shallow groundwater flow from areas undisturbed by the implementation of the abatement plan which would otherwise drain into the affected area, provided such diversions are designed, operated and maintained in accordance with all applicable regulations of the State.

The Federal regulations at 30 CFR 816/817.42 require that mining operations (including coal refuse disposal operations) comply with all applicable State and Federal water quality laws and regulations and with the effluent limitations for coal mining promulgated by EPA and set forth in 40 CFR part 434. In order to approve Pennsylvania's program amendment, OSM is required to obtain the concurrence of the EPA in accordance with § 503(b) of SMCRA. On September 20, 1995, OSM requested the concurrence of the EPA with respect to those aspects of the amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act.

In a letter to OSM dated January 30, 1997 (Administrative Record Number

PA–837.63), EPA conditionally concurred with the proposed Pennsylvania amendment (see Environmental Protection Agency section below for a complete discussion of EPA comments). The EPA provided five conditions for its concurrence with the proposed amendments.

The EPA stated that to emphasize its concern over in-stream refuse disposal, EPA concurrence is conditioned on the following: a.) PADEP notification to EPA within 30 days of receipt of a joint SMCRA/NPDES permit application for an in-stream refuse disposal project, and b.) PADEP submittal to EPA of any joint SMCRA/NPDES application or permit information which EPA specifically requests for an effective review.

The EPA stated that it will not object to PADEP issuance of an NPDES permit for proposed in-stream refuse disposal facilities if (1) compliance with Section 404 permit requirements is assured; (2) there are no feasible alternatives to the coal refuse disposal, protection of existing and designated downstream aquatic life and uses is assured, and provisions are established for adequate mitigation.

Where discharges from refuse disposal activities would cause or contribute to an exceedance of water quality standards, the NPDES permit must contain water quality-based effluent limitations in compliance with 40 CFR 122.44(d). Adequate monitoring and analysis of the background water quality of the receiving stream must be done prior to permit issuance and as part of the permit development process. The EPA also stated that appropriate measures must be planned and implemented for coal refuse disposal facilities which will prevent long term acid drainage after closure.

The proposed statutory revisions adopted by the State comply with EPA's determination regarding the treatment level required under Federal law for unencountered discharges. The proposed standards regarding treatment levels for discharges that are encountered are the applicable regulations of the department (§ 90.102 Hydrologic balance: water quality standards, effluent limitations and best management practices). The Director notes that EPA review of all permit applications related to in-stream refuse disposal and other permit applications identified by the EPA will help assure that the proposed coal refuse disposal operations in Pennsylvania will meet the requirements of the Clean Water Act.

In addition, EPA recommended that proposed disposal of potentially acidic refuse in valley fills on non-impacted (virgin) areas be subject to reviews under individual § 404 permits, rather than coverage under the nationwide 404 permit.

The EPA has clarified that its understanding of § 6.2(g)(1)(i) is that coal refuse disposal operations that encounter a preexisting discharge shall comply with the effluent limitations that will be described in the NPDES permit, and which will be consistent with the effluent guideline limitations for coal preparation plants and associated areas as identified at 40 CFR Part 434—Subpart B. However, the EPA notes that discharges unaffected by and diverted around or piped under fills (not encountered) would not be subject to the effluent guidelines at 40 CFR Part 434—Subpart B. Such discharges that are not encountered shall meet the baseline pollution load standard as defined at § 3(1.3), and shall be treated in accordance with the provisions at § 6.2(g)(1)(ii). The EPA will, as part of its review of all NPDES permits related to in-stream refuse disposal and other permits, help assure that adequate monitoring and analysis of the background water quality of the receiving stream will be done prior to permit issuance. In addition, the EPA will be able to provide guidance to the State to help assure the prevention of long term acid drainage after closure.

The Director notes that the proposed provisions at § 6.2(g)(1)(ii) address the possibility that coal refuse disposal operations (or implementation of the abatement plan) may cause the baseline pollution load to be exceeded. As a consequence of exceeding the baseline pollution load, the operator must comply with the proposed provisions at § 6.2(g). The Director recognizes the possibility that such coal refuse disposal operations (or implementation of the abatement plan) could affect a preexisting discharge to such a degree that, in effect, the operations have ''encountered'' that discharge. In such a circumstance (i.e., a discharge is encountered) an operator would be required to treat the preexisting discharge not to baseline, but to the applicable Pennsylvania water quality standards at Chapter 90.102. Proposed § 6.2(g)(1)(i) provides that for preexisting discharges that are encountered, the operator shall comply with all applicable regulations of the department.

The Director also recognizes the difficulty and complexity of making such a determination. By necessity, these determinations would have to be made by the State on a case-by-case basis after a thorough analysis of the circumstances and variables involved.

For example, under the proposed provisions, coal refuse may be placed upon a preexisting coal refuse deposit with a pre-existing pollutional discharge. Under such circumstances, the surface of the pre-existing coal refuse deposit may be prepared (modified) to accept deposition of a new coal refuse deposit so that the resulting deposit is stable. The surface preparation activities on the pre-existing deposit will not, of itself, be considered an ''encounter'' of the pre-existing pollutional discharge.

During coal refuse disposal operations, pollutional discharges from the pre-existing coal refuse deposit that is being buried under the new coal refuse deposit, will be treated to baseline standards. Pollutional discharges flowing from the newly placed coal refuse that lies above the pre-existing coal refuse deposit will be subject to the State effluent standards for disposal operations at Chapter 90, subchapter D at 90.102. However, if during its inspections of the operations, it becomes apparent to the State that pollutional waters from the new coal refuse disposal fill are co-mingling with (i.e., encountering) the pollutional discharge from the pre-existing coal refuse deposit, then the State must apply the effluent limitations at Chapter 90, subchapter D at 90.102 to the pre-existing discharge, as well as to the ''new'' discharge, rather than the baseline pollution load standard.

With the exceptions noted above for subsections (g)(1)(ii)(A) and (g)(2), the Director finds that 6.2(g) is consistent with the requirements of the Federal regulations at 30 CFR 816/817.42, provided that nothing in this approval authorizes the State to adopt revised effluent limitations without approval by the EPA pursuant to the Clean Water Act.

Subsection (h) provides that an operator who is required to treat preexisting discharges under subsection (g) will be allowed to discontinue preexisting discharges when the operator demonstrates that all of the conditions identified below have been satisfied.

(1) The baseline pollution load is no longer being exceeded as shown by all ground and surface water monitoring;

(2) All requirements of the permit and the special authorization have been or are being met;

(3) The operator has implemented each step of the abatement plan as approved in the authorization; and

(4) The operator did not cause or allow any additional surface water pollution or groundwater degradation

by reaffecting the pollution abatement area.

The Director notes that the proposed language at subsection 6.2(h) could be misinterpreted. The proposed language in the first sentence of this subsection which states that ''an operator required to treat preexisting discharges under subsection (g) will be allowed to discontinue treating . . .'' is unclear. Subsection 6.2(g) pertains to both discharges that are encountered and those that are not encountered, and the treatment standards are different for each.

The Director interprets the proposed language in the first sentence of § 6.2(h) to pertain only to subsection 6.2(g)(1)(ii), which governs discharges that are not encountered. Therefore, the Director is approving the proposed provision to the extent that it provides that an operator may only discontinue treating preexisting discharges that are not encountered when the operator demonstrates that the ''baseline'' pollution load is no longer being exceeded. Preexisting discharges that are encountered must be treated to the State water quality standards at Chapter 90, subchapter D at 90.102. Also, the Director is requiring that the State further amend the Pennsylvania program to clarify that Subsection 6.2(h) of the Coal Refuse Disposal Act pertains to preexisting discharges that are not encountered.

Subsection (i) provides that if any condition set forth in subsection 6.2(g) occurs after discontinuance of treatment under subsection 6.2(h), the operator shall reinstitute treatment in accordance with subsection 6.2(g). An operator who reinstitutes treatment under this subsection shall be allowed to discontinue treatment if the requirements of subsection 6.2(h) are met. This provision will help assure that treatment will be restarted as necessary to comply with the provisions of subsection 6.2(g).

To the extent that subsection 6.2(g), (h), and (i) are applied as discussed in this finding, the Director finds that the proposed provisions are not inconsistent with SMCRA, and are consistent with the Federal regulations at 30 CFR 816/817.42. The Director is making this finding with the understanding that the regulations to be developed by Pennsylvania to implement Section 6.2 (as is required by the proposed provisions at Section 3.2(b) of the Coal Refuse Disposal Act) will clarify that preexisting discharges that are encountered must be treated to the State effluent standards at Chapter 90, subchapter D at 90.102.

Subsection (j) provides that for pollution abatement areas subject to a grant of special authorization under subsection 6.2, the operator shall comply with all requirements relating to bonds set forth in section 6 of Pennsylvania's existing Coal Refuse Disposal Act, except that the criteria and schedule for release of bonds shall be as follows:

(1) Up to fifty-percent of the amount of bond if the operator demonstrates that:

(i) All activities were conducted in accordance with all applicable requirements;

(ii) The operator has satisfactorily completed installing the water impermeable cover, grading, planting and drainage control in accordance with the approved abatement plan;

(iii) The operator has properly implemented each step of the approved abatement plan;

(iv) The operator has not caused the baseline pollution load to be exceeded for a period of a minimum of six months prior to the submittal of a request for bond release and until the bond release is approved as shown by all ground and surface water monitoring; and

(v) The operator has not caused or contributed to any ground or surface water pollution by reaffecting the pollution abatement area.

(2) Up to an additional thirty-five percent of the amount of bond if the operator demonstrates that:

(i) The operator has replaced topsoil, completed final grading and achieved successful vegetation in accordance with the approved reclamation plan;

(ii) The operator has not caused or contributed to any ground or surface water pollution by reaffecting the pollution abatement area; and

(iii) The operator has achieved the actual improvement of the baseline pollution load described in the abatement plan and shown by all ground and surface water monitoring for the period of time provided in the abatement plan, or has achieved all of the following:

(A) At a minimum, the operator has not caused the baseline pollution load to be exceeded as shown by all ground and surface water monitoring for a period of twelve months from the date of initial bond release under clause (1) or from the date of discontinuance of treatment under subsection 6.2(h).

(B) The operator has conducted all measures provided in the abatement plan and any additional measures specified by the State in writing at the time of initial bond release under clause (1).

(C) The operator has caused aesthetic or other environmental improvements and the elimination of public health and safety problems by engaging in coal refuse disposal activities and reaffecting the pollution abatement area.

(D) The operator has stabilized the pollution abatement area.

(3) The remaining amount of bond if the operator demonstrates that:

(i) The operator has not caused the baseline pollution load to be exceeded from the time of bond release under clause (2) or, if treatment has been initiated any time after release of the bond, for a period of five years from the date of discontinuance of treatment under subsection 6.2(h); and

(ii) The applicable liability period of section 6 has expired and the operator has successfully completed all coal refuse disposal and reclamation activities.

In accordance with the Federal regulations at 30 CFR 800.40, the State's amendment provides for Phase I bond release after the completion of refuse placement and grading; Phase II bond release after revegation has been established; and Phase III bond release after the expiration of the extended liability period.

In addition, the State's bond release provisions establish special criteria to ensure that final bond release will not be granted unless the operator at a minimum, is satisfying the effluent limitations established by PADEP and approved by EPA for areas with preexisting pollutional discharges, the operator has fully implemented the approved abatement and reclamation plan and the operator has not caused degradation of the baseline pollution load for a specified period of time.

Therefore, the Director finds that proposed § 6.2(j) provides sufficient guarantees to ensure that final release of the bond will not occur until the operation has satisfied the water quality standards established by EPA and met all other reclamation requirements that apply to any surface mining operation. The Director finds subsection (j) to be no less effective than the Federal bond release standards at 30 CFR 800.40.

Subsection 6.2(k) sets forth the standard of successful revegetation for reclamation plans approved as part of a special authorization. The proposed standard of successful revegetation shall be, as a minimum, the establishment of ground cover of living plants not less than can be supported by the best available topsoil or other suitable material in the reaffected area, shall not be less than ground cover existing before disturbance and shall be adequate to control erosion: Provided,

however, that the State may require that the standard of success comply with section 5(c) and (e) of the current Coal Refuse Disposal Act where it determines compliance is integral to the proposed pollution abatement plan.

The Director finds proposed subsection (k) to be consistent with 30 CFR 816.115(b)(5), except as noted below. The Federal provision at 816.116(b)(5) provides the minimum revegetation standards for areas that were previously disturbed by mining, and that were not reclaimed to the requirements of Subchapter K (performance standards). The proposed State provision, however, lacks the requirement that to qualify for the revegetation standards, the area that was previously disturbed by mining must not have been reclaimed to the State's performance standards. To be no less effective than 816.116(b)(5), the State needs to limit the application of the proposed standards to areas that were previously disturbed by mining and that were not reclaimed to the State reclamation standards.

Therefore, the Director is approving subsection (k) only to the extent that it is applicable to areas previously disturbed by mining that were not reclaimed to the standards of the Pennsylvania program. In addition, the Director is requiring that the State further amend the Pennsylvania program to be no less effective than 30 CFR 816.116(b)(5), by limiting the application of the revegetation standards under Subsection 6.2(k) of its Coal Refuse Disposal Act, to areas that were previously disturbed by mining and that were not reclaimed to the State's reclamation standards.

Subsection 6.2(l) provides that forfeited funds in the Surface Mining Conservation and Reclamation Fund (Fund) shall be applied as a credit to the bond required for a special authorization. In addition, special authorization areas shall be exempt from permit reclamation fees.

The Director notes that any forfeited Fund moneys to be used would have originally come from a form of bond which is approved under the Pennsylvania program. As such, the use of these forfeited Fund moneys to ''rebond'' the site is not, *per se*, inconsistent with section 509 of SMCRA, 30 U.S.C. 1259, and 30 CFR 800.12, pertaining to the requirement of a performance bond and the acceptable forms thereof. However, if the forfeited moneys for a particular site are sufficient to perform all outstanding reclamation obligations for the site, then the site should not be reclaimed to lesser reclamation standards under a special authorization. For example, if the forfeited moneys in the Fund were used to reclaim the site, and that reclamation would result in the elimination of a pollutional discharge or revegetation of the site to the level required to support the land use approved in the original permit, then it would be inappropriate and a loss to the environment to reclaim the site to lesser standards under special authorization. Under these circumstances, the State should not approve the special authorization.

The Director finds that the proposed provisions, concerning the use of previously forfeited funds in establishing an appropriate bond amount for a special authorization area, are not inconsistent with the Federal forfeiture of bond provisions with the following exception. The Director is approving 6.2(l) to the extent that the PADEP will not approve a special authorization when such an authorization would result in the site being reclaimed to lesser standards than could be achieved if the forfeited bond moneys were used to reclaim the site to the standards approved in the original permit under which the bond moneys were forfeited. In addition, the Director is requiring that the State further amend the Pennsylvania program to clarify that under Subsection 6.2(l) of its Coal Refuse Disposal Act, a special authorization for coal refuse disposal operations will not be granted, when such an authorization would result in the site being reclaimed to lesser standards than could be achieved if the moneys paid into the Fund, as a result of a prior forfeiture on the area, were used to reclaim the site to the standards approved to the original permit under which the bond moneys were forfeited.

Subsection (m) provides that an operator granted special authorization under section 6.2 shall be permanently relieved from the requirements of subsection 6.2(g) and the act of June 22, 1937 (P.L. 1987, No. 394), known as ''The Clean Streams Law,'' for all preexisting discharges, identified in subsection 6.2(e), to the extent of the baseline pollution load if the operator complies with the terms and conditions of the pollution abatement plan and the baseline pollution load has not been exceeded at the time of final bond release. Relief of liability under this subsection shall not act or be construed to relieve any person other than the operator granted special authorization from liability for the preexisting discharge; nor shall it be construed to relieve the operator granted special authorization from liability under subsection 6.2(g)(1)(ii) if the baseline pollution is exceeded.

As discussed above in the finding for Section 6.2(g), the Director has determined that, with the exceptions noted for subsections (g)(1)(ii)(A) and (g)(2), proposed Section 6.2(g) is consistent with the requirements of the Federal regulations at 30 CFR 816/817.42 concerning water quality standards and effluent limitations. Under the proposed provisions, an operator with a special authorization would be required to comply with the Pennsylvania program performance standards for all preexisting pollutional discharges encountered by their operations and for all new pollutional discharges resulting from their operations, and to treat preexisting pollutional discharges in accordance with subsection 6.2(g). However, upon final bond release under subsection 6.2(j), an operator granted a special authorization would no longer be responsible for the preexisting pollutional discharges identified in the special authorization. To qualify, the operator with a special authorization must have complied with the terms and conditions of the pollution abatement plan and the provisions of Subsection 6.2(g) concerning the exceedence of the baseline pollution load.

As further discussed in the finding for Subsection 6.2(g), the EPA has concluded that discharges unaffected by and diverted around or piped under fills (not encountered) would not be subject to the effluent guidelines at 40 CFR part 434—subpart B. Such discharges that are not encountered shall meet the baseline pollution load standard as defined at § 3(1.3), and shall be treated in accordance with the provisions at § 6.2(g)(1)(ii). The Director finds, therefore, that the proposed subsection 6.2(m) is not inconsistent with the Federal regulations at 30 CFR 816.42 concerning water quality standards and effluent limitations.

7. Section 6.3 Experimental Practices

This new section sets forth criteria established to encourage advances in coal refuse disposal practices and advance technology or practices that will enhance environmental protection with respect to coal refuse disposal activities, and authorizes the State to grant permits approving experimental practices and demonstration projects. The State may grant such permits if:

(1) The environmental protection provided will be potentially more protective or at least as protective as required by this act and State regulations;

(2) The coal refuse disposal activities approved under the permits are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices or demonstration projects; and

(3) The experimental practices or demonstration projects do not reduce the protection afforded public health and safety below that provided by this act and state regulations.

SMCRA section 711 provides that the regulatory authority may, with approval by the Secretary, authorize departures in individual cases on an experimental basis from the environmental protection performance standards of sections 515 and 516 of SMCRA. The proposed provisions are substantively identical to the provisions of SMCRA section 711 concerning experimental practices, except that they are silent concerning the requirement to obtain approval from the Secretary for each experimental practice, and do not clarify that such practices are only approved as part of the normal permit approval process and only for departures from the environmental protection performance standards. The Director notes that the Pennsylvania rules developed to implement these provisions must be consistent with and no less effective than the Federal regulations at 30 CFR 785.13 concerning experimental practices mining.

The Director is approving the proposed amendments concerning experimental practices. In addition, the Director is requiring that the State further amend the Pennsylvania program by adding implementing rules no less effective than 30 CFR 785.13, and no less stringent than SMCRA Section 711 and which clarify that experimental practices are only approved as part of the normal permit approval process and only for departures from the environmental protection performance standards, and that each experimental practice receive the approval of the Secretary.

8. Section 15.1 Suspension of Implementation of Certain Provisions

This new provision provides for the suspension of any provision of Act 1994–114 found to be inconsistent with SMCRA or section 402 of the Federal Water Pollution Control Act (FWPCA) (62 Stat. 1155, 33 U.S.C. section 1251 *et seq.*). This new provision also provides that the State shall develop a regulatory program and program amendments under SMCRA and the FWPCA that are consistent with the requirements of section 301(p) of the FWPCA and the State remining regulations for surface mining activities. The Director finds the proposed language to be consistent with SMCRA section 503(a)(7) concerning State programs, and with the Federal regulations at 30 CFR 732.17 concerning State program amendments.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program.

The U.S. Fish and Wildlife Service (USFWS) expressed concern that the proposed amendments at § 4.1(b) concerning site selection, may lead to adverse impacts on Federally listed threatened or endangered species in violation of the Federal Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*). Specifically, the concern is with language at § 4.1(b) which states, ''Except if it is a preferred site, coal refuse disposal shall not occur * * * in sites known to contain Federal threatened or endangered plants or animals.'' USFWS interpreted the quoted language as allowing the disposal of coal refuse on preferred sites known to contain Federally listed endangered or threatened species. USFWS believed that such activity would reasonably be expected to adversely affect threatened and endangered species.

The USFWS comment stated that OSM has received no incidental take statement from the USFWS exempting OSM from the ''take'' prohibitions of § 9 of the Endangered Species Act, 16 U.S.C. § 1538. USFWS also noted that no consultations on Pennsylvania's coal mining program, including the delegation of the program to the State by OSM, or amendments to the State's mining law or regulations, have occurred between USFWS and OSM. USFWS concluded, therefore, that there are no legal means by which OSM or the State can issue a mining permit which would allow for the take of a Federally listed species. USFWS further concluded that both OSM and the State must interpret the permitting provision in Pennsylvania's mining regulations at 25 Pa. Code § 86.37(a)(15) (relating to Federally listed species) to mean that no proposed activity may be permitted by the State which ''may affect'' threatened or endangered species, or result in the ''take'' of threatened or endangered species in violation of § 9 of the Endangered Species Act.

In a letter dated March 8, 1996 (Administrative Record Number PA 837.59) the Pennsylvania Department of Environmental Protection (PADEP) attempted to address the concerns raised regarding § 4.1(b). PADEP stated that § 4.1(b) is part of a site selection process that is separate and in addition to the approved permitting process.

That is, the proposed amendments must be read in concert with the requirements of the existing Pennsylvania program. Specifically, § 4.1(b) prohibits refuse disposal on non preferred sites. The State also contends that, while § 4.1(b) does not prohibit nor does it by itself authorize coal refuse disposal on preferred sites known to contain Federally listed species, a proposed permit for coal refuse disposal on preferred sites must also comply with all the applicable permitting statutes and regulations. Consequently, coal refuse disposal activities on preferred sites must comply with § 86.37(a)(15) and § 90.150(d). Section 86.37(a)(15) specifically prohibits the PADEP from issuing a permit to conduct coal mining activities if the proposed activities would violate the Federal Endangered Species Act. Section 90.150(d) prohibits coal refuse disposal activities which are likely to jeopardize the continued existence of endangered or threatened species, or which are likely to destroy or adversely modify the designated critical habitats of such endangered or threatened species.

Despite the State's assurances described above, the USFWS stated that it does not agree that the PADEP's March 8, 1996, letter adequately supports a conclusion that the proposed amendments are ''not likely to adversely affect'' threatened or endangered species. As a remedy, USFWS recommended that PADEP revise the State's Coal Refuse Disposal Policy (see Finding 4 above). After reviewing the final Policy Guidance document, USFWS agreed that the revised Policy, in conjunction with OSM's interpretation of the Endangered Species Act protections already contained in Pennsylvania's program, adequately clarify the requirements to comply with the Federal Endangered Species Act and has provided its concurrence with the proposed amendments (Administrative Record Number PA–837.70).

In addition, however, the USFWS indicated that the site selection criteria at § 4.1 (c) and (d) are weak in that they too easily allow a company to select non-preferred sites based on criteria such as environmental, economic, technical, transportation, and social factors. The result, USFWS predicted,

will be that using ''previously affected areas'' will be a rare occurrence (Administrative Record Number PA–837.15).

In response, the Director notes that neither SMCRA nor the Federal regulations contain site selection criteria which distinguish between ''preferred'' (previously mined) sites and ''alternate'' (undisturbed) sites. So long as Pennsylvania also continues to apply its State program counterparts to the Federal regulations governing coal refuse disposal, and imposes these site selection criteria as additional requirements, the criteria constitute more stringent environmental controls, which are not inconsistent with SMCRA or the Federal regulations. *See* SMCRA Section 505(b), 30 U.S.C. § 1255(b).

The USFWS's Clean Water Act comments concern the proposed variance to the 100-foot stream buffer zone provision at § 6.1(h)(5). The USFWS stated that the removal of the buffer zone would allow the use of valley fills, and this would result in the violation of EPA's antidegradation policy at 40 CFR 131.12(a)(1) which provides that existing uses of the waters of the United States, and the water quality necessary to protect that use, must be maintained and protected. The USFWS asserted that valley fills will result in the elimination of perennial streams with their aquatic communities and their nutrients and food organisms. Therefore, the filling of valleys with coal refuse would eliminate existing uses, thereby violating 40 CFR 131.12(a)(1).

In response, the Director notes that the EPA has provided its conditional concurrence with this proposed amendment. Condition number one is that EPA will review all applications for in-stream coal refuse disposal projects. Condition number two is that EPA will not object to the issuance of a permit for in-stream coal refuse disposal if, among other things, the existing uses of the stream will be protected. *See* EPA concurrence section, below.

The U.S. Department of Labor, Mine Safety and Health Administrative (MSHA) commented on language at § 1 of the proposed amendments concerning the State's perception that a few large coal refuse disposal areas would be better than numerous small coal refuse disposal sites. MSHA stated agreement with the language as long as refuse piles are constructed properly. The Director agrees that proper construction of refuse piles is essential, and notes that nothing in the proposed provisions limits the applicability of the approved State provisions concerning the construction of coal refuse piles at Pa. Code Chapter 90.

Public Comments

A public comment period and opportunity to request a public hearing was announced in the October 16, 1995, **Federal Register** (60 FR 53565). The comment period closed on November 15, 1995. A public hearing was held on December 5, 1995. The public comments received and the Director's responses are presented below.

1. Definition of ''Coal Refuse Disposal Activities''

One commenter asserted that this definition is over broad and appears to include excess spoil under the definition. In response, the Director notes that the proposed definition specifically excludes the removal or storage of overburden from surface mining operations. The Federal regulations at 30 CFR 701.5 define ''spoil'' to mean overburden from surface coal mining operations. Therefore, the proposed definition is not inconsistent with the Federal definition.

The commenter also asserted that the definition is over broad in that it would allow topsoil and overburden to be handled and disposed of as coal refuse material, because the definition includes ''excess soil and related materials.'' In response, the Director agrees that neither overburden nor topsoil may be handled or disposed of as though it were coal refuse, and notes that in Finding 2 above, he is requiring the State to add regulations that clarify the meaning of the term ''excess soil and related materials.''

2. Threatened or Endangered Species

Numerous commenters object to the provision at § 4.1(b) that would allow coal refuse disposal in preferred sites that are known to contain prime farmlands or Federal threatened or endangered plants or animals or State threatened or endangered animals. The commenters stated that the proposed provision would violate section 9 of the Endangered Species Act, 16 U.S.C. 1538, and 30 CFR 817.97 concerning protection of fish, wildlife, and related environmental values.

Neither 16 U.S.C. 1538 nor 30 CFR 817.97 address prime farmland, so the Director disagrees with the commenter that coal refuse disposal on prime farmlands violates those provisions

As discussed above in Finding 4, while § 4.1(b) does not prohibit coal refuse disposal in sites known to contain Federal threatened or endangered species, it does not, by itself, authorize disposal in such areas either. What § 4.1(b) does, is allow for the possibility of coal refuse disposal in such areas if all the Pennsylvania program provisions concerning threatened or endangered species are complied with. This includes compliance with § 90.150(d) which provides that coal refuse disposal activities may not be conducted which are likely to jeopardize the continued existence of threatened or endangered species. Moreover, in response to comments from the USFWS, Pennsylvania has clarified the intent and implementation of the proposed provision by revising its coal refuse disposal policy. Specifically, the policy revisions clarify that coal refuse disposal must meet the permitting requirements of 25 PA Code Chapters 86 and 90. Both of these chapters have provisions that require compliance with the Federal Endangered Species Act.

Finally, the Director notes that the USFWS now agrees that OSM approval of this proposed amendment is not likely to adversely affect Federally listed endangered and threatened species in Pennsylvania, given the adoption of the amended State policy document and the interpretation, set forth in Finding 4, of Pennsylvania's existing program requirements pertaining to endangered and threatened species.

3. Variance to Stream Buffer Zones

Numerous commenters object to the provision at § 6.1(h)(5) that allows a variance to the 100-foot stream buffer zone provision. Specifically, commenters stated that the variance violates the regulations of the Clean Water Act at 40 CFR 131.12, which provides for the protection of existing instream water uses and the water quality necessary to protect existing uses, and 30 CFR 715.17(d), which allows stream channel diversions only if they comply with both State and Federal statutes and regulations.

The commenters also argue that OSM approval of § 6.1(h)(5) would violate Section 702(a) of SMCRA, 30 U.S.C. 1292(a), which requires that SMCRA not be construed to supersede, amend, modify or repeal certain other Federal statutes, including the Federal Water Pollution Control Act.

In response, the Director notes that the Federal regulations at 30 CFR 816/817.57 authorize variances to stream buffer zones, and the approved Pennsylvania rules at § 86.102(12) currently contain provisions authorizing variances to stream buffer zones. Therefore, variances to the 100-foot buffer zone are permitted. Also, the EPA has conditioned its concurrence with this amendment on numerous grounds,

including a requirement that it review any applications for in-stream disposal of coal refuse. Furthermore, EPA has stated that it will object to the issuance of any such permit application if it does not provide for protection of the existing uses of the stream. See EPA concurrence section, below.

However, as discussed in Finding 5, above, the Director is not approving § 6.1(h)(5) to the extent that it authorizes stream buffer zones variances so long as the coal refuse disposal activities will not cause ''significant'' adverse hydrologic or water quality impacts. Also, the Director is requiring Pennsylvania to amend its program to authorize stream buffer zone variances for coal refuse disposal activities only where such activities will not cause or contribute to the violation of applicable State or Federal water quality standards, and will not adversely affect water quality and quantity, or other environmental resources of the stream.

Some commenters also stated that the two-week public notice requirement is less effective than the Federal four-week requirement at 30 CFR 773.13(a). The Director disagrees. As discussed in Finding 5 above, the proposed two-week newspaper notice is in addition to the four-week newspaper notice required by the approved program at § 86.31(a).

One commenter asserted that allowing the placement of mine wastes within 100 feet of streams would likely pose a violation of § 404 of the Clean Water Act, which prohibits fills in waters of the United States, including wetlands. In response, the Director notes that the EPA has provided its conditional concurrence with the proposed amendment; See the EPA concurrence section below, Condition #1. Under 40 CFR § 123.24(d)(6) and the 1991 Memorandum of Agreement (MOA) between EPA and PADEP, EPA has the authority to review and comment on draft National Pollutant Discharge Elimination System (NPDES) permits for all coal mining activities, including refuse disposal. As part of the MOA, EPA waived review of routine mining permit applications. However, EPA will now review all permit applications that involve in-stream refuse disposal, and other permit applications as identified by the EPA to the PADEP.

The EPA review of all permit applications related to in-stream refuse disposal and other permit applications identified by the EPA will help assure that the proposed coal refuse disposal in Pennsylvania will meet the requirements of the Clean Water Act. In addition, the EPA condition will provide the EPA with the appropriate mechanism to monitor situations where potentially acidic refuse might be placed in valley fills on non-impacted areas. This will ensure that the EPA and the U.S. Army Corps of Engineers will have an opportunity to determine whether the proposed filling activity should be subject to reviews under individual Section 404 permits (see EPA concurrence section below, EPA Comment #2). The Director will continue to coordinate with EPA to understand how EPA has implemented this condition of its approval.

Numerous commenters stated that the practice of enclosing streams in pipes under coal refuse valley fills would violate the Federal provisions at 40 CFR 131.12 concerning the protection of existing instream water uses and wetlands. In response, the Director notes that the EPA has provided its conditional concurrence with the proposed amendment. Condition number one provides for EPA review of all proposed in-stream coal refuse disposal operations, while condition number two provides that EPA will not object to the approval of any such operation only if it is convinced that the existing uses of the stream will be protected (see the EPA concurrence section, below).

4. Identification of Alternative Sites—Mileage Standard

One commenter noted that the siting of new coal refuse areas is barely constrained under § 4.1(c), since the applicant is allowed to choose a site on the basis of factors entirely unrelated to the geologic and hydrologic suitability of the site, including such factors as ''economic'' and ''social'' factors. The commenter further stated that any attempt to interject a cost-benefit analysis into the site suitability requirements of 30 CFR 816 and 817 concerning disposal of coal refuse and siting and construction of valley and head-of-hollow fills must be rejected, to the extent that it attempts to waive any of those requirements.

The Director agrees. To be no less effective than the Federal requirements concerning coal mine waste disposal, the proposed siting considerations (such as ''economic'' and ''social'' factors) must be in addition to, rather than in place of the site suitability requirements of 30 CFR parts 816 and 817. The proposed language at § 4.1(c) does not, however, prevent the application of the approved State provisions that are counterparts to the Federal requirements concerning coal refuse disposal. Therefore, the proposed site selection criteria do not render the Pennsylvania program less effective than the Federal regulations.

Several commenters stated that the one mile radius criterion does little to encourage coal refuse disposal on preferred sites. In response, the Director notes that neither SMCRA nor the Federal regulations require coal refuse disposal operations to be placed on ''preferred'' sites, as that term is defined in § 4.1(a) of this amendment. Therefore, the site selection criteria contained in § 4.1(c) are applied in addition to Pennsylvania's State program counterparts to the Federal coal refuse disposal regulations at 30 CFR 816/817.81 through 816/817.84. As supplementary measures, the site selection criteria are not inconsistent with SMCRA or the Federal regulations.

5. Preventing Adverse Impacts to Surface and Groundwater

One commenter stated that § 6.1(i), which provides for a system to prevent adverse impacts on the hydrologic balance, should be in addition to any other specific design, location and operational requirements contained in 30 CFR 816/817 relating to coal waste and coal refuse disposal. The Director agrees. The Pennsylvania regulations at Chapter 90, Subchapter D. continue to provide the performance standards for coal refuse disposal, to which the proposed provision at Subsection 6.1(i) adds an additional requirement.

The commenter further stated that there is no basis for deferring reclamation and final cover on each lift of a coal refuse disposal area for the extended period of time provided in Subsection 6.1(i), and to the extent that toxic or acid-forming material is present, such material must be immediately isolated from water to prevent AMD. The Director understands the commenter's concern with this comment and notes that despite the provision's authorization of a deferral in completing the system to prevent adverse hydrologic impacts, as noted above in Finding 5, the State regulations at Chapter 90 concerning coal refuse disposal continue to apply, and without delay. For example, § 90.122 continues to provide that coal refuse disposal areas shall be maintained to ensure that the leachate and surface runoff from the permit area will not degrade surface water or groundwater, or exceed the effluent limits of § 90.102.

6. Alternate Effluent Limitations

One commenter stated that the proposed amendments (under § 6.2) are not consistent with the 1992 Energy Policy Act amendments, or the alternate effluent limitations of § 301(p) of the Clean Water Act, because the amendments appear to inappropriately

authorize the disposal of coal refuse materials under relaxed water quality standards and relaxed reclamation and bonding responsibility.

In response, the Director notes that as discussed above in Finding 6, the EPA has given its concurrence (with conditions) of the proposed amendments. See the EPA section below for information on all EPA comments and conditions. The proposed amendment distinguishes between preexisting discharges that are encountered by the proposed operation, and discharges that are not encountered. The EPA also recognizes such a distinction. In its concurrence with the proposed amendments, the EPA stated that the proposed amendments at § 6.2(g)(1)(i) require that discharges resulting from any refuse disposal activities, including instream valley fills, must comply with PADEP regulations that include the same effluent limitations as described in NPDES effluent guideline regulations for coal preparation plants and associated areas (40 CFR 434—Subpart B). EPA also stated that ''[u]naffected water diverted around or piped under fills would not be subject to effluent guideline regulations under 40 CFR 434. That is, EPA is concurring with the proposed State provisions at § 6.2(g)(1)(ii) that authorize the treatment of discharges that are not encountered to the ''baseline pollution load'' and not to the State regulatory counterpart to 40 CFR 434.

Therefore, it is OSM's understanding that proposed § 6.2(g)(1)(ii) is not, as the commenter asserts, over broad and is not inconsistent with Section 301(p) of the Clean Water Act.

EPA's involvement in the Pennsylvania permitting process for coal refuse disposal operations will help assure compliance with the provisions of the Clean Water Act.

The EPA will assist the State in identifying the appropriate effluent limitation standards on a permit-by-permit basis during the development of NPDES permit.

With regard to the commenter's reference to the 1992 Energy Policy Act, the Director notes that the Pennsylvania amendment does not propose to alter or diminish the ''land reclamation'' or bond release standards imposed under SMCRA, with one exception. At subsection 6.2(k), Pennsylvania proposes to allow operators with special authorizations to revegetate the sites merely by establishing ground cover which is not less than that existing before disturbance, so long as said ground cover is adequate to control erosion. As noted above in Finding 6, the Director is approving subsection (k) only to the extent that it is applicable to areas previously disturbed by mining that were not reclaimed to the standards of the Pennsylvania program. With the exception noted above, however, the Director has determined that the proposed provisions are no less stringent than SMCRA and can be approved, provided that nothing in the approval authorizes the State to implement the provisions with respect to revised effluent limitations without approval by the EPA pursuant to the Clean Water Act.

The commenter also stated that the term ''pollution abatement area'' is vaguely defined and not consistent with the definition of ''coal remining operation'' (which is defined by the Clean Water Act to be only that area on which coal mining was conducted before August 3, 1977). In response, the Director notes that the proposed definition of ''pollution abatement area'' is intended to identify areas that are part of the permit area and which are causing or contributing to the baseline pollution load. As stated above in Finding 6, the proposed provisions must comply with 40 CFR part 434 concerning performance standards for coal mining point source discharges, and with § 301(p) of the Federal Water Pollution Control Act (33 U.S.C. 1311(p)) concerning modified permits for coal remining operations. The effluent limitation standards will be identified jointly by the EPA and the State on a permit-by-permit basis during the development of the NPDES permit. Also, since unencountered discharges are not within the purview of § 301(p) anyway, the proposed amendment is not inconsistent with that provision of the Clean Water Act.

7. Perpetual Treatment of Acid Mine Drainage

One commenter asked how the coal industry will be responsible for any perpetual treatment of acid mine drainage from poorly constructed valley fill operations. In response, the Director notes that proposed Section 6.2(g) contains the provisions governing the treatment of discharges. Specifically, where a coal refuse disposal operation creates a new discharge or encounters a preexisting discharge, the refuse disposal operations shall comply with all applicable regulations of the department. That includes complying with the approved State effluent limitations, treatment requirements, and bond release requirements.

Where coal refuse disposal operations cause the baseline pollution load to be exceeded, the operator must treat that discharge according to § 6.2(g)(ii), (h), and (i). In addition to treating the discharge, the bond release criteria at § 6.2(j) must be met prior to bond being released. Therefore, if the applicable effluent limitation standards are not met, treatment is required and bond will not be released.

8. Experimental Practices

One commenter stated that this provision is over broad, and would allow an entirely different permit than would be issued under the Pennsylvania program for other surface coal mining operations. The commenter also stated that the provision should be disapproved because it doesn't require approval by the Secretary of each experimental practice.

In response, the Director disagrees that the proposed language is over broad and represents an alternative permitting system. The proposed language authorizes, under the Pennsylvania program, the approval of permits which contain experimental practices. The amendments do not authorize a separate permitting system as the commenter suggests. While the proposed language is silent concerning approval of experimental practices by the Secretary, the Director is requiring, in Finding 7, that Secretarial approval be required by the implementing regulations which Pennsylvania will subsequently develop and submit for OSM approval.

9. Implementation Prior to Approval

Numerous commenters asserted that the amendments should be disapproved because the State is currently reviewing and issuing permits under the proposed statutes without approval of OSM. For example, commenters assert that the State is inappropriately approving variances to stream buffer zones to allow the implementation of valley fills. In response, the Director notes that these comments do not bear on the issue which must be decided in this rulemaking, which is whether the proposed amendment is consistent with SMCRA and the Federal regulations.

One commenter asserted that the amendments will encourage the use of abandoned coal refuse areas and mine sites rather than the use of virgin lands for coal refuse disposal operations. The use of such abandoned mine lands will eliminate hazards, improve water quality and enhance environmental conditions. In support of this assertion, the commenter stated that Pennsylvania Act 158, to which Act 114 is similar, provides incentives to remine abandoned mine lands, and has resulted in 218 special authorization permits and the successful reclamation of all but two

of those abandoned mine lands. The Director agrees that the proposed amendments have the potential to result in the reclamation of the environmentally damaged preferred sites.

10. Miscellaneous Comments

One commenter stated that Pennsylvania's rivers and streams belong to its citizens, and that to allow for ''private concerns'' to damage or destroy these resources seems to be an unconstitutional taking, without just compensation. In response, the Director notes that only ''takings'' by governmental entities, rather than by ''private concerns,'' are addressed by the United States Constitution.

Another commenter stated that this amendment does not prohibit the placement of coal refuse on sites, preferred or otherwise, that contain ''state threatened plants.'' In response, the Director notes that the Federal regulations at 30 CFR 8.16/817.97(b) prohibit surface mining activities which are likely to jeopardize the continued existence of endangered or threatened species listed by the Secretary of the Interior, pursuant to the Federal Endangered Species Act of 1973. This prohibition does not apply to species listed as endangered or threatened under only the state counterpart to the Federal Endangered Species Act.

Other commenters stated that the amendment violates the guarantee of clean water provided for in the Pennsylvania State Constitution. The Director notes that these comments are outside of the scope of this rulemaking, since they are not relevant to the issue of whether the proposed amendment is consistent with SMCRA or the Federal regulations.

Another commenter stated that the site selection provisions of § 4.1, which prohibit the disposal of coal refuse on prime farmland unless it is on a preferred site, fail to define ''prime farmland.'' In response, the Director notes that the Pennsylvania approved program already defines prime farmland, at 25 Pa. Code § 90.1, as ''lands which are defined by the Secretary of the United States Department of Agriculture in 7 CFR 657 (relating to prime and unique farmlands) and which have been historically used for cropland * * *.''

A commenter asked if the proposed legislation provides terms to deny a permit for various reasons. The commenter also asked if the proposed legislation contains enough teeth to obtain compensation for the failure to comply with provisions of a permit or whether the State will be left with another debt from a failed permit. In response, the Director notes that the proposed coal refuse disposal amendments are an addition to the full requirements of the Pennsylvania program, and do not replace those requirements. Therefore, the State's authority to deny permits and withhold bond for applicable reasons still remains in effect.

A commenter asked if the proposed legislation protects the entire watershed from the headwaters to the end. In response, the Director reiterates that all the applicable provisions of the approved Pennsylvania program continue to apply to all permit decisions concerning coal refuse disposal in addition to the proposed coal refuse disposal provisions. In addition, the Director notes that both the EPA and the USFWS have concurred with the proposed amendments. The EPA has concurred with the proposed amendments upon specifying several conditions that must be complied with concerning the protection of downstream water quality. The USFWS has concurred with the proposed amendments after obtaining assurance that the proposed provisions will not negatively affect the protection of threatened and endangered species as is currently provided for in the approved Pennsylvania program. As discussed above in the findings, the Director has determined that the proposed coal refuse disposal provisions are not inconsistent with the provisions of SMCRA.

A commenter asked if the proposed provisions require the proper testing practices to determine amount, type, kinds, and species of life forms within the permitted area and adjacent areas, as well as the testing to determine the content of the refuse material so that one knows what is being buried. The commenter also asked if the proposed amendments contain provisions to sufficiently protect high quality as well as exceptional value rated streams, and if the proposed amendments address non-point pollution as well as single-point pollution in these permitted areas. In response, the Director reiterates that the proposed provisions are in addition to and do not replace the provisions of the approved Pennsylvania program. Therefore, the approved requirements for the protection of fish and wildlife, the protection of the hydrologic balance, the chemical analysis of the coal as well as strata above and below the coal, and the construction of the coal refuse disposal site continent to apply to coal refuse disposal areas.

A commenter asked if the proposed provisions requires the site to be properly recovered within a set time and maintained for a sufficient period of time. In response, the Director notes that coal refuse disposal operations are subject to both bonding and bond release requirements of the approved Pennsylvania program. While the proposed amendment provide specific provisions for the release of bonds for pollution abatement areas, those provisions continue to require time requirements with which the operator must comply, including compliance with the five-year liability period.

A commenter asked whether or not a permit should be obtained from the EPA under Section 402 due to water quality degradation caused by a valley fill operation. In response, the Director notes that the proposed amendments do not alter Section 402's requirements. If a permit is required under Section 402, it must still be obtained.

Environmental Protection Agency

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

On September 20, 1995, OSM solicited EPA's concurrence and comments on the proposed amendment (Administrative Record No. PA–837.02). EPA responded on January 30, 1997 (Administrative Record No. PA 837.63). The EPA provided the following comments and conditions on the proposed amendments.

(a) Comments.

(1) The EPA commended the portion of the proposed amendment which targets previously impacted areas for refuse disposal and requires reclamation of these areas.

(2) The EPA recommended that proposed disposal of potentially acidic refuse in valley fills on non-impacted areas be subject to reviews under individual Section 404 U.S. Army Corps of Engineers permit, rather than coverage under the nationwide 404 permit. Although PADEP regulations require project reviews and alternatives analyses similar to that of Section 404(b)(1) guidelines, individual 404 permit reviews would allow more detailed and formal inputs by USFWS and the EPA.

The Director concurs with this comment. The placement of potentially acidic refuse in valley fill could lead to serious water quality problems for downstream areas, and involvement of the USFWS and EPA through Section

404 permitting would strengthen the review process. The U.S. Army Corps of Engineers is responsible for the decision on whether a specific filling activity falls under an individual permit or under a nationwide 404 permit. EPA must work with the PADEP through its NPDES program, and with the U.S. Army Corps of Engineers through its joint responsibilities under the Clean Water Act, to establish a system where proposed disposal of potentially acidic refuse in valley fills on non-impacted areas would be subject to reviews under individual Section 404 U.S. Army Corps of Engineers permits. The Director will continue to coordinate with EPA to understand how EPA has implemented its recommendation.

(3) The EPA supports a cautious review of the factors that can be considered to decide if coal refuse disposal is to occur on ''alternative sites,'' rather than on previously impacted areas (preferred sites), to assure that undue weight is not placed on alternative sites at environmental expense.

The Director concurs with this comment. As stated above, PADEP is commended for developing a process to encourage the placement of fills on previously affected lands. However, under the program, the applicant's search radius for preferred sites (previously impacted lands) is controlled in a manner that limits the effectiveness of the process. Process effectiveness is limited because the applicant only must consider topographic conditions, transportation routes, and other economic and environmental factors on a site specific basis up to a one mile radius for existing operations and within a 25 square-mile area (approximately a 2.8 mile radius) for new operations. As a result, the search process may ignore sites outside the search radius that are economically and technically sound, and environmentally superior to areas inside the search radius. Therefore, OSM encourages PADEP to consider proposing statutory changes to this amendment which will increase the distance limitations, in order to increase the possibility that ''preferred sites'' will be used for coal refuse disposal.

(4) The EPA stated that, based on its review, the proposed amendment does not appear to lessen the protection provided by PADEP regulations governing threatened and endangered species. However, the EPA stated, the USFWS is the authority on such matters and has indicated concern to the EPA that there may not be sufficient assurance of protection in previously impacted areas. EPA stated that an agreement between USFWS and OSM is necessary for resolution.

The Director acknowledges, and shares EPA's concern for threatened and endangered species. As discussed above in Federal Agency comments, the PADEP has addressed USFWS concerns by revising the State's coal refuse disposal program guidance. In addition, on September 24, 1996, the USFWS issued a Biological Opinion and Conference Report on surface coal mining regulatory programs under SMCRA. In that report, the USFWS stated that surface coal mining and reclamation operations conducted in accordance with properly implemented Federal and State regulatory programs under SMCRA are not likely to jeopardize the continued existence of listed or proposed species, and are not likely to result in the destruction or adverse modification of designated or proposed critical habitats (Administrative Record Number PA 837.64). By letter dated April 7, 1998, the USFWS concurred that the revised Pennsylvania guidance document's provisions have satisfied USFWS concerns (Administrative Record Number PA 837.70).

(5) The EPA stated that it supports stringent State reviews of measures for preventing acid formation and seepage on refuse disposal sites, and urged the prohibition of any project where the effectiveness or such measures is questionable. The EPA stated that past refuse disposal sites located in valley fills have resulted in acid seeps after closure. This possibility in the future is a major concern EPA has with the proposed amendment. The EPA also stated that recent discussions with PADEP have indicated that improved preventive measures will be required. Success of refuse disposal projects would depend on incorporation of such preventive measures as alkaline addition, piping streams under fills, capping fills to reduce infiltration, and installing diversion drains around the fills. Long-term treatment bonds also have been indicated by PADEP as a requirement in case preventive measures prove not to be completely effective. The EPA further stated that, according to PADEP, specifics on many decision factors affecting water quality would be determined on a case-by-case basis, included in policies or regulations, or a combination of these.

The Director concurs with the need for stringent State reviews of measures for preventing acid formation and seepage on refuse disposal sites. The Director notes that new section 6.1(i) provides that new coal refuse disposal areas shall include a system to prevent adverse impacts to surface and ground water and to prevent precipitation from contacting the refuse. In addition, the Director notes (as discussed below at ''Conditions'') that the EPA will be reviewing all Pennsylvania permit applications that involve in-stream refuse disposal, and other permit applications as identified by the EPA to the PADEP. Such review of permit applications by the EPA should add an additional measure of protection for preventing acid formation and seepage on refuse disposal sites.

(6) The EPA urged the PADEP to evaluate potential cumulative downstream impacts of proposed refuse disposal sites in combination with mines and other facilities in affected watersheds. This could be addressed as part of the Cumulative Hydrological Impact Assessment required by SMCRA for mining-related permits.

The Director concurs with this comment and notes that the Pennsylvania surface and underground coal mining regulations 25 Pa. Code, Chapter 86.37(a)(4) require such a cumulative hydrological impact assessment. Section 86.37(a)(4) provides that the regulatory authority must find in writing that an assessment of the probable cumulative impacts of all anticipated coal mining in the general area on the hydrologic balance has been made by the PADEP. In addition, section 90.35 (concerning coal refuse disposal, protection of the hydrologic balance) provides that an application must contain a determination of the probable hydrologic consequences of the proposed coal refuse disposal activities on the proposed permit area and adjacent area.

(7) The EPA recommended that the EPA and USFWS be invited to contribute to any mitigation policy work group. The EPA stated that it is the EPA's understanding that a mitigation policy for placement of refuse in valley fills has not yet been determined by Pennsylvania. Such mitigation should take into consideration the value and unspoiled nature of running streams in areas not previously impacted and the irreplaceable nature of such streams to Pennsylvania and the United States.

The Director concurs with this comment, and encourages the State to include the EPA and USFWS in any mitigation policy work group that is created.

(b) Conditions.

(1) EPA stated that to emphasize its concern over in-stream refuse disposal, its concurrence is conditioned on the following: (a) PADEP notification to EPA within 30 days of receipt of a joint SMCRA/NPDES permit application for

an in-stream refuse disposal project, and (b) PADEP submittal to EPA of any joint SMCRA/NPDES application or permit information which EPA specifically requests for an effective review. EPA also stated that it will send a letter to PADEP identifying the categories of mining related permits which EPA will request for review.

Under 40 CFR 123.24(d)(6) and 1991 Memorandum of Agreement (MOA) between EPA and PADEP, EPA has the authority to review and comment on draft National Pollutant Discharge Elimination System (NPDES) permits for all coal mining activities, including refuse disposal. As part of the MOA, EPA waived review of routine mining permit applications. However, EPA will not review all permit applications that involve in-stream refuse disposal, and other permit applications as identified by the EPA to the PADEP.

The Director concurs with this condition, and believes that EPA review of all permit applications related to in-stream refuse disposal and other permit applications identified by the EPA will help assure that the proposed coal refuse disposal in Pennsylvania will meet the requirements of the Clean Water Act. In addition, the EPA condition will provide the EPA with the appropriate mechanism to monitor situations where potentially acidic refuse might be placed in valley fills on non-impacted areas. This will ensure that the EPA and the U.S. Army Corps of Engineers will have an opportunity to determine whether the proposed filling activity should be subject to reviews under individual Section 404 permits (see discussion under EPA comment number 2 above). The Director will continue to coordinate with EPA to understand how EPA has implemented this condition of its approval.

(2) EPA identified the following conditions under which it will not object to PADEP issuance of NPDES permits for proposed in-stream refuse disposal facilities: (1) Compliance with § 404 permit requirements; (2) no feasible alternatives; (3) protection of existing and designated downstream aquatic life and uses; and (4) adequate mitigation. Under 40 CFR 122.4(d), NPDES permits must comply with state water quality standards, including non-degradation requirements. However, the EPA recognizes that there may be certain circumstances which may limit alternatives to in-stream refuse disposal facilities.

The Director concurs with these four conditions. The Director recognizes that the responsibility for assuring compliance with these conditions is with the EPA and the U.S. Army Corps of Engineers under the applicable provisions of the Clean Water Act. The EPA will review all proposals for in-stream disposal of coal refuse (see Condition #1 above). In addition, EPA will work with the PADEP through its NPDES program and with the U.S. Army Corps of Engineers through its joint responsibilities under the Clean Water Act, to establish a system where proposed disposal of potentially acidic refuse in valley fills on non-impacted areas would be subject to reviews under individual § 404 permits (see Comment #2 above).

The Clean Water Act NPDES program and § 404 permit program contain the requirements for considering alternatives, establishing mitigation, and protecting existing and designated aquatic life and uses. As provided under Condition #1 above, EPA review of NPDES permits will necessarily consider factors that could affect existing uses of streams, such as the identification of the potential for acid discharges, the feasibility of implementation methods such as the piping of streams beneath fills, and the validity of proposed measures to protect the existing uses of streams. Through their joint responsibilities and authorities under § 404, the U.S. Army Corps of Engineers and EPA will be involved in the approval of in-stream refuse disposal. Accordingly, OSM expects that EPA and the Corps of Engineers will immediately notify OSM whenever any of these four conditions has not been implemented. The Director will continue to coordinate with EPA to understand how EPA has implemented its conditions of approval.

(3) The EPA stated that OSM must undertake appropriate consultation with the USFWS to ensure compliance with § 7 of the Endangered Species Act. Such consultation must be undertaken whenever disposal of coal refuse is proposed in any previously impacted area containing Federal threatened or endangered plants or animals, as allowed under proposed § 4.1(B) of the amendment. Under the Endangered Species Act, the USFWS must provide approval and issue a requisite incidental take permit whenever the proposed activities would affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitats.

The Director concurs with this condition and has, accordingly, consulted with USFWS. As a consequence of these consultations, OSM has asked the PADEP to amend their State Policy concerning coal refuse disposal program guidance to address the USFWS concerns. The PADEP subsequently amended the coal refuse disposal policy (Administrative Record Number PA–837.68), and USFWS has agreed that the current State policy guidance document concerning coal refuse disposal has satisfied its concerns (Administrative Record Number PA–837.70).

(4) The EPA stated that where discharges from refuse disposal activities would cause or contribute to an exceedence of water quality standards, the NPDES permit must contain water quality-based effluent limitations in compliance with 40 CFR 122.44(d). Adequate monitoring and analysis of the background water quality of the receiving stream must be done prior to permit issuance and as part of the permit development process.

The Director concurs with this condition and notes, as discussed in condition #1 above, that the EPA will review all proposed permit applications that concern in-stream disposal of coal refuse, as well as other selected permits identified by the EPA. Therefore, EPA will, as part of its review, help assure that appropriate water quality standards are properly set for every permit related to in-stream coal refuse disposal.

The EPA also stated that it is its understanding that § 6.2(g)(1)(i) of the proposed amendment requires that discharges resulting from any refuse disposal activities, including in-stream valley fills, must comply with PADEP regulations that include the same effluent limits as described in NPDES effluent guideline regulations for coal preparation plants and associated areas (40 CFR part 434—subpart B). The EPA stated that unaffected water diverted around or piped under fills would not be subject to effluent guideline regulations under 40 CFR part 434.

The Director concurs with this condition. In this condition, the EPA is clarifying that EPA's understanding of § 6.2(g)(1)(i) is that coal refuse disposal operations that encounter a preexisting discharge shall comply with the effluent limitations that will be described in the NPDES permit, and which will be consistent with the effluent guideline limitations for coal preparation plants and associated areas as identified at 40 CFR part 434—subpart B. However, the EPA notes that discharges unaffected by and diverted around or piped under fills (not encountered) would not be subject to the effluent guidelines at 40 CFR part 434—subpart B. Such discharges that are not encountered shall meet the baseline pollution load standard as defined at § 3(1.3), and shall be treated in accordance with the provisions at § 6.2(g)(1)(ii). The EPA will, as part of

its review of all NPDES permits related to in-stream refuse disposal and other permits, help assure that adequate monitoring and analysis of the background water quality of the receiving stream will be done prior to permit issuance.

(5) The EPA stated that appropriate measures must be planned and implemented for coal refuse disposal facilities which will prevent long term acid drainage after closure.

The Director concurs with this condition. As discussed in condition #1 above, the EPA will review all proposed permit applications that concern in-stream disposal of coal refuse, as well as other selected permits identified by the EPA. Consequently, the EPA will be able to provide guidance to the State to help assure the prevention of long term acid drainage after closure.

V. Director's Decision

Based on the above findings, and except as noted below, the Director is approving the proposed amendment as submitted by Pennsylvania on September 14, 1995.

As discussed in Finding 2 above, the definition of ''coal refuse disposal activities'' at section 3(2.1) is approved with the requirement that the Pennsylvania program be further amended to clarify the meaning of the phrase ''excess soil and related materials.''

As discussed in Finding 4 above, the Director is approving subsection 4.1(b) only to the following extent. With respect to preferred sites, the State will not approve (via the Site Selection process) or permit (via requirements in Chapters 86 or 90) a site that is known or likely to contain Federally listed threatened or endangered species, unless the State demonstrates and the USFWS concurs that the proposed activity is not likely to adversely affect Federally listed threatened or endangered species or result in the ''take'' of Federally listed or endangered species in violation of Section 9 of the Endangered Species Act.

As discussed in Finding 5 above, the Director is approving subsection 6.1(h)(5) only to the extent that it authorizes stream buffer zone variances for coal refuse disposal activities that will not cause or contribute to the violation of water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream. Also, the Director is requiring Pennsylvania to amend its program to authorize stream buffer zone variances for coal refuse disposal activities only where such activities will not cause or contribute to the violation of applicable State or Federal water quality standards, and will not adversely affect water quality and quantity, or other environmental resources of the stream.

As discussed in Finding 6 above, Section 6.2 is approved, except as noted below, provided nothing in this approval authorizes the State to implement these provisions with respect to revised effluent limitations without approval by the EPA pursuant to the Clean Water Act.

Subsection 6.2(g)(2) is approved to the extent that it applies to final bond releases on permits other than the permit for which the allegation that the baseline pollution load has been exceeded is pending.

Subsection 6.2(h) is approved to the extent that the proposed language in the first sentence of § 6.2(h) pertains only to subsection 6.2(g)(1)(ii), which governs discharges that are not encountered. Also, the Director is requiring that the State further amend the Pennsylvania program to clarify that Subsection 6.2(h) of the Coal Refuse Disposal Act pertains to preexisting discharges that are not encountered.

Subsections 6.2(g), (h), and (i) are approved with the understanding that the implementing regulations to be developed by Pennsylvania (as is required by Section 3.2(b) of the Coal Refuse Disposal Act) to implement the provisions at Section 6.2 will clarify that preexisting discharges that are encountered must be treated to the State effluent standards at Chapter 90, subchapter D at 90.102.

Subsection 6.2(k) is approved only to the extent that it is applicable to areas previously disturbed by mining that were not reclaimed to the standards of the Pennsylvania program. In addition, the Director is requiring that the State further amend the Pennsylvania program to be no less effective than 30 CFR 816.116(b)(5), by limiting the application of the revegetation standards under Subsection 6.2(k) of its Coal Refuse Disposal Act, to areas that were previously disturbed by mining and that were not reclaimed to the State reclamation standards.

Subsection 6.2(l) is approved to the extent the PADEP will not approve a special authorization when such an authorization would result in the site being reclaimed to lesser standards than could be achieved if the forfeited bond moneys were used to reclaim the site to the standards approved in the original permit under which the bond moneys were forfeited. In addition, the Director is requiring that the State further amend the Pennsylvania program to clarify that under Subsection 6.2(l) of its Coal Refuse Disposal Act, a special authorization for coal refuse disposal operations will not be granted, when such an authorization would result in the site being reclaimed to lesser standards than could be achieved if the moneys paid into the Fund, as a result of a prior forfeiture on the area, were used to reclaim the site to the standards approved in the original permit under which the bond moneys were forfeited.

As discussed above in Finding 7 concerning Section 6.3—Experimental Practices, the Director is requiring that the State further amend the Pennsylvania program by adding implementing rules no less effective than 30 CFR 785.13, and no less stringent than SMCRA Section 711 and which clarify that experimental practices are only approved as part of the normal permit approval process and only for departures from the environmental protection performance standards, and that each experimental practice receive the approval of the Secretary.

The Federal regulations at 30 CFR Part 938, codifying decisions concerning the Pennsylvania program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Pennsylvania program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Pennsylvania of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget

(OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the date and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 14, 1998.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 938.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 938.15 Approval of Pennsylvania regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
September 13, 1995 ..	April 22, 1998	Pennsylvania law Act 1994–114 concerning the special authorization for refuse disposal in areas previously affected by mining which contain pollutional discharges: Title and 1; 3; 3.2(b); 4.1; 6.1(h)(5), (i); 6.2; 6.3; 15.1.

3. Section 938.16 is amended by adding new paragraphs (vvv) through (bbbb) to read as follows:

§ 938.16 Required regulatory program amendments.

* * * * *

(vvv) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program to clarify the meaning of the term ''excess soil and related materials'' as that term is used in the definition of ''coal refuse disposal activities.''

(www) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program to authorize stream buffer zone variances for coal refuse disposal activities only where such activities will not cause or contribute to the violation of applicable State or Federal water quality standards, and will not adversely affect water quality and quantity, or other environmental resources of the stream.

(xxx) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program to clarify, in the regulations to be developed to implement the provisions of section 6.2 of the Coal Refuse Disposal Act (as is required by Section 3.2)(b) of the Coal Refuse Disposal Act), that preexisting discharges that are encountered must be treated to the State effluent standards at Chapter 90, subchapter D at 90.102.

(yyy) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program to clarify that Subsection 6.2(h) of the Coal Refuse Disposal Act pertains to preexisting discharges that are not encountered.

(zzz) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program to be no less effective than 30 CFR 816.116(b)(5), by limiting the application of the revegetation standards under Subsection 6.2(k) of its Coal Refuse Disposal Act, to areas that were previously disturbed by mining and that were not reclaimed to the State reclamation standards.

(aaaa) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program to clarify that under Subsection 6.2(l) of its Coal Refuse Disposal Act, a special authorization for coal refuse disposal operations will not be granted, when such an authorization would result in the site being reclaimed to lesser standards than could be achieved if the moneys paid into the Fund, as a result of a prior forfeiture on the area, were used to reclaim the site to the standards approved in the original permit under which the bond moneys were forfeited.

(bbbb) By July 1, 1998, Pennsylvania shall amend the Pennsylvania program by adding implementing rules no less effective than 30 CFR 785.13, and no less stringent than SMCRA Section 711 and which clarify that experimental practices are only approved as part of the normal permit approval process and only for departures from the environmental protection performance standards, and that each experimental practice receive the approval of the Secretary.

[FR Doc. 98–10632 Filed 4–21–98; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–040–FOR]

Texas Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Texas regulatory program and abandoned mine land reclamation (hereinafter referred to as the ''Texas program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of recodification of the Texas Coal Mining Regulations into the Texas Administrative Code at Title 16, Chapter 12. The amendment is intended to conform the Texas Coal Mining Regulations to Texas Administrative Code formatting syntax, to correct typographical errors, and to allow for the publication of the rules in the Texas Administrative Code in full text rather than by reference.

EFFECTIVE DATE: April 22, 1998.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. Background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 943.10, 943.15, and 943.16.

On June 23, 1980, the Secretary of the Interior approved the Texas plan. Background information on the Texas plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the June 23, 1980, **Federal Register** (45 FR 41937). Subsequent actions concerning the Texas plan and amendments to the plan can be found at 30 CFR 943.25.

II. Submission of the Proposed Amendment

By letter dated January 23, 1998 (Administrative Record No. TX–645), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment at its own initiative. Texas proposed to repeal § 11.221 at Title 16 of the Texas Administrative Code (TAC), which adopts by reference the Texas Coal Mining Regulations (TCMR), and to recodify these regulations into the Texas Administrative Code at Title 16, Chapter 12 in full text.

OSM announced receipt of the proposed amendment in the February 13, 1998, **Federal Register** (63 FR 7356), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on March 16, 1998. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified concerns relating to minor wording errors, typographical errors, and citation reference errors. OSM notified Texas of these concerns by fax dated March 5, 1998, and by letter dated March 10, 1998 (Administrative Record Nos. TX–645.05 and TX–645.07, respectively). By letter dated March 25, 1998 (Administrative Record No. TX–645.10), Texas responded to OSM's concerns by submitting revisions to its proposed program amendment that correct all of the errors identified. Because the revisions pertained to the correction of nonsubstantive editorial-type errors, OSM did not reopen the public comment period.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Recodification of Texas' Regulations. Texas proposed to codify TCMR Parts 700 through 850, pertaining to surface coal mining and reclamation operations, at 16 TAC §§ 12.1 through 12.710. Texas also proposed to codify TCMR §§ 051.800 through 051.817, pertaining to the Texas abandoned mine land reclamation program, at 16 TAC §§ 12.800 through 12.817. Texas proposed the simultaneous repeal of 16 TAC § 11.221 and adoption of the new sections at 16 TAC Chapter 12 for the purpose of renumbering the existing regulations and incorporating the text into the Texas Administrative Code. No requirements were proposed to be added to or deleted from the existing regulations. Minor changes to the existing regulations were proposed to conform them to the Texas Administrative Code formatting syntax; to update information on addresses; to correct grammar, punctuation, and capitalization errors; and to update internal references.

The Director finds that the proposed recodification is nonsubstantive in nature and Texas' proposed regulations at 16 TAC Chapter 12 are no less effective than the Federal regulations. Therefore, the Director is approving the recodification of Texas' regulations.

IV. Summary and Disposition of Comments

Public Comments

OSM solicited public comments on the proposed amendment, but none were received.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record No. TX–645.03). On February 23, 1998 (Administrative Record No. TX–645.08), the U.S. Army Corps of Engineers' commented that the proposed amendment was satisfactory.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated

under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from the EPA (Administrative Record No. TX–645.01). The EPA responded on March 6, 1998 (Administrative Record No. TX–645.09), with the following comments relating to impacts to streams and wetlands.

§ 12.134 Soil Resources Information. EPA commented that when the soils are delineated and identified, it would be helpful if they were listed as hydric or non-hydric.

Texas' regulations at § 12.134 are substantively identical to the Federal regulations at 30 CFR 779.21. Therefore, no changes to Texas' regulations may be required by OSM.

§ 12.144 Fish and Wildlife Plan. EPA commented that this section mentions wetlands in the requirements for protection and enhancement of wildlife habitat and recommended that a separate section be included specifically dealing with wetlands and streams. EPA commented that the separate section should include a description of how the operator will avoid and minimize impacts to wetlands and streams and steps that will be taken to compensate for unavoidable impacts to wetlands and streams, with at least one-to-one compensation for all lost wetland functions.

Texas' regulations at § 12.144 are substantively identical to the Federal regulations at 30 CFR 780.16(b). Therefore, no changes to Texas' regulations may be required by OSM.

General. EPA commented that discharge of dredged or fill material into waters of the U.S. (including most streams and wetlands) require authorization from the U.S. Army Corps of Engineers under § 404 of the Clean Water Act. The operators should be required to contact the nearest Corps office before beginning operations to obtain the necessary authorization.

The Texas program includes substantively identical counterparts to the Federal regulations relating to protection of the hydrologic balance and sediment control measures. This includes counterparts to the Federal regulations at 30 CFR 816.42 and 817.42 that require discharges of water from areas disturbed by surface mining activities shall be made in compliance with all applicable State and Federal water quality laws and regulations. Therefore, no changes to Texas' regulations may be required by OSM.

Texas proposed only to renumber and add its regulations to the Texas Administrative Code in this amendment. No substantive changes to the previously approved regulations were proposed. However, EPA's comments were forwarded to Texas for consideration in a future rulemaking.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. TX–645.02). Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Texas on January 23, 1998, and as revised on March 25, 1998.

The Director approves the regulations as proposed by Texas with the provision that they be fully promulgated in identical form to the regulations submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 943, codifying decisions concerning the Texas program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 10, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 943 is amended as set forth below:

PART 943—TEXAS

1. The authority citation for Part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 943.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	*	* *
January 23, 1998.	April 22, 1998.	Recodification; 16 TAC 12.1 through 12.710.

3. Section 943.25 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 943.25 Approval of Texas abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	*	* *
January 23, 1998.	April 22, 1998.	Recodification; 16 TAC 12.800 through 12.817.

[FR Doc. 98–10633 Filed 4–21–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 042–1042(a); FRL–5979–4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions submitted by the state of Missouri on March 20, 1997, which are designed to consolidate applicable requirements contained in its State Implementation Plan (SIP). These revisions will simplify compliance for Part 70 installations and many other Missouri sources.

DATES: This action is effective June 22, 1998 unless by May 22, 1998 relevant adverse comments are received. Should the agency receive such comment, it will publish notification withdrawing this rule.

ADDRESSES: Comments must be mailed to Joshua Tapp at EPA, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Joshua A. Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION: With the advent of the Clean Air Act (CAA) operating permit program, the EPA, the Missouri Department of Natural Resources (MDNR), the City of St. Louis'—Division of Air Pollution Control, the St. Louis County Department of Health, the Kansas City Health Department'—Air Pollution Control Program, and the City of Springfield'—Air Pollution Control Program have coordinated the review of the local agency codes and ordinances contained in the current Federally approved SIP. Consistency between these codes and ordinances and the state regulations contained in the SIP has always been important, but the operating permit program has brought this issue to the forefront. The basic concept of the operating permit program is to combine all air requirements to which one particular source is subject into one cohesive document so that the public, the source, and the regulatory agencies can clearly understand the compliance obligations. However, when the SIP contains outdated, overlapping, and sometimes conflicting applicable requirements, combining all requirements into one document may not achieve this goal.

This coordinated review revealed numerous discrepancies between Federally approved local ordinances and Federally approved state rules. The review also uncovered the fact that some local agencies have long since revised their regulations and, in many cases, the current version of the local agency regulations is very different from the Federally approved version.

In response to this review, MDNR and its local agencies developed recommendations for SIP action to correct these issues. This request is for the retention of some sections, the removal of some sections, and the addition of other sections. Five criteria were used to determine which sections should be recommended for removal from the SIP: (1) The sections are administrative only, (2) the sections apply to no known sources, (3) the requirements of the sections are covered by equivalent or more stringent Federally approved state rules, (4) the sections have no bearing on attainment or maintenance of the National Ambient Air Quality Standards, or (5) the sections are being concurrently replaced by current local ordinance, code, or permit requirements. Sections not meeting these criteria were recommended for retention. MDNR and its local agencies also requested that certain sections located in new or revised ordinances be added to replace outdated versions of Federally approved sections.

The following are examples of local ordinance provisions which are being retained in the SIP. MDNR and the City of Springfield Air Pollution Control Department have requested that Air Pollution Control Standard No. 1890, Chapter 2A, section 35 entitled ''Maximum Emission Limitations from Incinerators'' and related sections be retained in the SIP. These sections were retained because the state does not have an equally stringent rule in place which addresses incinerator emissions.

The following are examples of local ordinance provisions which are being removed from the SIP. MDNR and the city of St. Louis have requested that St. Louis Ordinance 50163 be completely removed from the SIP. Sections such as section 4 entitled ''Division of Air Pollution Control Created'' and section 19 entitled ''Labels to be Affixed to Approved Installations'' are

administrative only, and are therefore being rescinded from the SIP. Section 17, entitled ''Registration of Sources of Air Pollution'' is an example of a rule which is being rescinded because the state SIP rules are at least equally as stringent. A final example is section 5 entitled ''When Emissions of Pollutants Become Nuisance.'' This section does not have a bearing on attainment or maintenance of the national ambient air quality standards and is being removed for that reason.

The following are examples of the limited number of local ordinance provisions which are being added to the SIP. MDNR and the city of Kansas City have requested that the EPA add the most recent version of the Kansas City open burning provisions contained in Chapter 8 of the Air Quality Control Code. Section 8–1 entitled ''Definitions'' and section 8–4 entitled ''Open Burning'' are being added to the SIP, because they now take the place of comparable provisions from the previous version of the Code which are currently in the SIP. By adding the current version of the Code and concurrently rescinding the old version of the Code, the EPA, the state, and Kansas City will be able to maintain Kansas City air quality in a consistent manner.

On September 26, 1996, Missouri held a public hearing on these revisions and on October 31, 1997, the Missouri Air Conservation Commission adopted these revisions for submittal to the EPA. On March 12, 1997, MDNR submitted the revisions with a request to revise the SIP under the signature of David Shorr (the Governor's designee) and under the signatures of each of the local air pollution control agencies. The revisions include the removal of 157 local ordinance or code sections, the retention of 12 sections, and the addition of 7 sections. The reader should refer to the Technical Support Document for more information regarding the analysis which supports this recommendation.

This consolidation will simplify compliance for many Missouri sources without changing the stringency of the control requirements.

I. Final Action

This is a direct final action which approves the request submitted by MDNR and its local agencies to consolidate the Federally approved local ordinance and codes in the Federally approved SIP.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective June 22, 1998 without further notice unless the Agency receives relevant adverse comments by May 22, 1998.

If the EPA receives such comments, then the EPA will publish a notice withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 22, 1998 and no further action will be taken on the proposed rule.

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

II. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the 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, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

C. Unfunded Mandates

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

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

D. 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. The 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. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 22, 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).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 25, 1998.

William Rice,

Acting Regional Administrator, Region VII.

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

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(103) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(103) Revisions to the Missouri plan were submitted by the Governor on March 20, 1997.

(i) Incorporation by reference.

(A) St. Louis City Ordinance 59270, Section 4—Definitions, numbers 80. ''Open Burning,'' 100. ''Refuse,'' 108. ''Salvage Operation,'' and 126. ''Trade Waste'' only; and Section 12, effective October 23, 1984.

(B) St. Louis City Permit No. 96–10–084, issued to Washington University School of Medicine Medical Waste Incinerator, 500 S. Euclid Avenue, effective February 20, 1997.

(C) St. Louis City Permit No. 96–10–083, issued to Washington University School of Medicine Pathological Incinerator, 4566 Scott Avenue, effective February 20, 1997.

(D) St. Louis City Operating Permit, issued to St. Louis University Medical Center Medical Waste Incinerator, 3628 Rutger Avenue, effective August 3, 1992.

(E) Kansas City Air Quality Control Code C.S. No. 56726, Chapter 8, Sections: 8–2, definitions for ''Open burning,'' ''Refuse,'' ''Salvage operation,'' and ''Trade waste''; and 8–4, only, effective August 2, 1984.

(F) Remove St. Louis City Ordinance 50163, effective June 11, 1968.

(G) Remove St. Louis City Ordinance 54699, effective March 27, 1967.

(H) Remove St. Louis County Air Pollution Control Code SLCRO, Title VI, Chapter 612, effective February 22, 1967.

(I) Remove Kansas City Air Pollution Control Code C.S. No. 36539, Chapter 18, except sections: 18.83—Definitions, subsections (13) ''Incinerators'' and (15) ''Multiple Chamber Incinerators''; and 18.91—Incinerators, effective August 31, 1972.

(J) Remove City of Springfield Air Pollution Control Standard G.O. No. 1890, Chapter 2A, except sections: 2A–2—Definitions, the definitions for ''Director of Health,'' ''Existing Equipment,'' ''Incinerator,'' ''Multiple-chamber incinerator,'' ''New equipment,'' ''Open burning,'' ''Particulate matter,'' ''Refuse,'' and ''Trade waste''; 2A–25; 2A–34; 2A–35; 2A–36; 2A–37; 2A–38; 2A–51; 2A–55; and 2A–56, effective October 12, 1969.

[FR Doc. 98–10510 Filed 4–21–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VT–006–01–1219a; A–1–FRL–5998–1]

Approval and Promulgation of Air Quality Implementation Plans; Vermont; VOC Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Vermont on February 4, 1993, August 9, 1993, and August 10, 1994. These SIP revisions establish requirements for certain categories of sources which emit volatile organic compounds. The intended effect of this action is to approve these regulations into the Vermont SIP. This action is being taken in accordance with the Clean Air Act (CAA).

DATES: This rule is effective June 22, 1998 without further notice, unless EPA receives relevant adverse comments by May 22, 1998. If EPA receives such comments, then it will publish a timely document withdrawing this rule.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; and Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, VT 05676.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: On February 4, 1993, August 9, 1993, and August 10, 1994, the State of Vermont submitted formal revisions to its State Implementation Plan (SIP). These SIP revisions consist of regulations to reduce volatile organic compound (VOC) emissions from certain categories of sources.

I. Summary of SIP revision

Background

On November 15, 1990, amendments to the 1977 CAA were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. §§ 7401–7671q. Pursuant to the amended CAA, the entire state of Vermont was designated as ''unclassifiable/attainment'' for ground-level ozone. 56 FR 56694 (Nov. 6, 1991).

Section 184 of the amended CAA, establishes an Ozone Transport Region (OTR) which is comprised of several northeastern states, including Vermont. Section 184(b) requires that states in the OTR implement reasonably available control technology (RACT) for all VOC sources covered by a Control Techniques Guideline (CTG) issued before or after the enactment of the Clean Air Act Amendments of 1990 and for all major VOC sources (defined as 50 tons of VOC emissions per year for sources in the OTR).

A CTG is a document issued by EPA which establishes a ''presumptive norm'' for RACT for a specific VOC source category. Under the pre-amended CAA, EPA issued CTG documents for 29 categories of VOC sources. Section 183 of the amended CAA requires that EPA issue 13 new (i.e., post-1990) CTGs. Appendix E of the General Preamble of Title I (57 FR 18077) lists the categories

for which EPA plans to issue new CTGs. On November 15, 1993, EPA issued a CTG for Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations and Reactor Processes. Also, on August 27, 1996, EPA issued a CTG for shipbuilding and repair operations. In addition, on May 26, 1996, EPA issued a CTG for wood furniture finishing operations. CTGs for the remaining Appendix E categories have not yet been issued.

EPA's Evaluation of Vermont's Submittal

In response to the Section 184(b) RACT requirement, on April 6, 1992 and August 28, 1992, Vermont submitted negative declarations for the following pre-1990 CTG categories:

1. Automobile and Light-Duty Truck Coating Operations
2. Can Coating
3. Coil Coating
4. Fabric Coating
5. Vinyl Coating
6. Coating of Metal Furniture
7. Coating of Large Appliances
8. Coating of Magnet Wire
9. Petroleum Refinery Sources
10. Leaks from Petroleum Refinery Equipment
11. Petroleum Liquid Storage in External Floating Roof Tanks
12. Leaks from Natural Gas/Gasoline Processing Equipment
13. Manufacture of Synthesized Pharmaceutical Products
14. Pneumatic Rubber Tire Manufacturing
15. Graphic Arts Systems
16. Petroleum Solvent Dry Cleaners
17. Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufacturing Equipment
18. Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins
19. Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry

Vermont also submitted negative declarations regarding several post-1990 CTG categories. On April 20, 1994, Vermont submitted a negative declaration for the SOCMI Distillation Operations and Reactor Processes CTG. In addition, Vermont submitted a negative declaration for the shipbuilding and repair operations CTG on September 30, 1996.

Through these negative declarations, the State of Vermont is asserting that there are no sources within the State that would be subject to a rule for that source category. EPA is approving these negative declarations as meeting the Section 184(b) RACT requirement for the source categories listed. However, if evidence is submitted during the comment period that there are existing sources within the State of Vermont that, for purposes of meeting the RACT requirement, would be subject to one or more of these rules, if developed, EPA would be unable to take final approval action on the negative declarations.

After submitting the above negative declarations, Vermont then proceeded with the process of adopting regulations to control VOC emissions from the remaining pre-1990 CTG categories (which include surface coating processes, solvent metal cleaning, the use of cutback asphalt, and gasoline marketing operations) and from major non-CTG sources. Vermont's regulation for major non-CTG sources, 5–253.20 ''Other Sources that Emit Volatile Organic Compounds,'' was approved by EPA on April 9, 1997 (62 FR 17084) and will not be further discussed in this document.

The VOC regulations included in Vermont's February 4, 1993, August 9, 1993, and August 10, 1994 SIP submittals which are the subject of today's document are listed below.

5–101 Definitions
5–253.1 Petroleum Liquid Storage In Fixed Roof Tanks
5–253.2 Bulk Gasoline Terminals
5–253.3 Bulk Gasoline Plants
5–253.4 Gasoline Tank Trucks
5–253.5 Stage I Vapor Recovery Controls at Gasoline Dispensing Facilities
5–253.10 Paper Coating
5–253.12 Coating of Flatwood Paneling
5–253.13 Coating of Miscellaneous Metal Parts
5–253.14 Solvent Metal Cleaning
5–253.15 Cutback and Emulsified Asphalt

In addition to the above-mentioned rules, Vermont submitted revisions to its ''SIP Narrative,'' which contain descriptive material on how the state will implement these rules.

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the Act and EPA regulations, as found in Section 110 and Part D of the Act and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents. For the purpose of assisting State and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guidelines (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for RACT for specific source categories. EPA has not yet developed CTGs to cover all sources of VOC emissions. Further interpretations of EPA policy are found in those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987) and ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988) and the existing CTGs. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

EPA has evaluated Vermont's VOC regulations and has found that they are generally consistent with the following EPA guidance documents: Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks (EPA–450/2–77–008); Control of Volatile Organic Compounds from Use of Cutback Asphalt (EPA–450/2–77–037); Clarification for Final SIP Actions on Asphalt Regulations (EPA memorandum, October 4, 1979); Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed Roof Tanks (EPA–450/2–77–036); Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals (EPA–450/2–77–026); Control of Volatile Organic Emissions from Bulk Gasoline Plants (EPA–450/2–77–035); Hydrocarbon Control Strategies for Gasoline Marketing Operations (EPA–450/3–78–017); Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VII: Factory Surface Coating of Flat Wood Paneling (EPA–450/2–78–032); Control of Volatile Organic Compound Emissions from Solvent Metal Cleaning (EPA–450/2–77–022); and Model Volatile Organic Compound Rules for Reasonably Available Control Technology (EPA draft, June 1992). This finding is supported by Vermont's SIP Narrative, in which the State declares that it will require sources to use EPA test methods and otherwise exercise any discretion under its rules in a manner that is consistent with the CTGs. As such, EPA believes that the submitted rules constitute RACT for the applicable sources.

Vermont's VOC regulations and EPA's evaluation are detailed in a memorandum, dated [date], entitled ''Technical Support Document—Vermont—VOC Regulations.'' Copies of that document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

II. Final Action

EPA is approving the following regulations into the Vermont SIP:

5–101 Definitions
5–253.1 Petroleum Liquid Storage in Fixed Roof Tanks
5–253.2 Bulk Gasoline Terminals
5–253.3 Bulk Gasoline Plants
5–253.4 Gasoline Tank Trucks
5–253.5 Stage I Vapor Recovery Controls at Gasoline Dispensing Facilities
5–253.10 Paper Coating
5–253.12 Coating of Flatwood Paneling
5–253.13 Coating of Miscellaneous Metal Parts
5–253.14 Solvent Metal Cleaning
5–253.15 Cutback and Emulsified Asphalt.

In addition to approving these regulations into Vermont's SIP, EPA is also approving revisions to Vermont's SIP narrative, as well as negative declarations submitted by Vermont for certain CTG categories, as ''additional material'' under Section 52.2370.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve these SIP revisions should relevant adverse comments be filed. This rule will be effective June 22, 1998 without further notice unless, by May 22, 1998, the Agency receives relevant adverse comments.

If the EPA receives such comments, then EPA will publish a subsequent document informing the public that the rule is withdrawn. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective June 22, 1998.

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

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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

SIP approvals under Section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

To reduce the burden of Federal regulations on States and small governments, President Clinton issued Executive Order 12875 on October 26, 1993, entitled ''Enhancing the Intergovernmental Partnership.'' Under Executive Order 12875, EPA may not issue a regulation which is not required by statute unless the Federal Government provides the necessary funds to pay the direct costs incurred by the State and small governments or EPA provides to the Office of Management and Budget a description of the prior consultation and communications the agency has had with representatives of State and small governments and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected and other representatives of State and small governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

The present action satisfies the requirements of Executive Order 12875 because it is required by statute and because it does not contain a significant unfunded mandate. Section 110(k) of the Clean Air Act requires that EPA act on implementation plans submitted by states. This rulemaking implements that statutory command. In addition, this rule approves preexisting state requirements and does not impose new federal mandates binding on State or small governments.

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

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

D. 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).

E. Petitions for Judicial Review

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 22, 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).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Vermont was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 1, 1998.

John P. DeVillars,

Regional Administrator, Region I.

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

PART 52—[AMENDED]

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

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

Subpart UU—Vermont

2. Section 52.2370 is amended by adding paragraph (c)(25) to read as follows:

§ 52.2370 Identification of plan.

* * * * *

(c) * * *

(25) Revisions to the State Implementation Plan submitted by the Vermont Air Pollution Control Division on February 3, 1993, August 9, 1993, and August 10, 1994.

(i) Incorporation by reference.

(A) Letters from the Vermont Air Pollution Control Division dated February 4, 1993, August 9, 1993, and August 10, 1994 submitting revisions to the Vermont State Implementation Plan.

(B) Chapter 5 of the Agency of Natural Resources Environmental Protection Regulations, Subsection 5–253.1, entitled ''Petroleum Liquid Storage in Fixed Roof Tanks,'' effective in the State of Vermont on November 13, 1992.

(C) Chapter 5 of the Agency of Natural Resources Environmental Protection Regulations, Subsection 5–253.2, entitled ''Bulk Gasoline Terminals,'' effective in the State of Vermont on November 13, 1992.

(D) Chapter 5 of the Agency of Natural Resources Environmental Protection Regulations, Subsection 5–253.3, entitled ''Bulk Gasoline Plants,'' effective in the State of Vermont on November 13, 1992.

(E) Chapter 5 of the Agency of Natural Resources Environmental Protection Regulations, Subsection 5–253.4, entitled ''Gasoline Tank Trucks,'' effective in the State of Vermont on November 13, 1992.

(F) Chapter 5 of the Agency of Natural Resources Environmental Protection Regulations, Subsection 5–253.5, entitled ''Stage I Vapor Recovery Controls at Gasoline Dispensing Facilities,'' effective in the State of Vermont on November 13, 1992.

(G) Chapter 5 of the Agency of Natural Resources Environmental Protection Regulations, Subsection 5–253.10, entitled ''Paper Coating,'' effective in the State of Vermont on November 13, 1992.

(H) Chapter 5 of the Agency of Natural Resources Environmental Protection Regulations, Subsection 5–253.12, entitled ''Coating of Flat Wood Paneling,'' effective in the State of Vermont on November 13, 1992.

(I) Chapter 5 of the Agency of Natural Resources Environmental Protection Regulations, Subsection 5–253.13, entitled ''Coating of Miscellaneous Metal Parts,'' effective in the State of Vermont on August 13, 1993.

(J) Chapter 5 of the Agency of Natural Resources Environmental Protection Regulations, Subsection 5–253.14, entitled ''Solvent Metal Cleaning,'' effective in the State of Vermont on August 13, 1993.

(K) Chapter 5 of the Agency of Natural Resources Environmental Protection Regulations, Subsection 5–253.15, entitled ''Cutback and Emulsified Asphalt,'' effective in the State of Vermont on August 17, 1994.

(L) Chapter 5 of the Agency of Natural Resources Environmental Protection Regulations, Subsection 5–101, entitled ''Definitions,'' effective in the State of Vermont on November 13, 1992.

(M) Chapter 5 of the Agency of Natural Resources Environmental Protection Regulations, Subsection 5–101, entitled ''Definitions,'' effective in the State of Vermont on August 13, 1993.

(ii) Additional materials.

(A) Vermont Agency of Natural Resources document entitled ''State of Vermont: Air Quality Implementation Plan'' dated August 1993.

(B) Letter from the Vermont Agency of Natural Resources dated September 30, 1996 submitting a negative declaration for the shipbuilding and repair Control Techniques Guideline (CTG) category.

(C) Letter from the Vermont Agency of Natural Resources dated April 20, 1994 submitting a negative declaration for the synthetic organic chemical manufacturing industry (SOCMI) distillation and reactor processes CTG categories.

(D) Letters from the Vermont agency of Natural Resources dated April 6, 1992 and August 28, 1992 submitting negative declarations for several pre-1990 CTG categories.

(E) Nonregulatory portions of the submittal.

3. In § 52.2381, Table 52.2381 is amended by adding a new entry to existing state citation ''Chapter 5, Air Pollution Control, Subchapter I, Definitions, Section 5–101 Definitions'' and by adding 10 new entries to existing state citation ''Subchapter II, Prohibitions'' to read as follows:

§ 52.2381 EPA—Approved Vermont state regulations.

* * * * *

TABLE 52.2381—EPA-APPROVED REGULATIONS

[Vermont SIP regulations 1972 to present]

State citation, title and subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.2370	Comments and unapproved sections
* *	*	*	* *	*	*
Section 5–101 Definitions	10/29/92 7/29/93	4/22/98	[Insert *FR* citation from published date].	(c)(25)	Add definitions associated with VOC RACT rules.

TABLE 52.2381—EPA-APPROVED REGULATIONS—Continued

[Vermont SIP regulations 1972 to present]

State citation, title and subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.2370	Comments and unapproved sections
* *		*	* *		* *
Section 5–253.1 Petroleum Liquid Storage in Fixed Roof Tanks.	10/29/92	4/22/98	[Insert *FR* citation from published date].	(c)(25)	
Section 5–253.2 Bulk Gasoline Terminals	10/29/92	4/22/98	[Insert FR citation published date].	(c)(25)	
Section 5–253.3 Bulk Gasoline Plants	10/29/92	4/22/98	[Insert *FR* citation from published date].	(c)(25)	
Section 5–253.4 Gasline Tank Trucks.	10/29/92	4/22/98	[Insert *FR* citation from published date].	(c)(25)	
Section 5–253.5 Stage I vapor recovery controls at gasoline dispensing facilities.	10/29/92	4/22/98	[Insert *FR* citation from published date].	(c)(25)	
Section 5–253.10 Paper Coating.	10/29/92	4/22/98	[Insert *FR* citation from published date].	(c)(25)	
Section 5–253.12 Coating of Flatwood Paneling.	10/29/92	4/22/98	[Insert *FR* citation from published date].	(c)(25)	
Section 5–252.13 Coating of Miscellaneous Metal Parts.	7/29/93	4/22/98	[Insert *FR* citation from published date].	(c)(25)	
Section 5–253.14 Solvent Metal Cleaning.	7/29/93	4/22/98	[Insert *FR* citation from published date].	(c) 25)	
Section 5–253.15 Cutback and Emulsified Asphalt.	8/2/94	4/22/98	[Insert *FR* citation from published date].	(c)(25)	
* *		*	* *		* *

[FR Doc. 98–10724 Filed 4–21–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300635; FRL–5782–1]

RIN 2070–AB78

Fenoxaprop-ethyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of fenoxaprop-ethyl [ethyl 2-[4-[(6-chloro-2-benzoxazolyl) oxy]phenoxy] propanoate] and its metabolites [2-[4-] (6-chloro-2-benzoxazolyl)oxy]phenoxy] propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one in or on the following raw agricultural commodities (RACs): barley, grain at 0.05 parts per million (ppm), and barley straw at 0.1 ppm. AgrEvo USA Company requested these tolerances 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 April 22, 1998. Objections and requests for hearings must be received by EPA on or before June 22, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300635], 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–300635], 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–300635]. 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: Joanne I. 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: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6224, e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 17, 1997 (62 FR 48837) (FRL–5741–1), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP) for tolerance by AgrEvo USA Company, Little Falls One, 2711 Centerville Road, Wilmington, DE 19808. This notice included a summary of the petition prepared by AgrEvo USA Company, the registrant. There were no

comments received in response to the notice of filing.

The petition requested that 40 CFR 180.430 (b) be amended by establishing tolerances for combined residues of the herbicide fenoxaprop-ethyl [ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate] and its metabolites [2-[4-](6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one, in or on the following raw agricultural commodities: barley, grain at 0.05 ppm; and barley straw at 0.1 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 three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

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

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

subgroups including infants and children.

B. Aggregate Exposure

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

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup 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 fenoxaprop-ethyl and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for combined residues of fenoxaprop-ethyl [ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate] and its metabolites [2-[4-](6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one in or on the following raw agricultural commodities: barley, grain at 0.05 ppm; and barley straw at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

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

1. *Acute toxicity.* A battery of acute toxicity studies is available, places technical fenoxaprop-ethyl in Toxicity Category III for acute oral (rat) (LD_{50} = 2,357 milligram/kilograms (mg/kg) (M) and 2,500 mg/kg (F)), and acute inhalation (rat) LC_{50} = >0.511 mg/L; in Toxicity Category IV for acute dermal (rat) = >2,000 mg/kg and rabbit =>1,000 mg/kg and skin irritation (slight irritant) ; and in Toxicity Category I for eye irritation (rabbit) with non-reversible corneal opacity at day 21. Fenoxaprop-ethyl was determined to be a non-sensitizer in a dermal sensitization study (guinea pig).

2. *Genotoxicity* . A battery of genotoxicity studies, none of which indicated any genotoxic potential. The studies submitted included: *in vitro* human lymphocyte chromosomal aberration, mouse micronucleus, *in vitro* unscheduled DNA synthesis, Ames *Salmonella* bacterial point mutation and yeast DNA repair assays.

3. In a subchronic feeding study with rats (30/sex/dose), fenoxaprop-ethyl was administered at doses of 0, 1, 4 or 16 mg/kg/day for 90 days. The NOEL was 1 mg/kg/day and the lowest observed effect level (LOEL) was 4 mg/kg/day) based on relative organ weight changes. After the 4-week recovery period, significantly decreased liver weights were observed in males at the 1 mg/kg/day dose and in females at 4 mg/kg/day.

4. In a subchronic feeding study in dogs (6 dogs/sex/dose), fenoxaprop-ethyl was administered at doses of 0, 0.4, 2, or 10 mg/kg /day were fed for 90 days. The NOEL was 0.4 mg/kg/day) and the LOEL was 2 mg/kg/day based on histological changes of the kidneys. Inflammatory changes of the kidneys (interstitial pyelonephritis) were detected in the 2 mg/kg/day and in the 10 mg/kg/day dosed dogs.

5. In a 21–day dermal toxicity study, Wistar rats (10/sex/dose) received repeated dermal applications of fenoxaprop-ethyl (96.5%, moistened with sesame oil) at doses of 0, 5, 10, or 20 mg/kg, 6 hours/day, 5 days/week, for 21 total exposures. The LOEL was >5 mg/kg based on decreased liver weights. A NOEL was not established.

6. In a second 21–day dermal toxicity study, Wistar rats (10/sex/dose) received repeated dermal applications of fenoxaprop-ethyl (96.5%, vehicle not specified) at doses of 0, 5, or 20 mg/kg, 6 hours/day, 5 days/week, for 21 total exposures. The study author concluded that the NOEL was >20 mg/kg; a LOEL was not established.

7. In a subchronic inhalation toxicity study, Wistar rats (10-15/sex/concentration) were exposed by nose-only inhalation to fenoxaprop-ethyl (96.5%) at target concentrations of 0, 0.075, 0.250, or 0.750 mg/L (analytically -determined concentrations of 0, 0.073, 0.248, or 0.727 mg/L, respectively) for 6 hours/day, 5 days/week, for 6 weeks (28-29 total exposures). An unequivocal NOEL was not established in this study. A second study using the same protocol with target concentrations of 0 or 0.015 mg/L (analytically determined to be 0 or 0.0143 mg/L, respectively) was conducted. The exposure period was followed by a 4-week recovery period for animals in all but the 0.750 mg/L group. A NOEL for the repeated dose inhalation was 0.015 mg/L.

8. In a chronic toxicity study in beagle dogs (6/sex/dose) dogs were fed fenoxaprop-ethyl (94%) at doses of 0, 0.075, 0.375 or 1.875 mg/kg/day for two years. The NOEL was 0.375 mg/kg/day and the LOEL was 1.875 mg/kg/day based on decreases in body weight gain.

9. In a carcinogenicity study with groups of 50 male and 50 female NMRKF (SPF71) mice, fenoxaprop-ethyl (94%) was administered at dose levels of 0, 0.375, 1.5, or 6 mg/kg/day for 24 months. The NOEL was >6 mg/kg/day (HDT). A LOEL was not established.

10. In a second carcinogenicity study, fenoxaprop-ethyl (96.8%) was administered to groups of 50 male and 50 female NMRI mice at doses of 0, 5.7, 16.6 or 44.6 mg/kg/day in males and 0, 6.8, 19.4 or 53.7 mg/kg/day in females for 24 months. For chronic toxicity the NOEL was 5.7 mg/kg/day and the LOEL was 16.6 mg/kg/day based on histopathological findings in the liver. There was evidence of carcinogenicity at the highest dose tested (HDT). Statistically (p=0.05) significant increases were seen in liver and adrenal gland tumors. In males at the high dose, the incidence of hepatocellular adenomas (30%) and carcinomas (8%) were increased when compared to controls (2%, adenomas and 0%, carcinomas). Also at this dose in males, the incidence of subcapsular adenomas of the adrenal glands was 43% compared to 22% in controls. In addition, microscopic pathology indicated the hepatocellular hypertrophy was observed in the majority of all treated animals (both sexes). Dosing was considered adequate to assess the carcinogenic potential of fenoxaprop-ethyl based on clinical signs, increased liver weight, and histopathology.

11. In a combined chronic/oncogenicity study, Wistar rats (116/sex/dose) were dosed with fenoxaprop-ethyl (95.8%) at 0. 0.25, 1.5 or 9 mg/kg/day for 28 months. For chronic toxicity, the NOEL was 1.5 mg/kg/day) and the LOEL was 9 mg/kg//day based on decreased serum lipids and cholesterol in the males. Under the conditions of this study, there was no evidence of carcinogenic potential.

12. In an oral developmental toxicity study, pregnant Wistar rats (20/dose) received fenoxaprop-ethyl (93% a.i.) in sesame oil at doses of 0, 10, 32, or 100 mg/kg/day from days 7 through 16 of gestation. For maternal toxicity, the NOEL was 32 mg/kg/day and the LOEL was 100 mg/kg/day, based on slight initial reduction in body weight and food consumption. There were no treatment-related effects or clinical signs, body weight gain, food consumption, or development of the conceptuses in the uterus at dose levels of less than 32 mg/kg/day. Developmental toxicity was demonstrated at 100 mg/kg/day as slightly impaired growth of the fetuses (reduced body weights and placental weights and reduced skeletal ossification). For developmental toxicity, the NOEL was 32 mg/kg/day and the LOEL was 100 mg/kg/day, based on reduced fetal body weights, reduced placental weights, retarded skeletal ossification of the cranium, sternebrae and 5th metacarpals.

13. In a second oral developmental toxicity study, pregnant Cr1:COBS CD (SD) BR rats were dosed with fenoxaprop-ethyl (96.2%) in corn oil at doses of 0, 10, 32, or 100 mg/kg/day from days 6 through 15 of gestation. For maternal toxicity, the NOEL was 32 mg/kg/day and the LOEL was 100 mg/kg/day, based on decreased body weight gain and increased liver weights. For developmental toxicity, the NOEL was 32 mg/kg/day and the LOEL was 100 mg/kg/day base on increase malformations, significant fetal weight reduction and increase total visceral and skeletal anomalies.

14. In an oral developmental toxicity study with groups of Himalayan [(Hoe:HIMK(SPFWiga)] rabbits were dosed at doses of fenoxaprop-ethyl (93%) in sesame oil at 0, 0.5, 12.5, 50.0 or 200 mg/kg/day from days 7 through 19 of gestation. For maternal toxicity, the NOEL was 12.5 mg/kg/day and the LOEL was 50.0 mg/kg/day, based on decreased food consumption and body weight gain. For developmental toxicity, the NOEL was 50 mg/kg/day and the LOEL was 200 mg/kg/day based on reduced fetal weights, placental weights, crown-rump lengths, and fetal survival, and increased litter and fetal incidence of rib anomalies and diaphragmatic hernias. No developmental toxicity was observed at doses of less than 50.0 mg/kg/day.

15. In a dermal developmental toxicity study, pregnant KFM-Han Wistar rats (25/dose) received repeated dermal applications of fenoxaprop-ethyl (96.5%) in sesame oil at doses of 0, 100, 300, or 1,000 mg/kg/day for 6 hours/day on days 6–15 of gestation. For maternal toxicity, the NOEL was >1,000 mg/kg/day (HDT); a LOEL was not observed. For developmental toxicity, the NOEL was 1,000 mg/kg/day; a LOEL was not observed. There were no treatment-related malformations or variations noted upon external, visceral, and skeletal examination of the fetuses.

16. In a dermal developmental toxicity study, fenoxaprop-ethyl (96.5%) in sesame oil was administered dermally to 16 Chinchilla rabbits (SPF quality) at dose levels of 0,100, 300, or 1,000 mg/kg/day for 6 hours/day on days 6–18 of gestation. For maternal toxicity, the NOEL was 1,000 mg/kg/day (HDT); a LOEL was not observed. There was no developmental toxicity demonstrated at any dose level. For developmental toxicity, the NOEL was 1,000 mg/kg/day; a LOEL was not observed.

17. In a 2-generation reproductive toxicity study, fenoxaprop-ethyl (97.2%) was administered to 30 WISTAR/HAN rats/sex/dose in their diet at doses of 0, 0.25, 1.5, or 9.0 mg/kg/day. Exposure to animals began at 7 weeks of age and lasted for 80 days prior to mating to produce F1a and F1b pups. At 21 days of age, F1b pups were selected to become the parents of the F2a and F2b litters. There were no treatment-related effects on mortality, clinical signs of toxicity, body weight, food consumption or reproductive parameters at any does level. For parental/systemic toxicity, the NOEL was 0.25 mg/kg/day) and the LOEL was 1.5 mg/kg/day based on decreased blood lipids. The NOEL for systemic toxicity was 0.25 mg/kg/day. For reproductive toxicity, the NOEL was 0.25 mg/kg/day and the LOEL was 1.5 mg/kg/day based on reduced pup body weights (F1a).

18. No developmental neurotoxicity data are required for fenoxaprop-ethyl. No effects on histopathology of the brain were observed in any of the studies in which these parameters were measured. There no evidence of developmental anomalies of the fetal nervous system in the prenatal developmental toxicity studies with rats or rabbits or in the 2-generation reproduction study in rats.

19. Studies on metabolism: In a rat metabolism study fenoxaprop-ethyl(U-14C-chlorophenyl; 98% radiochemical purity) was administered to male and female Wistar HOE: Wiskf (SPF 71) strain of rats (10–15 animals/dose/sex) by gavage as a single dose at levels of 2 or 10 mg/kg, or at a single dose at 2 mg/kg following a 4–day pretreatment with unlabeled fenoxaprop-ethyl at 2 mg/kg/day. Within 6 hours of dosing 83–109% of the administered radioactivity was recovered in the urine and feces, with a majority of the dose (51–65%) being recovered within 24 hours of dosing. Within 24 hours of dosing, urinary excretion accounted for 39–48% of the dose for females and 22–311% of the dose for males. The primary metabolite in urine of both sexes in each dose group was 6-chlorobenzoxazole-2-mercapturic acid, accounting for 22–50% of the total radioactivity in the urine (15–26% of the dose) The urine of female rats dosed either once at 10 mg/kg or repeatedly at 2 mg/kg also contained high levels (23–28% of dose) of 2-(4-(6-chloro-2-benzoxazolyloxy)-phenoxy)-propionic acid (the free acid of fenoxaprop-ethyl). At the 10 mg/kg dose, unchanged parent accounted for 24% of the fecal radioactivity (15% of dose) for male rats and 6% for female rats (1.7% of dose).

In a second rat metabolism study, fenoxaprop-ethyl (1–14C-dioxyphenyl; 96% radiochemical purity) was administered by gavage as a single dose

to male and female SPF Wistar strain rats (10 animals /sex) at 10 mg/kg body weight and to 15 females at 2 mg/kg body weight. Within 96 hours of dosing, 101.3% and 87.4% of the 10 gm/kg dose was recovered from male and female rats, respectively, and 108.8% of the 2 mg/kg dose was recovered from female rats. There were sex- and dose-related differences in excretion. In the 0- to 24-hour urine of male rats dosed at 10 mg/kg, 99% of the radioactivity was identified as 2-(4-hydroxyphenoxy)-propionic acid (HPP-acid), accounting for 47.5% of the administered dose. In female rats dosed at 10 mg/kg, the primary urinary metabolites were identified as HPP acid (27.5% of dose) and 2-(4-6-chloro-2-benzoxazolyloxy)-phenoxy)-propionic acid (the free acid of fenoxaprop-ethyl; 27% of dose). In feces of the 10 mg/kg dose groups, fenoxaprop-ethyl and its free acid accounted for 20.1 and 16.6% of the dose for males and 9.0 and 11.3% of the dose for females.

B. Toxicological Endpoints

1. *Acute toxicity*. EPA has selected for acute dietary risk assessment the NOEL of 32 mg/kg/day from the rat developmental toxicity study. The effects were increased incidence of fetuses with malformations (including skeletal defects, eye defects, absent innominate artery, diaphragmatic hernia and umbilical hernia at 100 mg/kg/day (LOEL). Population subgroup of concern is females 13+ years old.

An acute dietary risk assessment for the general population, including infants and children, (excluding the subgroup, females 13+ years old) is not required because no treatment-related effects attributable to a single exposure (dose) were seen in oral studies conducted with fenoxaprop-ethyl. A MOE of 100 is adequate to ensure protection for females 13+ years old.

2. *Short - and intermediate - term toxicity*. No dermal or systemic toxicity was seen in a dermal developmental toxicity study in rats and rabbits following repeated dermal applications of fenoxaprop-ethyl at 1,000 mg/kg/day (Limit-Dose). Also, no dermal or systemic toxicity was seen at the HDT (20 mg/kg/day) in a 21–day dermal toxicity study in rats.

3. *Intermediate-term inhalation toxicity*. A 6-week rat inhalation toxicity study demonstrated a NOEL = 0.015 mg/L based on decreases in total lipids, increased triglycerides, increased alkaline phosphatase, increased liver and kidney weights, and liver hypertrophy at 0.075 mg/L (LOEL).

C. Cancer Dietary/Inhalation

1. *Chronic toxicity*. EPA has established the RfD for fenoxaprop-ethyl at 0.0025 milligrams/kilogram/day (mg/kg/day). This RfD is based on reduced pup weights observed in a 2-generation rat reproductive toxicity study with a NOEL of 0.25 mg/kg/day. An uncertainity factor of 100 was used in calculating the RfD to account for both inter- and intra-species variations.

2. *Carcinogenicity*. Characterization of the carcinogenicity of fenoxaprop-ethyl has been referred to EPA Health Effects Division's Cancer Peer Review Committee. For the interim, a worst case and protective risk assessment was carried out by use of a linear low dose extrapolation method (Q1*) based on the increases in adrenal tumors in male mice. The Q1* for the adrenal tumors is 9.1×10^{-2}.

D. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.430 (a)) for the combined residues of fenoxaprop-ethyl [ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate] and its metabolites [2-[4-](6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoic acid, and 6-chloro-2,3-dihydrobenzoxazol-2-one in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures and risks from fenoxaprop-ethyl as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The NOEL for the acute dietary exposure was 32 mg/kg/day from a rat study. The Agency has determined that the uncertainty factor of 10 to account for enhanced sensitivity of infants and children should be removed for fenoxaprop-ethyl, and that the MOE of 100 to account for inter (10) and intra (10) species variation is adequate to insure protection for this population from exposure to fenoxaprop-ethyl, because in the rat developmental toxicity study, the fetal effects (malformations) were seen at maternally toxic doses (i.e., the LOEL was the same for both adults and fetuses).

From the acute dietary (food only) risk assessment a high-end exposure estimate of 0.001 mg/kg/day was calculated. This exposure yields a dietary (food only) MOE of 32,000 for females 13+ years, the population subgroup of concern. This risk estimate was highly conservative because it assume that 100% of barley and all other commodities having tolerances for residues of fenoxaprop-ethyl will contain residues at tolerance levels. Therefore, this is an overestimation of human dietary exposure. Use of anticipated residue values and percent crop-treated data will result in a lower acute dietary exposure estimate if estimated by probabilistic techniques.

ii. *Chronic exposure and risk*. The anticipated residues for existing fenoxaprop-ethyl uses (including the use on barley) result in Anticipated Residue Contribution that varies between 0.000009 and 0.000023 mg/kg/day for the population subgroups (the U.S. Population, Nursing Infants (<1 year old), Non-Nursing Infants (> year old), Children (1–6 years old) , Children (7–12 years old) and Non-Hispanic Others); and occupied between 0.4% and 0.9% of the RfD.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided five years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. Section 408(b)(2)(F) states that the Agency may use data on the actual percent of crop treated for assessing chronic dietary risk only if the Agency can make the following findings: (1) that the data used are reliable and provide a valid a basis for showing the percentage of food derived from a crop that is likely to contain residues; (2) that the exposure estimate does not underestimate the exposure for any significant subpopulation and; (3) where data on regional pesticide use and food consumption are available, that the exposure estimate does not understate exposure for any regional population. In addition the Agency must provide for periodic evaluation of any estimates used.

The percent of crop treated estimates for fenoxaprop-ethyl were derived from federal and market survey data. EPA considers these data reliable. A range of estimates are supplied by this data and the upper end of this range was used for the exposure assessment. By using this upper end estimate of percent crop treated, the Agency is reasonably certain that exposure is not underestimated for any significant subpopulation. 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. Review of this regional data allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. To provide for the periodic evaluation of these estimates of percent crop treated as required by the section 408(b)(2)(F), EPA may require fenoxaprop-ethyl registrants to submit data on percent crop treated. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than five years from the date of issuance of this tolerance.

In the absence of an Agency Cancer Assessment Review, the Health Effects Division of the Office of Pesticide Programs recommended a worst case and protective risk assessment using a linear low dose extrapolation method (Q1*) based on the increases in adrenal tumors in mice. The Q1* for the adrenal tumors was determined to be 9.1×10^{-2}. Based on the US population chronic dietary exposure of 0.00001 mg/kg/day, this results in a cancer risk estimate of 9.1×10^{-7}.

2. *From drinking water.* Based on the acute and chronic dietary (food) exposure and using default body weights and water consumption figures, acute and chronic drinking water levels of concern (DWLOC) for drinking water were calculated. To calculate the DWLOC, the acute or chronic dietary food exposure (from the DRES analysis) was subtracted from the acute toxicity NOEL or RfD, as appropriate. DWLOCs were then calculated using the default bodyweights and drinking water consumption figures.

For acute drinking water exposure for both adults and children, the level of concern was 960 ppm. For chronic and cancer exposure in drinking water the levels of concern were 80 ppb and 110 ppt, respectively. For adults, the estimate was based on a body weight of 70 kg and consumption of 2 liters of water per day; for children, a body weight of 10 kg and a consumption of 1 liter of water per day. Agency estimates for contamination of drinking water from the registered uses of fenoxaprop-ethyl is less than 1 ppb for acute exposure and less than 100 ppt for chronic exposure. These levels are not greater than levels of EPA concern.

3. *From non-dietary exposure.* Fenoxaprop-ethyl is currently registered for use on turfgrass including sod farms, commercial and residential turf and ornamentals. Applications to residential turf are done by professional applicators. There are no homeowner uses. There is a potential dermal exposure to infants to fenoxaprop-ethyl from the registered uses for lawn and turfgrass weed control but no dermal toxicity has been shown in animal studies. Potentially, infants and children may have some inhalation exposure due to residual residues of the pesticide on lawns but such exposure would be very low. Currently there are no inhalation exposure data required for post-application of pesticides to lawns and turf uses. As inhalation exposure for mixer/loaders is acceptable, the risk to children and infants from inhalation exposure under a much lower exposure scenario is characterized qualitatively as being extremely low. Exposure data are required for hand to mouth movements of infants and children; however, no acute dietary toxicity endpoints have been identified for fenoxaprop-ethyl for infants and children. There is an acute dietary toxicity endpoint; however, the only population subgroup of concern is females 13+ for developmental effects. The risk to this subgroup will be addressed later in this document under ''Aggregate Risk and Determination of Safety for Infants and Children.'' No acute dietary toxicity endpoints have been identified for the general populations.

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 fenoxaprop-ethyl 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, fenoxaprop-ethyl 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 fenoxaprop-ethyl has a common mechanism of toxicity with other substances.

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

1. *Acute risk.* From the acute dietary (food use) risk assessment a high-end exposure estimate of 0.001 mg/kg/day was determined for females 13+ years, the population subgroup of concern for acute toxicity. This exposure yields a dietary MOE of 32,000. The potential contribution to acute exposure from residues in drinking water is minimal (1,000-fold less than EPA's level of concern) and would not result in an aggregate acute exposure that exceeds EPA's level of concern. EPA concludes there is a reasonable certainty that no acute harm will result from aggregate exposure to fenoxapro-ethyl residues.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to fenoxaprop-ethyl from food

will utilize less than 0.4% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants less than one year old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fenoxaprop-ethyl 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 fenoxaprop-ethyl residues.

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.

Fenoxaprop-ethyl is currently registered for use on turfgrass including sod production, commercial and residential turf and landscape ornamentals. No short- or intermediate-term dermal toxicity endpoints have been identified for fenoxaprop-ethyl. An inhalation endpoint has been identified, however, as the uses are outdoors, exposure from inhalation route should be considerable less than that determined for worker mixer/loaders, who have an MOE of 2,800. Additionally, based on the low level of chronic dietary exposure, the Agency concludes that aggregate short- and intermediate-term exposure is at a level below EPA's level of concern.

F. Aggregate Cancer Risk for U.S. Population

Based on a upper bound potency factor (Q1*) of 9.1 x 10^{-2} $(mg/kg/day)^{-1}$, the lifetime cancer risk from residues of fenoxaprop-ethyl in food commodities is 9.1 x 10^{-7}. Taking into accoutn the exposure from residues in food, EPA has caluculated a drinking water level of concern which would not result in a greater negligible total cancer risk from chronic exposure to fenoxaprop-ethyl residues in food and water. The Agency's GENEEC screening model was then used to estimate maximum residues in surface water. This model estimates potential residues in surface water for use in ecological risk assessment. As such, it provides high-end values on the concentrations of pesticides that might be found in ecologically sensitive environments. The residue levels obtained for fenoxaprop-ethyl plus its acid metabolite in water using GENEEC do not exceed the drinking water level of concern. Therefore, EPA doen not expect there to be a greater than negligible cancer risk from chronic exposures to fenoxaprop-ethyl in drinking water and food.

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

1. *Safety factor for infants and children*— a. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of fenoxaprop-ethyl, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure 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.

b. *Developmental toxicity studies.* In a oral developmental toxicity study with Wistar rats, the maternal NOEL was 32 mg/kg/day, based on reduction in body weight and food consumption. The developmental NOEL was 32 mg/kg/day, based on reduced fetal body weights, reduced placental weights and retarded skeletal ossification of the cranium, sternebrae and 5th metacarpals.

In a second oral developmental toxicity study with Crl:COBS CD (SD) BR rats, the maternal NOEL was 32 mg/kg/day, based on decreased body weight gain and increased liver weights. The developmental NOEL was 32 mg/kg/day, based on increase malformations, significant fetal weight reduction and increase total visceral and skeletal anomalies.

In a oral developmental toxicity study with Himalayan rabbits, the maternal NOEL was 12.5 mg/kg/day, based on decreased food consumption and body weight gain. The developmental NOEL was 50mg/kg/day, based on reduced fetal weights, placental weights, crown-rump lengths, fetal survival and increased litter and fetal incidence of rib anomalies and diaphragmatic hernias.

c. *Reproductive toxicity study.* In a rat reproduction study, the parental (systemic) NOEL was 0.25 mg/kg/day, based on decreased blood lipids. The reproductive (pup) NOEL was 0.25 mg/kg/day, based on reduced pup body weights.

d. *Pre- and post-natal sensitivity.* The toxicological data base is complete and adequate to determine pre- and post-natal toxicity. The prenatal developmental toxicity data demonstrated no indication of increased sensitivity of rats or rabbits to *in utero* exposure or repeated dermal applications of fenoxaprop-ethyl. The rat reproduction study did not identify any increased sensitivity of rats to *in utero* or postnatal exposure. Maternal and parental NOELs were equivalent to developmental or offspring NOELs.

e. *Conclusion.* Based on the above data, EPA determined that the standard safety factor would be adequate to protect the safety of infants and children thus the additional children's safety factor was removed.

2. *Acute risk.* The acute dietary (food only) MOE for females 13+ years old (accounts for both maternal and fetal exposure) was determined to be 32,000. This MOE was based on the developmental NOEL in rats of 32 mg/kg/day. This risk assessment assumed 100% crop-treated and tolerance level residues on all treated crops consumed, resulting in a significant over-estimate of dietary exposure. Despite the potential for exposure to fenoxaprop-ethyl in drinking water, EPA does not expect the acute aggregate exposure to exceed level of concern. The large acute dietary MOE determined for females 13+ years old provides assurance that there is a reasonable certainty of no harm from both females 13+ years and the pre-natal development of infants.

3. *Chronic risk.* Using the exposure assumptions described in this rule, the percentage of the RfD that will be utilized by chronic dietary (food only) exposure to residues of fenoxaprop-ethyl ranges from 0.4% for nursing infants less than one year old, up to 0.9% for non-nursing infants less than

one year old. Despite the potential for exposure to fenoxaprop-ethyl in drinking water, EPA does not expect the chronic aggregate exposure to exceed 100% of the RfD. Based on the nature of the residential uses, no chronic residential exposure is anticipate. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from chronic aggregate exposure to fenoxaprop-ethyl regulable residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of fenoxaprop-ethyl in plants and animals is adequately understood for purposes of these tolerances.

B. Analytical Enforcement Methodology

An adequate analytical method for determining the magnitude of residues in the raw agricultural commodities listed in this Final Rule has been evaluated by EPA and is published in the Pesticide Analytical Manual (PAM II). The method may be requested from: Calvin Furlow, Public Information Branch, Field Operations Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703–305–5937).

C. Magnitude of Residues

The nature of the residue in plants is adequately understood for the purposes of these tolerances.

D. International Residue Limits

No CODEX Maximum Residue Levels (MRLs) have been established for fenoxaprop-ethyl. Canadian MRLs for combined residues of fenoxaprop-ethyl, its free acid metabolite [2-[4-[(6-chloro-2-benzoxazolyl)oxy]propanoic acid] and 6-chloro-2,3-dihydrobenzoxazol-2-one have been established at 0.02 ppm for milk. This tolerance expression and level for milk is in harmony with subject tolerances of the final rule.

IV. Conclusion

Therefore, the tolerances are established for combined residues of fenoxaprop-ethyl [ethyl 2-[4-[(6-chloro-2-benzoxazolyl) oxy]phenoxy] propanoate] and its metabolites [2-[4-] (6-chloro-2-benzoxazolyl)oxy]phenoxy] propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one, in or on the following raw agricultural commodities: barley, grain at 0.05 ppm; and barley straw at 0.1 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 June 22, 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–300635] (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.

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 1985, 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 this 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: April 8, 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 § 180.430, in paragraph (a) by alphabetically adding the following commodities to the table to read as follows:

§ 180.430 Fenoxaprop-ethyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
Barley, grain	0.05
Barley, straw	0.1
* * * * *	

* * * * *

[FR Doc. 98–10395 Filed 4–21–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[FRL–6001–8]

Removal of Direct Final Rule for XL Project at OSi Specialties, Inc., Sistersville, WV

AGENCY: Environmental Protection Agency (EPA).

ACTION: Removal of direct final rule amendments.

SUMMARY: On March 6, 1998, EPA published a direct final rule entitled ''Project XL Site-Specific Rulemaking for OSi Specialties, Inc., Sistersville, West Virginia'' at 63 FR 11124–11147. That **Federal Register** notice provided that the direct final rule would be withdrawn if relevant adverse comments were received by March 27. Because EPA received such comments, EPA is now removing the amendments made by the direct final rule.

EFFECTIVE DATE: April 22, 1998.

ADDRESSES: *Docket.* A docket containing documents relevant to this action is available for public inspection and copying at the EPA's docket office located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603–9230. Refer to RCRA docket number F–98–MCCP–FFFFF.

A duplicate copy of the docket is available for inspection and copying at U.S. EPA, Region 3, 841 Chestnut Street, Philadelphia, PA 19107–4431, during normal business hours. Persons wishing to view the duplicate docket at the Philadelphia location are encouraged to contact Mr. Tad Radzinski in advance, by telephoning (215) 566–2394.

FOR FURTHER INFORMATION CONTACT: Mr. Tad Radzinski, U.S. Environmental Protection Agency, Region 3 (3WC11), Waste Chemical Management Division, 841 Chestnut Street, Philadelphia, PA 19107–4431, (215) 566–2394.

SUPPLEMENTARY INFORMATION: A companion proposal to the direct final rule was published in the March 6, 1998 **Federal Register** (63 FR 11200–11202). EPA will address the comments received in response to that proposal but will not institute a second comment period.

However, persons who stil wish to comment on the companion proposal may do so by attending the hearing announced in the proposed rule section of today's **Federal Register**. In a subsequent final rule EPA will address the comments received on the proposed rule.

The Congressional Review Act, 5 U.S.C. Section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. Section 804, however, exempts from Section 801 the following types of rules: rules of particular applicability; rules relating to Agency management or personnel; and rules of Agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-Agency parties, 5 U.S.C. Section 804(3). EPA is not required to submit a rule report regarding today's action under Section 801 because this is rule of particular applicability.

Because the rule now being withdrawn is currently effective, EPA also finds that good cause exists under section 3010(b)(3) of RCRA (42 U.S.C. 6903(b)(3)) to publish this removal of the site-specific regulation with an immediate effective date, rather than having it take effect in 30 days. See 5 U.S.C. 553(d)(3). Today's removal of the direct final rule affects only one facility, and is limited in its scope to a removal of a temporary conditional deferral of a relatively narrow set of RCRA regulations. As such, the deferral was

designed to provide greater flexibility only to the OSi Specialties, Inc., Sistersville Plant, and did not impose or remove additional regulatory requirements on other regulated entities.

List of Subjects in 40 CFR Parts 264 and 265

Environmental protection, Air pollution control, Control device, Hazardous waste, Monitoring, Reporting and recordkeeping requirements, Surface impoundment, Treatment storage and disposal facility, Waste determination.

Dated: April 16, 1998.

Carol M. Browner,

Administrator.

Accordingly, 40 CFR Chapter I is amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

§ 264.1080 [Amended]

2. Section 264.1080 is amended by removing paragraphs (f) and (g).

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

§ 265.1080 [Amended]

4. Section 265.1080 is amended by removing paragraphs (f) and (g).

[FR Doc. 98–10861 Filed 4–21–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS–400082D; FRL–5785–5]

Deletion of Certain Chemicals; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today amending its regulations to delete several chemicals and chemical categories from the list of chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). This action is being taken to comply with a January 12, 1998 order from the United States District Court for the District of Columbia. Because this action is being taken to conform the regulations to the court's order, notice and comment are not required, and this rule is effective immediately.

EFFECTIVE DATE: This rule is effective April 22, 1998.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Petitions Coordinator, 202–260–3882 or e-mail: bushman.daniel@epamail.epa.gov. For specific information regarding this document or for further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877, or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 30, 1994 (59 FR 61432) (FRL-4922-2), EPA issued a final rule entitled ''Addition of Certain Chemicals; Toxic Chemical Release Reporting; Community Right-to-Know'' under section 313(d) of EPCRA, 42 U.S.C. 11023(d). That rule added 286 chemicals and chemical categories (hereinafter collectively ''chemicals'') to the list of toxic chemicals subject to reporting under section 313 of EPCRA, 42 U.S.C. 11023, and section 6607 of the PPA, 42 U.S.C. 13106(a).

The Chemical Manufacturers Association (CMA) and several other plaintiffs filed suits challenging various aspects of the rule in the United States District Court for the District of Columbia. During the pendency of those cases, EPA and CMA entered into an agreement whereby EPA consented to the remand and vacatur of dimethyldichlorosilane, methyltrichlorosilane, and trimethylchlorosilane (hereinafter collectively ''chlorosilanes'') which had been added by the rule. An order to that effect was issued by the District Court. Subsequently, the court granted summary judgment in favor of EPA on all remaining issues raised in the cases. See *National Oilseed Processors Ass'n, et al.* v. *Browner*, 924 F. Supp. 1193 (D.D.C. 1996).

On appeal, the Court of Appeals for the District of Columbia Circuit upheld the lower court's decision on all issues except EPA's listing of 2,6-dimethylphenol (DMP) and 2-bromo-2-nitropropane-1,3-diol (Bronopol). See *Troy Corp., et al.* v. *Browner*, 120 F.3d 277 (D.C. Cir. 1977). As to those chemicals, by order dated December 16, 1997 the court remanded the District Court's decision with instructions to remand EPA's action to the Agency for further proceedings consistent with the Court of Appeals' ruling. On CMA's motion, the District Court then issued a January 12, 1998 order (*Chemical Manufacturers Association* v. *Browner, et al.*, No. 1:95CV01673) vacating the listing of DMP and Bronopol, and directing EPA to publish a notice removing chlorosilanes, DMP, and Bronopol from the EPCRA section 313 list of reportable toxic chemicals.

Accordingly, EPA is issuing this final rule revising the EPCRA section 313 list of reportable chemicals in 40 CFR 372.65 to delete chlorosilanes, DMP, and Bronopol. Under 5 U.S.C. 553(b)(3)(A), the notice-and-comment requirements of the Federal Administrative Procedure Act (5 U.S.C. 551-706) do not apply where the Agency ''for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Because the District Court's orders vacate the listing of chlorosilanes, DMP, and Bronopol thus rendering those listings without effect, and because this action is being taken merely to comply with the court's direction and to amend the regulations so that they reflect the present legal status of those chemicals, EPA hereby finds that notice and comment on this action are unnecessary.

This action is effective immediately upon publication in the **Federal Register**. Under 5 U.S.C. 553(d)(3), 30–day advance notice of a rule is not required where the Agency provides otherwise for good cause. EPA finds that good cause for an immediate effective date exists in this case, because as explained above this rule merely amends the EPCRA section 313 list of

reportable toxic chemicals to reflect the present legal status of the chemicals addressed in this final rule.

Since this action does not contain any requirements, it 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), 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 review 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 action does not require a proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

The deletion of these chemicals from the EPCRA section 313 list will reduce the overall reporting and recordkeeping burden estimate provided for EPCRA section 313, but this action does not require any review or approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* until EPA decides to subtract the total burden eliminated by today's action from the EPCRA section 313 overall burden approved by OMB. At some point in the future, EPA will determine the total EPCRA section 313 burden associated with the chemcials being deleted today, and will complete the required Information Collection Worksheet to adjust the total EPCRA section 313 estimate. The reporting and recordkeeping burdens associated with EPCRA section 313 are approved by OMB under OMB No. 2070–0093 (EPCRA section 313 base program and Form R, EPA ICR No. 1363) and under OMB No. 2070–0145 (Form A, EPA ICR No. 1704). The current public reporting burden for EPCRA section 313 is estimated to average 61.3 hours for a Form R submitter and 34.5 hours for a Form A submitter. These estimates includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, including suggestions for reducing this burden, to Chief, Information Policy Branch, Mail Code 2137, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Please do not send your completed forms to this address.

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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**. However, section 808 of that Act 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 April 22, 1998. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: April 13, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended to read as follows:

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. Section 372.65 is amended by deleting the entries for 2-bromo-2-nitropropane-1,3-diol, dimethyldichlorosilane, 2,6-dimethylphenol, methyltrichlorosilane, and trimethylchlorosilane under paragraph (a), and deleting the entire CAS No. entries for 52–51–7, 75–77–4, 75–78–5, 75–79–6, and 576–26–1 under paragraph (b).

[FR Doc. 98–10712 Filed 4–21–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 589

[Docket No. NHTSA–98–3421]

RIN 2127–AB85

Federal Motor Vehicle Safety Standards; Head Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petitions for reconsideration.

SUMMARY: This document denies petitions for reconsideration submitted by the American Automobile Manufacturers Association (AAMA) and ASC, Incorporated (ASC). On April 8, 1997, NHTSA published a final rule amending provisions in Standard No. 201, Head Impact Protection, relating to upper interior head impact protection. The amendments revised and clarified test procedures, added an optional compliance phase-in plan, allowed carry-forward credits to facilitate compliance, and excluded small buses from the Standard's upper interior impact protection requirements. ASC's petition stated the company's concerns about the impact of the final rule on the integrated convertible roof and frame designs and requested a further amendment to the definition of ''convertible roof frame system.'' AAMA's petition requested that NHTSA reconsider and modify the final rule in reference to approach angles, moveable side glazing, multiple impacts, the procedure for locating CG-F (a reference point corresponding to the location of a front seat occupant's head), and the definition of ''forehead impact zone.''

DATES: *Petition Date:* Any petitions for reconsideration of this denial must be received by NHTSA no later than June 8, 1998.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For legal issues: Mr. Otto Matheke, Office of the Chief Counsel, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Matheke's telephone number is (202) 366–5253. His facsimile number is (202) 366–3820. For non-legal issues: Dr. William Fan, Office of Crashworthiness Standards, NPS–11, Dr. Fan's telephone

number is (202) 366–4922. His facsimile number is (202) 366–4329.

SUPPLEMENTARY INFORMATION: On August 18, 1995, the National Highway Traffic Safety Administration (NHTSA) published a final rule (60 FR 43031—Docket No. 92–28; Notice 4) amending Federal Motor Vehicle Safety Standard (FMVSS) No. 201, ''Occupant Protection in Interior Impact,'' to require passenger cars, trucks, buses, and multipurpose passenger vehicles (MPVs) with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or less to provide head protection during a vehicle crash when the occupant's head strikes pillars, side rails, headers, or the roof of the vehicle. The final rule specifies a 24 km/h (15 mph) in-vehicle component impact test that uses a free-motion headform (FMH). The injury criterion is the HIC limit of 1,000. The effective date is a four-year phase-in plan (10 percent, 24 percent, 40 percent, 70 percent and 100 percent) beginning on September 1, 1998. An optional implementation plan is a one-year phase-in plan (0 percent and 100 percent) beginning on September 1, 1998. A final stage manufacturer or alterer must comply with the standard's upper interior impact requirements for vehicles manufactured on or after September 1, 2002.

The agency received ten petitions for reconsideration in response to the August 1995 final rule. In response to those petitions, NHTSA published another final rule on April 8, 1997 (62 FR 16718—Docket No. 92–28; Notice 7) revising test procedures, adding an optional phase-in plan, allowing carry-forward credits, and excluding small buses from the upper interior head impact requirements. In addition, NHTSA initiated a new rulemaking concerning alternative procedures for testing dynamically deployed head protection systems.

In response to the April 1997 final rule, the American Automobile Manufacturers Association (AAMA) and ASC, Incorporated submitted new petitions for reconsideration. The ASC petition requested exclusion of the convertible top from the FMH impact requirements, while the AAMA petition addressed technical issues in general areas.

The ASC Petition for Reconsideration

On May 22, 1997, ASC submitted a petition for reconsideration arguing that the amendments to the August 1995 final rule did not address current convertible top designs that include integrated roof and frame systems (e.g., a removable hardtop). ASC also indicated its belief that the addition of padding to an integrated convertible roof and frame system would prevent the roof from folding into the available storage area below the beltline or in the rear storage area, thereby interfering with rear vision or requiring elimination of the rear seat in some models. Compliance with Standard No. 201's upper interior impact requirements would, in ASC's view, limit future design and development of convertible tops to traditional vinyl or canvas top convertibles with separate frames. As a result, production and sale of more ''advanced'' integrated convertible top designs would become impracticable. Accordingly, in its petition for reconsideration, ASC requested that the convertible roof frame definition in the amended final rule be revised to read as follows:

> Convertible roof frame means the frame of a convertible roof *and the roof and frame of a convertible with an integrated roof and frame system which is capable of folding and being stored below the beltline or in the rear storage compartment of the vehicle.*

Without this revision, ASC believes that the automobile industry will not be able to continue production and development of new convertible automobile designs with integrated roof and frame systems.

The agency notes that the exclusion of convertible roofs and linkages is an issue that was examined extensively throughout the rulemaking process leading up to the August 1995 and April 1997 final rules. In the August 1995 final rule, NHTSA agreed to exclude ''convertible roof frames and linkage mechanisms because the presence of a countermeasure such as padding would interfere with their movement'' (60 FR 43031, at 43047). The April 1997 final rule, issued in response to petitions for reconsideration filed after the issuance of the August 1995 final rule, deleted the word ''metal'' from the definition of ''convertible roof frame'' in response to objections that limiting excluded frames to those made of metal was design restrictive (62 FR 16718, 16721).

ASC's request for reconsideration raises an issue that NHTSA examined prior to the issuance of the August 1995 final rule and the April 1997 final rule. In the preamble to the April 1997 final rule, the agency observed that commenters did not provide any support for the claim that countermeasures could not be installed on areas other than convertible roof frames and linkage mechanisms. NHTSA further stated that rigid convertible tops could produce head injuries and that the agency believed that protection should be provided for all the hard areas inside a vehicle unless it is not practicable to do so. The ASC petition does not include any new data or information demonstrating either that the agency's prior decision not to exclude convertible roofs was wrong or that newer roof designs require reconsideration of the issue.

In the absence of new data, the agency considered the ASC petition based on the agency's current knowledge of vehicle roof designs. The upper roof area of a typical passenger car is relatively soft in comparison with the pillar and side rail components of the vehicle. Based on the agency's current knowledge, the upper roof structure of a typical production car does not require any padding to comply with the FMH impact requirements. The roof structure is basically a shallow, thin shell design with some rib-type reinforcement members (roof cross-member and/or roof bow member). A properly designed thin shell structure is a very effective energy absorptive design. A roof structure made of sheet metal or other flexible materials should be able to meet Standard 201's requirements without the extensive use of padding or other countermeasures. ASC has not submitted any data indicating that convertible hardtops cannot be made as flexible as a conventional roof structure. NHTSA believes that there is not a sufficient basis for treating convertible hardtops differently from regular vehicle roof structures and that convertible hardtops should be subject to Standard No. 201's upper interior impact requirements.

Agency test data indicate that the upper roof of many production cars can comply with those requirements without any modification. An integrated convertible roof, except frames and linkage mechanisms, is basically a shallow thin shell design that is soft and smooth. Since convertible roof frames and linkage mechanisms are excluded from the final rule, the design of the remainder of the convertible hardtop roof should not present additional compliance difficulties. The agency believes that integrated convertible roof designs should be able to meet Standard 201 when the roof top membrane structure is tested using the FMH impactor at a speed up to 24 km/h (15 mph). Since ASC has not demonstrated that a ''hard'' convertible top that meets Standard 201's upper interior impact requirements cannot be built or is otherwise impracticable, the agency is denying ASC's petition.

The AAMA Petition for Reconsideration

On May 23, 1997, AAMA submitted a petition for reconsideration requesting that NHTSA consider additional changes to Standard No. 201 to address concerns relating to approach angles in compliance testing, hinged and moveable glazing, multiple FMH impacts, the procedure for locating a reference point that corresponds to the head position of a front seat occupant and is known as CG–F, and the definition of the forehead impact zone of the FMH.

In defining the trajectory of the FMH when it is propelled at target points located on all pillars except the A-pillar, the April 1997 final rule specified a vertical approach angle range for the FMH of +50 to −10 degrees. AAMA believes that the minimum vertical angle of −10 degrees may not be sufficient to allow the FMH to make proper contact with certain targets. In AAMA's view, simultaneous contact of the forehead and chin may occur when the pillar surface on which the target is located is canted (from top to bottom) toward the inside of the vehicle at an angle of approximately 10 degrees. AAMA recommended that the existing target exclusion in S6.1 be expanded so that targets that cannot be tested using the approach angle limits specified in S8.13.4 would be excluded from the upper interior impact requirements.

NHTSA does not believe that the exclusion in S6.1 must be modified to address AAMA's concern. As it appears in the April 1997 final rule, S6.1 indicates that the FMH impact requirements do not apply to any target that cannot be located using the procedure of S10. S10(b) specifies that, except as specified in S10(c), if there is no combination of horizontal and/or vertical approach angles specified in S8.13.4 at which the forehead impact zone of the FMH can contact one of the targets located using the procedures in S10.1 through S10.13, the center of that target is moved to any location within a 25 mm sphere, centered on the center of the original target and measured along the vehicle interior, that the forehead impact zone can contact at one or more combination of angles. S10(c) specifies that if there is no point within the sphere specified in S10(b) which the forehead of the FMH can contact at one or more combination of horizontal and/or vertical approach angles specified in S8.13.4, the sphere is increased by 25 mm increments until it contains at least one point that can be contacted at one or more combination of angles. In addition, S8.13.4.2 specifies procedures for determining vertical approach angles that would avoid simultaneous contact of the forehead and chin. If a specific target cannot be tested using the approach angle limits specified in S8.13.4, the target should be relocated using S10(b) or S10(c). Accordingly, NHTSA concludes that an amendment to the final rule is not necessary to resolve AAMA's concern.

As noted above, the April 1997 final rule excluded convertible roof frames and linkage mechanisms from Standard No. 201's upper interior impact requirements. AAMA's petition for reconsideration requested that the hinge and latch components for sunroofs and moveable side glazing be accorded similar treatment. The organization argued that these components, like convertible roof frames and linkage mechanisms, cannot function if they must be padded to meet Standard No. 201.

NHTSA does not believe that the same considerations that apply to convertible roof frames and linkage mechanisms also apply to sunroof and side window latches and hinges. First, convertible roofs are large and complex compared to sunroofs and moveable glazing, and therefore require much stronger latches and anchorages to stabilize the whole roof during high speed travel. Second, the size and complexity of convertible roof mechanisms are such that padding those components may interfere with the operation of the convertible roof top. In contrast, the latches and hinges used in the sunroofs and moveable glazing of current production vehicles are usually small in size and made of, or enclosed with, plastic materials. Although the amended final rule does not identify the latches or hinges of moveable side glazing or sunroofs as targets for compliance testing, these components could be located in target areas. However, the agency believes that padding these fasteners, if required, would not significantly affect the operation of sunroofs and side windows. NHTSA also notes that similar components, such as safety belt anchorages and grab handles, may also have to be padded. The agency is not aware of any justification for differentiating between the latter and sunroof or side window hinges and latches.

The April 1997 final rule specified that a FMH impact may not occur within 150 mm distance of any prior FMH impact. AAMA believes that the minimum distance of 150 mm is not adequate to address complex impact conditions. The organization contends that the type of countermeasure, the target location, the size of target component, the impact approach angles, and the interaction of chin loading are factors that may lead to multiple impacts affecting test results. Since damage to trim as a result of an impact cannot be readily detected through visual observation and manufacturers cannot reliably anticipate the effects on material or component performance, AAMA contends that only one impact be allowed for each component.

The agency does not agree. In order to complete vehicle compliance tests with one vehicle, NHTSA concluded in the final rule that multiple FMH impacts on a component should be allowed, that impacts on both left and right side components should be allowed, but that an overlap of two FMH impacts should not be allowed. The agency determined that the minimum distance between two targets should be 150 mm (6 inches). In order to allow padding to recover from a FMH impact, a 30-minute waiting period is specified if the next impact is to be on the same component.

NHTSA believes that the existing minimum distance between impact points is adequate. The maximum width of the Hybrid III headform is 150 mm and the effective width of the forehead impact zone is much less than 150 mm. With two adjacent targets at 150 mm distance, overlapping of the FMH contact should not occur. The agency also believes that manufacturers may test in a fashion that minimizes multiple impacts. The amended final rule allows testing of both left and right side components; multiple impacts would generally occur during the A or B-pillar component tests. If target selection is made using both side components, the actual distance between two adjacent targets could be much larger than the specified minimum distance of 150 mm. In addition, NHTSA testing indicates that the foam damage area from an impact is smaller than the forehead impact zone.

AAMA also argued that only one FMH impact should be allowed for each component due to the uncertainty involved in choosing a design and/or material for compliance testing. NHTSA notes that AAMA has raised this issue in a previous petition for reconsideration. In that instance, AAMA did not submit any test data establishing that permitting only a single test for each component is necessary or desirable. In its current request, AAMA has not submitted any new test data supporting such a contention. NHTSA has previously declined to adopt a limitation on the number of impacts per component and declines to do so now.

The agency also wishes to make it clear that where Standard 201, or other Federal motor vehicle safety standards, do not address a specific test condition, vehicles must comply in all circumstances consistent with anticipated use of the vehicle by occupants. Multiple impacts to one component are an example of a circumstance that might be encountered in a crash. NHTSA may therefore test single components with multiple impacts when performing compliance testing under Standard 201.

The AAMA petition also requests that the agency rectify an apparent conflict involving the procedure for locating CG–F by use of the ''seating reference point (SgRP).'' The SgRP is a single point which establishes the rearmost normal design driving or riding position. In Standard No. 201, S8.12(a)(1) uses SgRP with the seat in its rearmost normal design or driving position to locate the rearmost CG–F (CG–F2). The forwardmost CG–F (CG–F1) is, according to S8.12(a)(2), located horizontally forward of CG–F2 by the distance equal to the fore and aft distance of the seat track. Because S8.12(a)(2) describes CG–F1 as the head center of gravity with the seat in its forwardmost adjustment position, AAMA believes that S8.12 implies that the reference point to be used is not SgRP, which is a single point, but rather the design H-point, which can occupy a number of points according to the seat adjustment. In its petition, AAMA suggested that a conflict existed and requested that it be resolved.

When the August 1995 final rule was published, NHTSA was requested to change the reference point from the SgRP to the H-point. The agency explained in the preamble of the April 1997 final rule that a change of the reference point is not necessary. This is because the only point used for locating CG–F1 and CG–F2 is the single SgRP. The agency notes that, prior to a recent correcting amendment published on January 2, 1998 (63 FR 27), S8.12(a)(1) incorrectly specified that C-–F2 should be located with the seat in its rearmost adjustment position rather than the rearmost normal design driving or riding position. As the SgRP only exists in the latter position and not the former, AAMA and others could have reasonably concluded that NHTSA intended that the design H-point rather than the SgRP be used to locate CG–F1 and CG–F2. The reference in S8.12(a)(2) to the seat being in its forwardmost adjustment position to assist in describing CG–F1 may have created further opportunities for misunderstanding. However, the agency believes that the correcting amendment to S8.12(a)(1) resolved this issue and that further rulemaking is not required.

AAMA also suggested that the existing definition of the forehead impact zone is in error. In its petition, AAMA recommended that in S8.10(d), the word ''vertical'' be replaced with ''horizontal'' as it refers to a plane along the contour of the outer skin of the forehead of the FMH. S8.10(d) specifies the procedure for locating the upper boundary of the forehead impact zone by directing that a line be drawn along the contour of the headform and through a point on a vertical line in the midsagittal plane of the FMH so that the line is bisected by that point. This line is described as being coincident to a vertical plane, while the procedure for locating the lower horizontal boundary, found in S8.10(c), specifies that the lower boundary line be coincident to a horizontal plane. AAMA's belief that the use of the vertical plane in S8.10(d) is in error may be premised on the use of the horizontal plane in S8.10(c) for locating a similar line. However, at the point where the upper boundary of the forehead impact zone is located, the contours of the FMH are such that the use of a horizontal plane for locating the upper boundary would result in the forehead impact zone extending along the sides of the FMH. NHTSA has determined that the use of a vertical plane in describing this procedure is more appropriate. Use of a horizontal plane to describe the forehead impact zone would include part of the side of the head in the forehead impact zone.

Based on the foregoing, NHTSA denies the AAMA and ASC petitions.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: April 10, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–10674 Filed 4–21–98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AD35

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for One Plant, *Arctostaphylos pallida* (Pallid Manzanita), From the Northern Diablo Range of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) determines threatened status for *Arctostaphylos pallida* (pallid manzanita) pursuant to the Endangered Species Act of 1973, as amended (Act). This plant species is found only in the northern Diablo Range of California in Alameda and Contra Costa Counties. The primary threats to the species are the effects of fire suppression, and shading and competition from native and alien plants. To a lesser extent, the species is threatened by disease, herbicide spraying, hybridization, and the ongoing effects of habitat loss and fragmentation. This rule implements the Federal protection and recovery provisions afforded by the Act for this species.

DATES: Effective May 22, 1998.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Field Office, 3310 El Camino, Suite 130, Sacramento, CA 95821–6340.

FOR FURTHER INFORMATION CONTACT: Dwight Harvey, at the above address or by telephone (916/979–2725).

SUPPLEMENTARY INFORMATION:

Background

Arctostaphylos pallida (pallid manzanita) is found only in the northern Diablo Range of California. The Diablo Range is part of the inner South Coast Range of California. The Diablo Range extends in a northwest to southeast direction as a more or less continuous mountain chain, 32 to 48 kilometers (km) (20 to 30 miles (mi)) wide, for approximately 300 km (190 mi) from San Pablo Bay in central California to Polonio Pass in northeast San Luis Obispo County. The altitude of the Diablo Range varies from 600 to 1,280 meters (m) (2,000 to 4,200 feet (ft)) and is broken by four or five east to west passes. These passes divide the Diablo

Range into several distinct units: Contra Costa Hills, Mt. Diablo, Mt. Hamilton Range, Panoche Hills, San Carlos Range, and Estrella Hills (Sharsmith 1982). *Arctostaphylos pallida* occurs in the Contra Costa Hills section of the Diablo Range.

Portions of the Diablo Range are thought to have been surrounded by marine embayments since the middle Miocene era, when modern flora and fauna were developing (Sharsmith 1982). Much of the surface of the Diablo Range is composed of rock in the Franciscan series. The soils formed from Franciscan rock are believed to partially control the present distribution of plant species in the Diablo Range (Sharsmith 1982). *Arctostaphylos pallida* seems to prefer to grow in limited locations of the East Bay Hills on north and east facing slopes where bare, siliceous, mesic soils with low fertility exist (Amme and Havlik 1987a).

Alice Eastwood described *Arctostaphylos pallida* in 1933 from specimens collected in 1902 by W.W. Carruth in the ''East Oakland Hills,'' an area believed to be Huckleberry Ridge in Alameda and Contra Costa Counties, California. *A. pallida* is a member of the *A. andersonii* complex, a group of *Arctostaphylos* species found in central coastal California. Though McMinn reduced the taxon to a variety of *A. andersonii* in 1939, Wells (1993) treated it as *A. pallida.*

Arctostaphylos pallida is an upright, non-burl-forming shrub in the heath family (Ericaceae). *Arctostaphylos pallida* grows from 2 to 4 m (6.5 to 13.0 ft) high or more with rough, gray or reddish bark. The twigs are bristly. The ovate to triangular leaves are bristly, strongly overlapping, and clasping; they are 2.5 to 4.5 centimeters (cm) (1.0 to 1.8 inches (in.)) long and 2 to 3 cm (0.8 to 1.2 in.) wide. The dense, white flowers are urn-shaped and 6 to 7 millimeters (mm) (0.2 to 0.3 in.) long. The flowering period is from December to March.

The overall current range of *Arctostaphylos pallida* is similar to that known at the time the species was described in 1933. The extant populations of this species are thought to be smaller, however, due to habitat destruction and fragmentation by urbanization (B. Olson, *in litt.* 1994). Although *A. pallida* occupies most of its historic range, local habitat destruction due to residential development has resulted in losses of up to 50 percent in some locations along Manzanita Way in the Oakland Hills (B. Olson, *in litt.* 1994). Only two large populations are known, one at Huckleberry Ridge, the presumed type locality in Alameda and Contra Costa Counties, and the other at Sobrante Ridge in Contra Costa County. The remaining occurrences, all located in Alameda or Contra Costa Counties, are all small, and most have fewer than ten individuals. Of the 13 documented occurrences of *A. pallida*, six are considered to be declining, while the trend of the remaining seven is uncertain or unknown (CNDDB 1997). One of the latter populations has fewer than 50 plants and was planted outside of its native habitat, where its long-term survival is not likely (CNDDB 1997). Two other occurrences are considered to have been planted (CNDDB 1997).

The species is found from 200 to 445 m (656 to 1,460 ft) in elevation, primarily on thin soils composed of chert and shale (Amme and Havlik 1987a). Generally, the plants are found in *Arctostaphylos* dominated chaparral that is often surrounded by oak woodlands and coastal shrub (Amme *et al.* 1986). The two largest occurrences occupy a total area of 12 hectares (ha) (29 acres (ac)) (Amme *et al.* 1986). These two populations are found in maritime chaparral, a habitat with mesic environmental conditions due to a maritime influence. The smaller of the two, at Sobrante Ridge, has the least human impact of all known populations. It had an estimated 1,700 to 2,000 plants in the mid-1980s and the status and vigor of the plants appeared good (Amme *et al.* 1986, Amme and Hovik 1987). The population remains in good shape and, although some management is needed, the potential for long term viability is high (David Amme, pers. comm. 1997, Neil Havlik, pers. comm. 1997). The Sobrante Ridge site has more open space than other occurrences and recruitment of *Arctostaphylos pallida* is taking place in areas with bare and exposed gravel (Steve Edwards, Tilden Botanic Garden, pers. comm. 1997).

The largest known population of *Arctostaphylos pallida* occurs at Huckleberry Ridge, although an estimated 50 percent of the original habitat at this site has either been developed for housing or is privately owned. Development eliminated a large number of *A. pallida* plants and fragmented the remaining habitat at this site (Amme and Havlik 1987b, B. Olson, *in litt.* 1994). An estimated 2,400 to 2,700 plants were present in this population during the mid 1980s (Amme *et al.* 1986). A fungal infection during the early 1980s resulted in branch and stem dieback in over 50 percent of the plants at Huckleberry Ridge, and the condition of the population was described as poor (Amme and Havlik 1987c). Disease is discussed in further detail under factor C in the ''Summary of Factors Affecting the Species'' section below.

Many of the smaller populations occur in coastal scrub (Brad Olson, California Native Plant Society, *in litt.* 1994). These occurrences of *Arctostaphylos pallida* are all small with few individuals and their long term viability is questionable. The largest is estimated to have 65 individuals, some of which were planted (CNDDB 1997). Several other occurrences were also planted, and many small populations are located along roadcuts where plants appear to have established naturally after the soil was disturbed (Amme *et al.* 1986). Some of these occurrences have only one or several individuals and are in poor condition (CNDDB 1997). Many of these smaller populations are shaded by planted and naturalized *Pinus radiata* and *Cupressus* spp. (Amme and Havlik 1987a). Shading and competition are discussed in more detail under factor E below in the ''Summary of Factors Affecting the Species'' section below.

More than half of the remaining habitat for the species, including both large populations and numerous smaller populations, occur on lands owned by the East Bay Regional Park District (EBRPD)(Brad Olson, EBRPD, *in litt.* 1997). Other small populations occur on lands owned by the East Bay Municipal Utility District (EBMUD), the City of Oakland, Pacific Gas and Electric power line easements, or on other privately owned lands (B. Olson, *in litt.* 1994, Robert Nuzum, EBMUD, *in litt.* 1997). The primary threats to *Arctostaphylos pallida* are the effects of fire suppression, and shading and competition from native and alien plants. To a lesser extent, the species is threatened by disease, herbicide spraying, hybridization, and the ongoing effects of habitat loss and fragmentation.

Previous Federal Action

Federal government actions on the species began as a result of section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. This document included *Arctostaphylos pallida* (as *Arctostaphylos andersonii* var. *pallida*) as endangered. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the

context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. The above taxon was included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal in the **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Arctostaphylos pallida* was included in the June 16, 1976, publication.

General comments received in relation to the 1976 proposal were summarized in the April 26, 1978, **Federal Register** (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all existing proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In a December 10, 1979, notice (44 FR 70796), the Service withdrew the June 6, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated Notice of Review for plants on December 15, 1980 (45 FR 82480). This notice included *Arctostaphylos pallida* as a Category 1 candidate species for Federal listing. Category 1 were those taxa for which the Service had on file sufficient information to support issuance of proposed listing rules. On November 28, 1983, the Service published a supplement to the Notice of Review (48 FR 53640). This supplement changed this taxon from Category 1 to Category 2. Category 2 species were those taxa for which the Service had information indicating that listing may be warranted but for which it lacked sufficient information on status and threats to support issuance of listing rules. The plant notice was revised on September 27, 1985 (50 FR 39526). *Arctostaphylos pallida* was again included as a Category 2 candidate species. In the revision of the plant notice published on February 21, 1990 (55 FR 6184), *A. pallida* was elevated to a Category 1 candidate species. In the revision of the plant notice published on September 30, 1993 (58 FR 51144), this category remained unchanged.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Arctostaphylos pallida* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, the Service found that the petitioned listing of this species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled annually, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed annually from October of 1983 through 1993. Publication of the proposed rule to list *A. pallida* as a threatened species on August 2, 1995 (60 FR 39309) constituted the final warranted finding for this species.

The processing of this final rule conforms with the Service's listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475) and the extension of the guidance published in the **Federal Register** on October 23, 1997 (62 FR 55268). The guidance clarifies the order in which the Service will process listing actions following two related events: (1) The lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Pub. L. 104–6), and (2) the restoration of funding for listing through passage of Omnibus Budget Reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of outstanding proposed listings. A lower priority is assigned to resolving the conservation status of candidate species and processing administrative findings on petitions to add species to the lists or reclassify species from threatened to endangered status (Tier 3). The lowest priority actions are in Tier 4, a category which includes processing critical habitat determinations, delistings, or other types of reclassifications. Processing of this final rule is a Tier 2 action.

Summary of Comments and Recommendations

In the August 2, 1995, proposed rule (60 FR 39309) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State and Federal agencies and representatives, City and County governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Daily Review* (Hayward, California), the *Ledger Dispatch* and the *Brentwood News* (Antioch, California), and the *Oakland Tribune* on August 9, 1995, which invited public comment. No public comments or requests were received during this public comment period. Work on the final rule to list *Arctostaphylos pallida* as a threatened species was suspended due to the moratorium. After the moratorium was lifted in April 1996, the public comment period was reopened on February 27, 1997, for 30 days to update the proposed listing (62 FR 8417). In accordance with Service policy (59 FR 34270), four independent specialists were solicited to review pertinent scientific or commercial data and assumptions relative to the proposed rule. No response was received from the four independent specialists.

In a letter dated March 25, 1997, Mr. Brad Olsen of the East Bay Regional Park District requested that the comment period be reopened an additional time because all affected and interested parties and agencies may not have had sufficient time to convey important information pertaining to all the known *Arctostaphylos pallida* populations. The notice opening the additional comment period was published in the **Federal Register** (62 FR 24388) on May 5, 1997. The public comment period closed on June 4, 1997. Comments were solicited from an additional eight experts pertaining to—(1) The known or potential effects of fire suppression and general fire management practices on the pallid manzanita and its habitat, (2) other biological, commercial, or other relevant data on any threats (or the lack thereof) to the species; and (3) the size, number, or distribution of populations of the species.

During the last two comment periods, the Service received a total of eight comments (letters and personal phone conversations) from seven people. One commenter supported the listing and the other six were neutral. Several commenters provided additional information that has been incorporated into this rule. No commenters were opposed to the rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of the best available scientific and commercial information,

the Service has determined that *Arctostaphylos pallida* should be classified as a threatened species. Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures to be followed for adding species to the list of threatened and endangered species. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Arctostaphylos pallida* Eastw. (pallid manzanita) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

In its proposal to list the pallid manzanita (60 FR 39311), the Service identified residential development as a threat. However, the Service no longer considers it to be a significant threat. Although residential development eliminated a large number of *Arctostaphylos pallida* plants on Huckleberry Ridge, further direct habitat destruction is not anticipated. Up to 50 percent of the original habitat of *A. pallida* on Huckleberry Ridge has been developed for housing or is privately owned. However, most of the remaining population at Huckleberry Ridge, as well as the other large *A. pallida* population on Sobrante Ridge, is on lands now owned by the East Bay Regional Park District and is protected from further direct habitat destruction resulting from urbanization or land use conversion. The smaller *A. pallida* populations occur either on other park lands or on privately owned lands that have already been developed. The ongoing effects of prior development are discussed in detail under factor E.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Although this species is not known to be sought after by collectors, *Arctostaphylos pallida* is commercially cultivated (Wells 1993). Many members of this genus are considered desirable to use for interior decoration because of their attractive bark, leaves, and hard wood. In addition, they are often used in residential landscapes and local horticulturalists sometimes collect the seeds for cultivation (Keeley and Keeley 1992, Smith 1988). Overutilization is not currently known to be a threat to this species, but unrestricted collecting for scientific or horticultural purposes or excessive trampling of seedlings by individuals interested in seeing rare plants could result from increased publicity as a result of listing this species. Possible unauthorized cutting of *A. pallida* was evident at the Sobrante Ridge Regional Preserve population where public access trails and photographic displays of this species are established throughout manzanita habitat (Dwight Harvey and Elizabeth Warne, USFWS, *in litt.* 1997).

C. Disease or Predation

Approximately 50 percent of the Huckleberry Ridge population of *Arctostaphylos pallida* was affected in the 1980s by a fungal infection that attacked the roots of the plants, causing branch and stem dieback (Amme and Havlik 1987a, CDFG 1987). The Huckleberry Ridge population remains in poor condition (Amme and Havlik 1987c, CNDDB 1997). If the wet, cold weather conditions that induced the fungal infection are repeated, another infection could occur, resulting in reduced vigor of the population (D. Amme, pers. comm. 1994).

Botryosphaeia fungal infections can cause changes in leaf pigmentation thus affecting the plant's photosynthetic capabilities, destroy branches, and lead to the eventual death of whole plants (Smith 1985, Amme and Havlik 1987, Wood and Parker 1988). Pale chlorotic leaves, possibly due to *Botryosphaeia* fungi, were evident at the East Ridge population on EBMUD land, where 14 mature *A. pallida* plants grow under a canopy dominated by *Umbellularia californica, Arbutus menziesii,* and introduced *Pinus radiata* (D. Harvey and E. Warne, *in litt.* 1997, R. Nuzum, *in litt.* 1997). In addition, urban expansion has resulted in the planting and subsequent spread of many exotic and native species of trees and shrubs (Amme and Havlik 1987a). Many of these species grow faster than *Arctostaphylos pallida* and, in some locations, completely shade them. Excessive shade and overcrowding can cause a slow decline in the plant's overall health and vigor that can lead to the spread of *Botryosphaeia* fungi and an unknown root fungus (Smith 1985, Amme and Havlik 1987a).

D. The Inadequacy of Existing Regulatory Mechanisms

The State of California Fish and Game Commission has listed *Arctostaphylos pallida* as an endangered species under the California Endangered Species Act (chapter 1.5 § 2050 *et seq.* of the California Fish and Game Code, and title 14 California Code of Regulations § 670.2). The State of California requires that individuals obtain authorization from the California Department of Fish and Game (CDFG) to possess or ''take'' a listed species. Although the take of State-listed plants is prohibited by the California Native Plant Protection Act and the California Endangered Species Act (California Fish & Game Code, chapter 10, division 2, § 1908 and California Fish & Game Code, chapter 1.5, division 3, § 2080), State law does not prohibit the taking of such plants via habitat modification or land use changes by the owner. After CDFG notifies a landowner that a State-listed plant grows on his or her property, the California Native Plant Protection Act requires only that the land owner notify the agency ''at least ten days in advance of changing the land use to allow salvage of such a plant'' (California Fish and Game Code, chapter 10, § 1900 *et seq.*).

The California Environmental Quality Act (CEQA) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal.'' Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State or Federal governments. Once significant effects are identified, the lead agency has the option of requiring mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of listed or rare species. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the agency involved. In addition, CEQA guidelines recently have been revised in ways that, if made final, may weaken protections for threatened, endangered, and other sensitive species.

California Department of Fish and Game (CDFG) and EBRPD jointly developed the Alameda Manzanita Management Plan in 1987. Since then, due to limited funding, and conflicting fire management policies, this plan has only partially been carried out. The mission of the plan was to determine and implement management activities that would improve the condition of the species and help in its recovery (Amme

and Havlik 1987b). EBRPD has reduced the amount of flammable dead plant material in the Huckleberry Ridge population (Ed Leong, EBRPD, pers. comm. 1994, *in litt.* 1997). The reduction in plant litter, and the pruning of some competing exotics, has helped to stimulate germination and growth of the species at Sobrante Ridge, Huckleberry Ridge and two other lesser locations (D. Amme, pers. comm. 1994, N. Havlik, pers. comm. 1997). The potential effects of fire management policies on *A. pallida* are further discussed under factor E below.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

Due to past and present fire suppression policies and inactive or ineffective fire management plans, the long-term viability of *Arctostaphylos pallida* is in doubt. In the 1800s, before the expansion of urban areas into the East Bay Hills, major natural or human-caused fires periodically burned through manzanita habitat mainly from east to west driven by dry ''Diablo Winds'' during the late summer and fall (EBRPD 1996, R. Nuzum, *in litt.* 1997). These fires rarely threatened the lower lying communities of Berkeley and Oakland. Fire management practice from about 1900 to 1940 changed from unrestricted burning to permitted burning only (Sampson 1944, J. Dunne *et al.* 1991). The California Department of Forestry and Fire Protection (CDFFP) currently has a policy of immediate suppression of all wildfires (B. Harrington, CDFFP, pers. comm. 1996).

Due to the expansion of homes up to the crest of the East Bay Hills during the 1940s and 1950s, human-caused fires, such as the Oakland Hills fire of 1991, are now a major threat to human safety (EBRPD 1996). Over the last 10 years, urban development has expanded to approach the two largest populations of *Arctostaphylos pallida* at Sobrante and Huckleberry Ridges. At Sobrante Ridge, homes come within 30 m (100 ft) of the population and at Huckleberry Ridge some homes along Manzanita Drive have *A. pallida* within their landscaping (Amme and Havlik 1987a, D. Harvey and E. Warne, *in litt.* 1997).

Fire suppression in the East Bay Hills, in combination with increased browsing of tree and shrub seedlings and acorns by deer and livestock, has led to structural and compositional change in habitats within the range of *Arctostaphylos pallida.* Open-canopied oak woodlands maintained historically by frequent fire have been converted, in the absence of fire, into closed-canopied woodland-forests dominated by *Umbellularia californica* (California bay), other native trees, or alien conifer or *Eucalyptus* forests (McBride 1974, B. Olson, *in litt.* 1994 Safford 1995). Because of their denser canopies, these forests and woodlands create a microclimate unsuitable for healthy *A. pallida* plants. For example, the small population of *A. pallida* at upper East Ridge persists in the understory of a closed-canopy forest of California bay and *Arbutus menziesii* (madrone) (R. Nuzum, *in litt.* 1997). No signs of recent fire are present at this site (D. Harvey and E. Warne, *in litt.* 1997 as *per* J. Dunne) and it is estimated that the site may not have burned in more than 100 years (R. Nuzum, *in litt.* 1997). Most of the 14 adult pallid manzanita in this population are unhealthy and show signs of fungal infections and bark striping. Bark striping may be a sign that excessive canopy shading is affecting *A. pallida*. Bark striping was first thought to have a pathological origin but is now believed to be a stress response by some species of manzanita to the absence of fire (Davis 1973 *in* Hanes 1995). On shaded sites, such as upper East Ridge, the ability of the shade intolerant *A. pallida* plants to maintain live tissue is thought to lessen, resulting in the partial shutdown of growing cells and tissue sloughing that manifests as bark striping (Davis 1973 *in* Hanes 1995, Amme and Havlik 1987a). At the Huckleberry Ridge population, *A. pallida* plants are generally wider than they are tall, a consequence of growing away from the overstory canopy to reach light, and all of the *A. pallida* plants displayed bark striping (Amme and Havlik 1987a).

Fire suppression can also alter the reproductive dynamics of *Arctostaphylos pallida* stands. Based on differing survival responses of chaparral plants to fire, manzanitas can be divided into burl-forming and non-burl-forming (Sampson 1944, Roof 1976, Keeley and Keeley 1977). Burls lay at the base of the main stem of the plant and contain stored nutrients and shoot-forming embryonic tissues. The burl-forming types are capable of surviving fire by resprouting from these burls. The second group does not form burls. Instead, stand persistence is based on the establishment and maintenance of a seed bank in the soil. This seed bank may lay dormant within the soil for as much as 100 years or more (Keeley 1987, 1991). When a fire passes through an area, the seeds are scarified and thus become capable of germinating (Amme and Havlik 1987a). However, fire is not the only way seeds can be scarified. Mechanical disturbances, such as crushing, can also crack the seed coat and enable the seeds to germinate (S. Edwards, pers. comm. 1997). Both types of manzanita can also regenerate by layering, a method that does not require fire. Branches sprout roots at points at which they are covered by soil and leaf litter. This produces a clone of the original plant (Amme and Havlik 1987b). Of the three methods of regeneration, only seed reproduction results in genetic recombination and it is, therefore, important to the maintenance of genetic diversity.

Stand regeneration in *Arctostaphylos pallida* is based primarily on seed reproduction. At the Sobrante Ridge population, *A. pallida* is closely associated with open stands of *Quercus chrysolepis* (canyon live oak) and *Q. wislizenii* var. *fructescens* (interior live oak) and recruitment of both pallid manzanita and oaks is occurring on bare and exposed gravel (Amme *et al.* 1986, S. Edwards, pers. comm. 1997). The effects of fire are evident at this site and fire may have occurred 20 to 30 years ago (N. Havlik, pers. comm. 1997).

In contrast, the effects of fire are not evident at the Huckleberry Ridge population and fire may have not occurred there for 70 years or longer (R. Nuzum, *in litt.* 1997, D. Harvey and E. Warne, *in litt.* 1997). The *Arctostaphylos pallida* population is unhealthy due to the negative effects of a dense California bay-madrone canopy and reproduction is poor (N. Havlik, pers. comm. 1997, R. Nuzum, *in litt.* 1997, S. Edwards, pers. comm. 1997, D. Harvey and E. Warne, *in litt.* 1997). In a 1993 fuel management and habitat improvement experiment at the Huckleberry Ridge site, a small area overgrown with a dense stand of *A. pallida* was cleared, and the cut vegetation piled and burned. Seedlings of *A. pallida* were present the following year. Hand pulling of the invasive alien, *Genista monspessulana* (French broom), was necessary during 1994 and 1995. During a site visit in March of 1997, 40 to 50 *A. pallida* were present. Most were 10–15 cm (4–6 in) tall, vigorous, and well-branched. The seedlings were found on the barer soil areas. In addition to continued invasion by French broom, native *Baccharis pilularis* (coyote brush) had begun to invade the site (E. Leong, pers. comm. 1997) .

The importance of fire in relation to this manzanita's reproductive strategy is uncertain, however, since seed reproduction can also occur as a result of site soil disturbance. Evidence exists that mechanical scarification, such as crushing, stimulates germination in several manzanita species, including *A. pallida* (Keeley 1987, Keeley 1991, S. Edwards, pers. comm. 1997). New

seedlings of *A. pallida* have appeared in areas where mechanical scarification had recently taken place including exposed gravel clearings and fire breaks at the Sobrante Ridge (S. Edwards, pers. comm. 1997, N. Havlik, pers. comm. 1997), at several road cuts along Skyline Boulevard (D. Amme, pers. comm. 1997), and at Huckleberry Ridge where grading and removal of plants has occurred for residential development (N. Havlik, pers. comm. 1997).

However, fire is thought to have been the primary historical process by which seed regeneration was initiated and it has other valuable effects beyond seed scarification. The accumulated leaf and bark litter, fallen fruits, and roots of *Arctostaphylos* species have a self-inhibitory effect on seed germination (Amme and Havlik 1987b). Fire is believed to remove these toxic materials and promote germination of *Arctostaphylos* and other herbs and shrubs (Amme *et al.* 1986). Fire also recycles nutrients in the soil (Amme and Havlik 1987b). The excessive accumulation of dead leaf and bark material also results in the retention of soil moisture. Higher soil moisture levels allows fires to conduct heat through the soil more effectively; this has the potential to destroy the existing *Arctostaphylos pallida* seed bank. (Wood and Parker 1988).

The fire management policy of the CDFFP has superseded EBRPD fire management policy on park lands (J. Di Donato, EBRPD, *pers. comm*. 1996). However, fire management can be modified in specific areas for listed species (B. Harrington, *pers. comm*. 1996). On EBRPD and EBMUD lands, where the majority of *Arctostaphylos pallida* populations occur, *A. pallida* habitat has been managed by fire suppression and brush removal (B. Olson, *in litt.* 1994, J. Di Donato, pers. comm. 1996, B. Harrington, pers. comm. 1996). Mechanical removal of exotic plants has been the primary method used to improve growing conditions mostly for isolated individual plants (Amme and Havlik 1987). Due to the continued expansion of urbanization adjacent to *A. pallida* habitat, and the catastrophic Oakland Hills fire of 1991, mechanical removal of highly flammable vegetation remains the predominant method used to reduce the fuel load in *A. pallida* chaparral habitat. A fire management plan that includes the possibility of prescribed burns to address the needs of *A. pallida* for germination and seedling establishment is currently being developed by the EBRPD in cooperation with CDFG and CDFFP (EBRPD 1996, J. Di Donato, *in litt.* 1996).

The genetic integrity of *Arctostaphylos pallida* is threatened by hybridization with other species of *Arctostaphylos* introduced into the vicinity of *A. pallida* populations (D. Amme, pers. comm. 1994). At least three other species of *Arctostaphylos* have been used for landscaping on private lands along Manzanita Way, a road that borders the Huckleberry Ridge Preserve. Hybrids between a common associate of *A. pallida, A. tomentosa* ssp. *crustacea* (brittle leaf manzanita), are known to occur in two separate populations (Amme *et al.* 1986, D. Harvey and E. Warne, *in litt.* 1997 as *per* J. Dunne). Hybrids have also been observed between *A. pallida* and *A. glauca* (bigberry manzanita) in Oakland parks (D. Amme, pers. comm. 1997 as *per* S. Edwards). *Arctostaphylos pallida* closely resembles *A. pajaroensis* (Pajaro manzanita), a species native to the Pajaro River area. Hybrids may be occurring between these two species in areas where residents have planted *A. pajaroensis* along Huckleberry Ridge (D. Amme, pers. comm. 1997). Hybridization with any of these taxa could result in a hybrid manzanita swarm replacing pure *A. pallida* (Amme and Havlik 1987b, Amme *et al.* 1986).

Herbicides have been used to eradicate *Eucalyptus* associated with *Arctostaphylos pallida* in many areas of EBRPD lands in the Oakland Hills. The exact effect herbicide spraying has on *Arctostaphylos pallida* has not been studied, however, roadside spraying has had negative effects on regeneration of *A. pallida* along Skyline Boulevard (Amme and Havlik 1987a).

Urban development in the East Bay Hills has fragmented the natural habitat of *Arctostaphylos pallida.* Splitting the habitat into smaller, more isolated units can alter the physical environment by changing the amount of incoming solar radiation, water, wind, or nutrients for the remnant vegetation (Saunders *et al.* 1991). In addition, a higher proportion of these fragmented natural areas are subject to external factors (e.g., invasion of nonnative plants, foot traffic, and increased erosion) that disrupt natural ecosystem processes (B. Olson, *in litt.* 1994).

Residential development at Huckleberry Ridge has contributed to the introduction of exotic landscape and weedy plant species that compete with the remnant population (Amme and Havlik 1987b). Small populations, in particular, are threatened by shading from planted *Eucalyptus* spp., *Pinus radiata*, and *Cupressus* spp. (cypresses), and by competition with other aggressive alien plant species including French broom, *Vinca major* (periwinkle), and *Senecio mikanioides* (German ivy) (Amme *et al.* 1986, B. Olson, *in litt.* 1994, N. Havlik, pers. comm. 1997). Eventually the taller growing species will block necessary light to the few scattered *A. pallida* resulting in unhealthy, dying and diseased plants as demonstrated at some areas of the Huckleberry Ridge and East Ridge populations (R. Nuzum, *in litt.* 1997, N. Havlik, pers. comm. 1997, E. Leong, *in litt.* 1997). In 1985 several large bay trees were cut at the base to improve light conditions for some *A. pallida.* As a result, many *A. pallida* responded with new growth (N. Havlik, pers. comm. 1997).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Arctostaphylos pallida* in determining to make this rule final. Based on this evaluation, the preferred action is to list *A. pallida* as threatened. This species is not now in immediate danger of extinction throughout all or a significant portion of its range. *A. pallida* exists at two large and eleven small occurrences. The majority of its habitat is on EBRPD property. The two largest occurrences of *A. pallida* are protected from further direct habitat destruction resulting from urbanization or land use conversion. However, all occurrences of *A. pallida* remain threatened by compositional and structural changes due to fire suppression that result in shading and competition from native and alien plant species, disease, the ongoing effects of habitat fragmentation resulting from past urbanization, and chance events due to the small size of the few remaining populations. Some populations are also threatened by hybridization, and herbicide spraying. Furthermore, the existing regulatory mechanisms do not provide *A. pallida* adequate protection from these threats. *Arctostaphylos pallida*, therefore, fits the definition of a threatened species. For the reasons discussed below, critical habitat has not been designated.

Critical Habitat

Critical habitat is defined in section 3 of the Act as (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for conservation of the species.

''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Critical habitat is not determinable when one or both of the following situations exist—(1) Information sufficient to perform required analyses of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat (50 CFR 424.12(a)(2)). Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat designation for this species is not prudent due to lack of benefit. Critical habitat only applies to Federal actions on Federal lands or federally-permitted actions on private lands. All known populations occur on non-Federal land, and no Federal lands are known to occur within the historical range of the species. No Federal actions, authorizations, or licensing currently occurs, or is likely to occur, on lands where the species occurs. Therefore, designation of critical habitat is not likely to benefit *A. pallida.*

Moreover, such designation could increase the degree of threat to the species. The publication of precise maps and descriptions of critical habitat in the **Federal Register** would make this plant vulnerable to incidents of vandalism or collection and, therefore, could contribute to the decline of the species. All of the 13 occurrences of *A. pallida* are located near or adjacent to residential areas and public roads where they are easily accessible. *A. pallida* is commercially cultivated (Wells 1993). Many members of this genus, including numerous San Francisco Bay area taxa, are considered desirable for interior decoration and landscape plantings and are collected for cultivation for these purposes (Roof 1976, Smith 1985, 1988). The desirability and accessibility of the species, therefore, could make the plants subject to collection if their precise location was publicized. Most of the populations have so few individuals that even limited collection could contribute significantly to their decline. Designation of critical habitat for *A. pallida* could, therefore, interfere with recovery efforts for the species.

The Service finds, therefore, that the designation of critical habitat for *Arctostaphylos pallida* is not prudent at this time, because such designation would likely provide no conservation benefit beyond that the species would receive by virtue of its designation as a threatened species. This finding is based on the fact that the species does not occur on Federal lands, nor does it occur on non-Federal lands where there is likely to be any Federal agency involvement. Moreover, designation of critical habitat would facilitate trespassing and increased collection or damage to the species or its habitat, and thereby interfere with recovery efforts. Any minor, unforeseen benefits that might derive from designation of critical habitat would be outweighed by the increased threat to the species that would result from such designation.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery plans be developed for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. None of the populations of *Arctostaphylos pallida* occur on Federal lands and no Federal actions have been identified that are likely to occur on non-Federal lands with populations of the species.

Some populations occur on non-Federal lands protected from development. EBRPD owns the sites of both major populations of *A. pallida.* The EBRPD and CDFG jointly developed the Alameda Manzanita Management Plan in 1987. Although this plan was not adopted by Alameda or Contra Costa County governments, portions of the plan are in use by the EBRPD (D. Amme, pers. comm. 1994, E. Leong, pers. comm. 1994, *in litt* 1997). A specific management plan does not exist for the small population on EBMUD land at upper East Ridge. The Service has not pursued any conservation agreements on public or private land regarding this species.

Listing this plant species necessitates the development of a recovery plan. Such a plan would bring together both State and Federal efforts for conservation of the plant. The plan would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also would describe site-specific management actions necessary to achieve conservation and survival of the plant species. Additionally, pursuant to section 6 of the Act, the Service would be able to grant funds to the State for management actions promoting the protection and recovery of the species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened species. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the

removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked ''Of Cultivated Origin.'' Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, education purposes, or special purposes consistent with the purposes of the Act. It is anticipated that some trade permits may be sought or issued for cultivated specimens to enhance the propagation and survival of the species.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. Collection, damage, or destruction of listed species on Federal lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. However, *Arctostaphylos pallida* is not known to occur on any Federal lands. Such activities on non-Federal lands would constitute a violation of section 9, however, if conducted in knowing violation of State law or regulations or in violation of State criminal trespass law. Interstate or foreign commerce, or offering for sale in interstate or foreign commerce, or importing or exporting pallid manzanita without a threatened species permit would be a violation of section 9. Questions regarding whether specific activities would constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Sacramento Field Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not require collection of information that requires approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor of the Service's Sacramento Field Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Dwight Harvey, Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service amends part 17 subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Arctostaphylos pallida.	pallid manzanita	U.S.A. (CA)	Ericaceae—heath ...	T	635	NA	NA
*	*	*	*	*	*	*	

Dated: March 4, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–10662 Filed 4–21–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980318066-8066-01; I.D. 022698A]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 25; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document corrects two portions of the regulatory text in the final rule for Framework Adjustment 25 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) published Tuesday, March 31, 1998.

DATES: Effective May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Tokarcik, 978-281-9326.

SUPPLEMENTARY INFORMATION:

Background

The interim final rule for the Atlantic sea scallop fishery and the final rule to implement measures contained in Framework Adjustment 25 to the FMP were published on Tuesday, March 31, 1998 (63 FR 15324 and 63 FR 15326, respectively). Both rules added a provision to the same paragraph designation of the prohibitions section of 50 CFR part 648. Because the Atlantic Sea scallop interim final rule became effective on April 3, 1998, and Framework Adjustment 25 to the FMP is not effective until May 1, 1998, this document is correcting Framework Adjustment 25 by changing its paragraph designation of (a)(110) to paragraph (a)(112) for its addition to § 648.14. The regulatory text as published for the Atlantic sea scallop interim final rule remains unchanged.

Also, Framework Adjustment 25 inadvertently included the time frame May 10 through May 30 as a period of time in which gillnet vessels would be prohibited from fishing in the Mid-coast Closure Area. This document is correcting § 648.87(a)(1)(i) by removing the reference to May 10 through May 30.

Correction

Accordingly, the publication on March 31, 1998, of the final regulations to implement Framework Adjustment 25 to the Northeast Multispecies FMP (I.D. 022698A), which was the subject of FR Doc. 98-8288, is corrected as follows:

1. On page 15330, in the first column, amendatory instruction 3, line 5, correct ''(a)(110)'' to read ''(a)(112)'', and in line 15 to the regulatory text to § 648.14, correct ''(110)'' to read ''(112)''.

2. On page 15333, in the second column, in line 2 to the regulatory text to § 648.87(a)(1)(i), remove ''May 10 through May 30''.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 15, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–10731 Filed 4–21–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208297-8054-02; I.D. 041498A]

Fisheries of the Economic Exclusive Zone Off Alaska; Groundfish Fisheries by Vessels Using Hook-and-Line Gear in the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for groundfish by vessels using hook-and-line gear in the Gulf of Alaska (GOA), except for sablefish or demersal shelf rockfish. This action is necessary because the first seasonal bycatch allowance of Pacific halibut apportioned to hook-and-line gear targeting groundfish other than sablefish or demersal shelf rockfish in the GOA has been caught.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 18, 1998, through 1200 hrs, A.l.t., May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907-486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The prohibited species bycatch mortality allowance of Pacific halibut for groundfish other than demersal shelf rockfish, which is defined at § 679.21(d)(4)(iii)(C), was established by the Final 1998 Harvest Specifications of Groundfish for the GOA (63 FR 12027, March 12, 1998) for the first season, the period January 1, 1998, through May 17, 1998, as 250 mt.

In accordance with § 679.21(d)(7)(ii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal apportionment of the 1998 Pacific halibut bycatch mortality allowance specified for the hook-and-line groundfish fisheries other than sablefish or demersal shelf rockfish in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for groundfish other than sablefish or demersal shelf rockfish by vessels using hook-and-line gear in the GOA.

Maximum retainable bycatch amounts may be found at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the first seasonal apportionment of the 1998 Pacific halibut bycatch mortality allowance specified for the groundfish fisheries other than sablefish or demersal shelf rockfish by vessels using hook-and- line gear in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The first seasonal bycatch allowance of Pacific halibut apportioned to hook-and-line gear targeting groundfish other than sablefish or demersal shelf rockfish in the GOA has been caught. Further delay would only result in overharvest which would disrupt the FMP's objective of apportioning Pacific halibut bycatch allowances throughout the year. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 16, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–10725 Filed 4–17–98; 3:03 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 77
Wednesday, April 22, 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

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 98–014N]

Nutrition Labeling; Health Claims on Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of withdrawal of proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is withdrawing its proposed rule, ''Nutrition Labeling; Health Claims on Meat and Poultry Products,'' published in the **Federal Register** on May 25, 1994 (59 FR 27144). The rule proposed to amend the Federal meat and poultry products inspection regulations by proposing requirements for permitting the use of health claims on the labeling of meat and poultry products that characterize the relationship of a substance (food or food component) to a disease or health-related condition. The rule also proposed regulations establishing a labeling application process for such health claims. FSIS' proposal (Docket No. 93–002P) has become obsolete because of changes made by the Food and Drug Administration (FDA) in its original final rule and in its subsequent rulemaking on health claims. Therefore, FSIS intends to propose a more comprehensive document on health claims regulations for meat and poultry products that will parallel those regulations issued by FDA for other foods.

ADDRESSES: Send comments to: FSIS Docket Clerk, Docket No. 98–014N, Room 102, Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700. Any comments received will be available for public inspection in the Docket Room from 8:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. William Hudnall, Assistant Deputy Administrator, Office of Policy, Program Development, and Evaluation, at (202) 205–0495; FAX (202) 401–1760.

SUPPLEMENTARY INFORMATION: The Agency's final rule on health claims on meat and poultry products would have authorized health claims related to the characterization of the relationship of a substance to a disease or health-related condition on product labeling. FSIS' proposed rule paralleled FDA's original final rule on health claims that was issued on January 6, 1993 (58 FR 2478). However, three subsequent rulemakings by FDA on additional health claims for substances such as oat bran and psyllium have made FSIS' proposed rule and its pending final rule obsolete. Under provisions of recent legislation establishing new procedures for health claims, FDA is expected to continue authorizing health claims for additional substances on an incremental basis.

With this notice, FSIS is officially withdrawing its proposed rule (Docket No. 93–002P) of May 25, 1994, and will later publish a new proposed rule to authorize health claims for meat and poultry products that is parallel to the extent possible with FDA's. FSIS also is prepared to consider future rulemaking on health claims for additional substances when it becomes necessary to do so.

If needed, FSIS will publish another notice addressing any comments received on this notice.

Done at Washington, DC, on April 15, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–10601 Filed 4–21–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–50–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. This proposal would require installation of components for the suppression of electrical transients, and/or installation of components to provide shielding and separation to the fuel system wiring that is routed to the fuel tanks from adjacent wiring. The proposal also would require installation of flame arrestors and pressure relief valves in the fuel vent system. This proposal is prompted by testing results, obtained in support of an accident investigation, and by re-examination of possible causes of a similar accident. The actions specified by the proposed AD are intended to prevent possible ignition of fuel vapors in the fuel tanks, and external ignition of the fuel vapor exiting the fuel vent system and consequent propagation of a flame front into the fuel tanks.

DATES: Comments must be received by June 8, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–50–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chris Hartonas, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, telephone (425) 227–2864; or Dorr Anderson, Aerospace Engineer, Propulsion Branch, ANM–140S, telephone (425) 227–2684; FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address

specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–50–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–50–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 17, 1996, a Boeing Model 747 series airplane was involved in an accident shortly after takeoff from John F. Kennedy International Airport in Jamaica, New York. In support of the subsequent accident investigation, the FAA participated in testing of the fuel quantity indication system (FQIS). Results of that testing revealed that higher than expected energy levels could be induced by high transient voltage levels in the electrical wiring and probes of the fuel system. These energy levels occurred when the wiring of the FQIS was subjected to electromagnetic interference (EMI) testing. EMI or electrical transients may be generated in the airplane when switching electrical loads in the wiring adjacent to the FQIS wiring.

As part of this testing, conductive debris, such as steel wool and lockwire, was used to bridge the FQIS probes to simulate debris that has been found in fuel tanks during inspections of transport category airplanes. Results of the tests indicated that higher than expected transient voltage levels in the FQIS wiring and probes could be induced, and the resulting energy levels in the FQIS wiring and probes could be greater than the energy required to ignite fuel vapor inside a fuel tank.

In addition, recent inspections of the fuel probe wiring in Model 747 fuel tanks revealed damaged wiring insulation, which exposed the conductors inside the fuel tanks. This condition, together with the introduction of induced transients or short circuit conditions, may result in potential ignition sources in a fuel tank.

Although the testing and inspections evaluated FQIS wiring, the same conditions can be generated with other wiring that is routed to the fuel tanks. The conditions described above, if not corrected, could result in excessive levels of energy in fuel system wiring that is routed to the fuel tanks and a potential source of ignition in the fuel tanks.

The fuel system wire installation on Model 737–100, –200, –300, –400, and –500 series airplanes is similar to that on the Model 747 series airplane involved in the 1996 accident. Therefore, those Model 737–100, –200, –300, –400, and –500 series airplanes may be subject to the same unsafe condition revealed on the Model 747–100, –200, and –300 series airplanes.

The accident investigation has included a review of previous fuel tank explosions, including a Model 737–300 series airplane accident on May 11, 1990, in the Philippines. One possible scenario which may have caused the 1990 accident is an external ignition of the fuel vapor exiting the fuel vent system and consequent propagation of a flame front into the wingtip vent scoop and through the vent system into the center tank. The Model 737–300 vent system does not include flame arrestors and pressure relief valves and would allow a flame front to travel unimpeded into the vent system through the wingtip vent scoop. The conditions described above, if not corrected, could result in a potential source of ignition in a fuel tank.

The fuel vent system on Model 737–100, –200, –400, and –500 series airplanes is identical to that on the Model 737–300 series airplane. Therefore, those Model 737–100, –200, –400, and –500 series airplanes may be subject to the same unsafe condition revealed on the Model 737–300 series airplanes.

FAA's Conclusions

While none of the above conditions have been identified at this time as the cause of the accidents discussed previously, the FAA concludes that results of the tests and inspections that have been performed indicate that modifications are required to limit the energy level induced in the fuel system wiring and FQIS probes. Furthermore, the FAA has determined that installation of components for the suppression of electrical transients, and/or installation of components to provide shielding and separation to the fuel system wiring that is routed to the fuel tanks from adjacent wiring is necessary to provide protection from wire-to-wire electrical short circuit conditions. Such conditions are a potential source of ignition in the fuel tanks. In addition, the FAA has determined that installation of flame arrestors and pressure relief valves in the fuel vent system is necessary to prevent a flame front from propagating through the fuel vent system and igniting vapors present in the fuel tanks.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require installation of components for the suppression of electrical transients, and/or installation of components to provide shielding and separation of the fuel system wiring that is routed to the fuel tanks from adjacent wiring. The proposed AD also would require installation of flame arrestors and pressure relief valves in the fuel vent system. The actions would be required to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 2,781 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,140 airplanes of U.S. registry would be affected by this proposed AD.

Since the manufacturer has not yet developed a modification commensurate with the requirements of this proposal, the FAA is unable at this time to provide specific information as to the number of work hours or the cost of parts that would be required to accomplish the proposed modifications. A further problem in developing a specific cost estimate is the fact that proposed modification costs are expected to vary from operator to operator and from airplane to airplane depending upon airplane configuration. The proposed compliance time of 12 months should provide ample time for the development, approval, and installation of an appropriate modification.

However, based on similar modifications accomplished previously on other airplane models, the FAA can reasonably estimate that the proposed

modification to the fuel system wiring would require 40 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required parts is estimated to be $10,000 per airplane. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be $14,136,000, or $12,400 per airplane.

In addition, based on similar modifications accomplished previously on other airplane models, the FAA can reasonably estimate that the proposed modification to the fuel vent system would require 48 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required parts is estimated to be $20,400 per airplane. Based on these figures, the cost impact of this proposed modification on U.S. operators is estimated to be $26,539,200, or $23,280 per airplane.

As indicated earlier in this preamble, the FAA specifically invites the submission of comments and other data regarding the economic aspect of this proposal.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 98–NM–50–AD.

Applicability: All Model 737–100, –200, –300, –400, and –500 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent possible ignition of fuel vapors in the fuel tanks, and/or external ignition of the fuel vapor exiting the fuel vent system and subsequent propagation of a flame front into the fuel tanks, accomplish the following:

(a) Within 12 months after the effective date of this AD, install components for the suppression of electrical transients, and/or install components to provide shielding and separation to the fuel system wiring that is routed to the fuel tanks from adjacent wiring, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) Within 12 months after the effective date of this AD, install flame arrestors and pressure relief valves in the fuel vent system, in accordance with a method approved by the Manager, Seattle ACO.

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

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

Issued in Renton, Washington, on April 14, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–10590 Filed 4–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–147–AD]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Model Piaggio P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a notice of proposed rulemaking (NPRM) that would have applied to certain Industrie Aeronautiche e Meccaniche (I.A.M.) Model Piaggio P–180 airplanes. The NPRM, if followed with a final rule, would have required installing a shield on the front section of the engine cradles. Airworthiness Directive (AD) 96–09–09 currently requires the same action as is proposed in this NPRM. The Federal Aviation Administration (FAA) inadvertently prepared and issued this NPRM. With this in mind, the FAA has determined that the proposed rule should be withdrawn. This withdrawal does not prevent the FAA from taking future rulemaking on this subject.

FOR FURTHER INFORMATION CONTACT: Mr. David O. Keenan, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to This Action

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain I.A.M. Model Piaggio P–

180 airplanes of the same type design that are registered in the United States was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 2, 1998 (63 FR 5320). The NPRM proposed to require installing a shield on the front section of the engine cradles.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

AD 96–09–09, Amendment 39–9585 (61 FR 19808, May 3, 1996), currently requires the same action as is proposed in this NPRM. The FAA inadvertently prepared and issued this NPRM. Since the NPRM, if followed with a final rule, would duplicate actions already required in an existing AD, the FAA has decided that the NPRM should be withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing future rulemaking on this issue, nor does it commit the agency to any course of action in the future.

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket No. 97–CE–147–AD, published in the **Federal Register** on February 2, 1998 (63 FR 5320), is withdrawn.

Issued in Kansas City, Missouri, on April 14, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certfication Service.

[FR Doc. 98–10598 Filed 4–21–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–24]

Proposed Modification of Class E Airspace; Youngstown Elser Metro Airport, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Youngstown Elser Metro Airport, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 28, has been developed for Youngstown Elser Metro Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to add an extension to the east for the existing controlled airspace for Youngstown Elser Metro Airport.

DATES: Comments must be received on or before June 8, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–24, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket no. 98–AGL–24.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Youngstown Elser Metro Airport, OH, to accommodate aircraft executing the proposed GPS Rwy 28 SIAP, at the airport by adding an eastern extension to the existing controlled airspace at the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA

Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document 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. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL OH E5 Youngstown Elser Metro Airport, OH [Revised]

Youngstown Elser Metro Airport, OH
(Lat. 40°57′37″ N., long. 80°40′36″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Portland Municipal Airport; and within 4.0 miles either side of the 108° bearing from the airport, extending from the 6.4-mile radius to 8.8 miles east of the airport, excluding that airspace within the Youngstown-Warren Regional Airport, OH, Class E airspace area, and excluding that airspace within the New Castle, PA, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on April 7, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–10680 Filed 4–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–23]

Proposed Modification of Class E Airspace; Fort Atkinson, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Fort Atkinson, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 03, has been developed for Fort Atkinson Municipal Airport. Controlled airspace extending upward from 700 to 1,200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action would increase the radius of the controlled airspace for Fort Atkinson Municipal Airport.

DATES: Comments must be received on or before June 8, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–23, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–23.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify

Class E airspace at Fort Atkinson, WI, to accommodate aircraft executing the proposed GPS Rwy 03 SIAP, at Fort Atkinson Municipal Airport by increasing the radius of the controlled airspace for the airport. Controlled airspace extending upward from 700 to 1,200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document 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. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL WI E5 Fort Atkinson, WI [Revised]

Fort Atkinson Municipal Airport, WI
(Lat. 42° 57′48″ N, long. 88°49′03″ W)

That airspace extending upward from 700 feet above the surface within a 8.6-mile radius of Fort Atkinson Municipal Airport, excluding that airspace within the Watertown, WI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on April 7, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–10679 Filed 4–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–22]

Proposed Modification of Class E Airspace; Griffith, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Griffith, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 26, has been developed for Griffith-Merrillville Airport. Controlled airspace extending upward from 700 to 1,200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to add an extension to the east for the existing controlled airspace for Griffith-Merrillville Airport.

DATES: Comments must be received on or before June 8, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–22, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–22.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the

notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Griffith, IN, to accommodate aircraft executing the proposed GPS Rwy 26 SIAP, at Griffith-Merrillville Airport by adding an eastern extension to the existing controlled airspace at the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document 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. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL IN E5 Griffith, IN [Revised]

Griffith-Merrillville Airport, IN
(Lat. 41°31′11″ N., long. 87°24′04″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Griffith-Merrillville Airport; and within 2.0 miles either side of the 080° bearing from the airport, extending from the 6.4-mile radius to 7.8 miles east of the airport, excluding that area within the Chicago, IL, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois, on April 7, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–10678 Filed 4–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–6]

Proposed Amendment of Class E Airspace; Daytona Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace at Daytona Beach, FL. The Standard Instrument Approach Procedure (SIAP) for VHF Omnidirectional Range (VOR) Runway (RWY) 8 at the Ormond Beach Municipal Airport has been amended to a VOR or Global Positioning System (GPS) RWY 17 SIAP. As a result, the airspace for the Ormond Beach Municipal Airport must be amended.

DATES: Comments must be received before May 22, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 98–ASO–6, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–ASO–6.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Office of Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with the rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM)

by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Daytona Beach, FL. The VOR RWY 8 SIAP at the Ormond Beach Municipal Airport has been amended to a VOR or GPS RWY 17 SIAP. As a result, the airspace for the Ormond Beach Municipal Airport must be amended from a 6.4- to a 7.3-mile radius to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport. Additionally, the airspace extension for the previous VOR RWY 8 SIAP will be removed. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface 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 Part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

* * * * *

ASO FL E5 Daytona Beach, FL [Revised]

Daytona Beach International Airport, FL
(Lat. 29°10′48″ N, long. 81°03′27″ W)
Spruce Creek Airport
(Lat. 29°04′49″ N, long. 81°02′48″ W)
Ormond Beach Municipal Airport
(Lat. 29°18′04″ N, long. 81°06′50″ W)
Ormond Beach VORTAC
(Lat. 29°18′12″ N, long. 81°06′46″ W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 10-mile radius of Daytona Beach International Airport, within a 6.4-mile radius of Spruce Creek Airport and within a 7.3-mile radius of Ormond Beach Municipal Airport.

* * * * *

Issued in College Park, Georgia, on April 8, 1998.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–10677 Filed 4–21–98; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 901

Request for Comments Concerning Procedures for State Application for Exemption From the Fair Debt Collection Practices Act

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (''Commission'') requests public comments about the overall costs and benefits and the continuing needs for its Procedures for State Application for Exemption from the Provisions of the Fair Debt Collection Practices Act (''FDCPA''), hereinafter known as ''Procedures.''

DATES: Written comments will be accepted until June 22, 1998.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth Street and Pennsylvania Ave., N.W., Washington, D.C. 20580. Comments should be identified as ''Procedures for Exemption from FDCPA, 16 CFR Part 901—Comment.''

FOR FURTHER INFORMATION CONTACT: John F. LeFevre, Attorney, Federal Trade Commission, Washington, D.C. 20580, telephone number (202) 326–3209 or Tom Kane, Attorney, Federal Trade Commission, Washington, D.C. 20580, telephone number (202) 326–2304, E-mail [tkane@ftc.gov].

SUPPLEMENTARY INFORMATION:

I. Background

A. The Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act, 15 U.S.C. § 1691 *et seq.* (''FDCPA''), prohibits a number of deceptive, unfair and abusive practices by third party debt collectors. Section 817 of the FDCPA requires that the Commission exempt from its requirements ''any class of debt collection practices within any state if the Commission determines that under the law of the state, the class of debt collection practices is subject to requirements substantially similar to those imposed by [the FDCPA], and that there is adequate provision for enforcement.'' The Commission has received one application for exemption from Sections 803–812 of the FDCPA from the State of Maine for debt collection practices conducted within that State and granted that exemption.[1]

The FDCPA prohibits debt collectors from using false or misleading statements, harassing or abusive conduct or any unfair methods to collect debts. Among the practices which are specifically prohibited are making false threats to coerce payment (such as false threats of suit); using deceptive collection notices that falsely appear to be from an attorney or court; and engaging in any sort of harassment, such as threatening violence, using profanity and obscenities, or making continuous phone calls. The FDCPA also restricts the extent to which debt collectors may call a consumer at work and prohibits them from making calls to consumers

[1] Notice of Maine Exemption from the Fair Debt Collection Practices Act, 60 Fed. Reg. 68173 (December 27, 1995).

very early in the morning or late at night. With a few narrow exceptions, it prohibits collectors from contacting third parties and revealing the existence of a consumer's debt. In addition, the FDCPA prohibits collectors from adding charges to a debt unless the consumer involved agrees to them or they are permitted by law, and from filing suit against a consumer outside of the district of the consumer's residence or where the contract creating the debt was signed.

Under the FDCPA, if a consumer disputes the debt in writing, the collector is required to stop all collection efforts until the debt is verified. The FDCPA also states that if the consumer demands in writing that the debt collector cease all further collection efforts, the debt collector must comply even if the debt is valid. Finally, the FDCPA gives a consumer the right to bring suit against a debt collector in any court for violations of the FDCPA, and, if successful, to receive actual damages and additional damages up to $1,000, as well as costs and attorney's fees.

The FDCPA is enforced primarily by the Federal Trade Commission. A violation of the FDCPA is deemed an unfair or deceptive practice in violation of the Federal Trade Commission Act. All of the functions and powers of the Federal Trade Commission Act are available to the Commission to enforce compliance with the FDCPA. The Commission may enforce the provisions of the FDCPA in federal court, seeking civil penalties and injunctive relief, as appropriate.

B. The Procedures

The Commission promulgated procedures in 1979 for state applications for exemption from the provisions of the FDCPA, which are published in 16 CFR 901 (1995) (''Procedures''). Section 901.2 of the Procedures provides that any state may apply to the Commission for a determination that, under the laws of that State, (1) any class of debt collection practices within that State is subject to requirements that are substantially similar to, or provide greater protection for consumers than, those imposed under Sections 803 through 812 of the FDCPA; and (2) there is adequate provision for state enforcement of such requirements. Section 901.4 of the Procedures describes the criteria for making the determination. Section 901.4(a) requires that (1) the definitions and rules of construction in the state law import the same meaning and have the same application as those prescribed by the FDCPA; (2) debt collectors provide all the applicable notifications under the state law that are required by the FDCPA; (3) debt collectors under the state law take all affirmative actions and abide by obligations substantially similar to, or more extensive than, those prescribed by the FDCPA; (4) debt collectors under the state law abide by the same or more stringent prohibitions as are prescribed by the FDCPA; (5) obligations and responsibilities imposed on consumers under the state law are no more costly, lengthy, or burdensome than corresponding obligations or responsibilities imposed on consumers by the FDCPA; and (6) consumers' rights and protections under the state law are substantially similar to, or more favorable than, those provided by the FDCPA. Section 901.4(b) requires that the Commission consider (1) the facilities, personnel and funding devoted to administrative enforcement of the state law; (2) provisions in the state law for civil liability for actions brought in the private sector as compared with Section 813 of the FDCPA; and (3) the statute of limitations for civil liability in the state law (for actions brought in the private sector) which should be substantially similar or longer than that in the FDCPA. The Commission must consider each provision of the state law in comparison with each corresponding provision in Sections 803 through 812 of the FDCPA, and not the state law as a whole in comparison with the FDCPA as a whole.

Section 901.3 of the Procedures requires that an application be accompanied by a variety of documents including (1) the state law; (2) a comparison of the provisions of the state law with various sections of the FDCPA; (3) a copy of the full text of the law that provides for its enforcement; (4) a comparison of provisions of the law that provides for enforcement with the provisions of Section 814 of the FDCPA; and (5) a statement identifying the state office designated to administer the state law, along with a description of the ability of that office to effectively administer the statute. If an application is filed in accordance with the Procedures, Section 901.5 states that the filing shall be published in the **Federal Register**. Section 901.6 provides that the Commission may grant an exemption under the provisions of the Procedures.

II. Regulatory Review Program

The Commission has determined to review all current Commission regulations periodically. These reviews seek information about the costs and benefits of the Commission's regulations and their regulatory and economic impact. The information obtained assists the Commission in identifying regulations that warrant modification or rescission. Therefore, the Commission solicits comments on, among other things, the economic impact of and the continuing need for the Procedures; possible conflict between the Procedures and state, local, or other federal laws; and the effect on the Procedures of any technological, economic, or other industry changes.

III. Request for Comment

The Commission solicits written public comments on the following questions:

(1) Is there a continuing need for the Procedures?

(a) What benefits have the Procedures provided to consumers covered by the FDCPA?

(b) Have the Procedures imposed costs on consumers?

(2) What changes, if any, should be made to the Procedures to increase the benefits of the Procedures to consumers covered by the FDCPA?

(a) How would these changes affect the benefits to consumers covered by the FDCPA?

(b) How would these changes affect the costs the Procedures impose on states considering applying for exemption?

(3) What significant burdens or costs, including costs of compliance, have the Procedures imposed on any state that has considered applying for exemption, or that has actually applied for exemption?

(a) Have the Procedures provided benefits to such states? If so, what benefits?

(4) What changes, if any, should be made to the Procedures to reduce the burdens or costs imposed on states considering applying for an exemption?

(a) How would these changes affect the benefits provided by the Procedures?

(5) Do the Procedures overlap or conflict with other federal, state, or local laws or regulations?

(6) Since the Procedures were issued, what effects, if any, have changes in new technology, such as the Internet or E-mail, or changes in other economic conditions, had on the Procedures?

(7) Section 901.4 of the Procedures requires that the Commission compare civil liability provisions of private suits in the state law and those contained in Section 813 of the FDCPA, but Section 901.6(d) prohibits the Commission from exempting any state from the provision of Section 813. Should Section 901.4 be changed to remove the requirement that civil liability provisions in the state law

and those contained in Section 813 of the FDCPA be compared?

(8) Are there any other changes that should be made to the Procedures? If so, please specify and state reasons for the changes.

Lists of Subjects in 16 CFR Part 901

Fair Debt Collection Practices Act.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–10699 Filed 4–21–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–008]

Standards for Business Practices of Interstate Natural Gas Pipelines

April 16, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend § 284.10 of its regulations governing standards for conducting business practices and electronic communication with interstate natural gas pipelines. The Commission is proposing to incorporate by reference, in § 284.10(b)(1)(i), the standards relating to intra-day nominations promulgated March 12, 1998 by the Gas Industry Standards Board (GISB).

DATES: Comments are due May 22, 1998.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2294

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–1283

Kay Morice, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0507

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street, N.E., Washington D.C. 20426. The complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, also provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user. CIPS can be accessed over the Internet by pointing your browser to the URL address: http://www.ferc.fed.us. Select the link to CIPS. The full text of this document can be obtained in ASCII or WordPerfect format. CIPS also may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS user assistance is available at 202–208–2474.

The Federal Energy Regulatory Commission (Commission) is proposing to amend § 284.10 of its regulations governing standards for conducting business practices and electronic communications with interstate natural gas pipelines. The Commission is proposing to adopt the consensus standards, promulgated March 12, 1998, by the Gas Industry Standards Board (GISB) dealing with intra-day nominations and revisions to nomination and confirmation procedures.

I. Background

In Order Nos. 587, 587–B, and 587–C[1] the Commission adopted regulations to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid. In those orders, the Commission incorporated by reference consensus standards developed by GISB, a private, consensus standards developer composed of members from all segments of the natural gas industry.

In Order No. 587, the Commission adopted a standard requiring pipelines to permit shippers to make at least one intra-day nomination per day.[2] An intra-day nomination is a nomination submitted after the initial nomination deadline at 11:30 a.m. to change a shipper's scheduled quantities for the next gas day.[3]

In Order No. 587–C, the Commission did not adopt additional standards approved by GISB concerning intra-day nominations, because the standards did not clearly outline the pipelines' obligations. The Commission further noted that pipelines had implemented GISB's previous intra-day standards in divergent ways, for instance, by establishing different times for submission of intra-day nominations. These differences prevented shippers from coordinating their intra-day nominations across the pipeline grid. The Commission gave GISB and the industry until September 1, 1997 to propose additional standards that would create the needed uniformity in intra-day procedures.

On September 2, 1997, GISB filed a report detailing its progress in reaching consensus on the intra-day standards. While GISB reported making significant progress in developing the standards, it highlighted conflicts between its members that were inhibiting completion of the standards. The disagreements concerned the circumstances under which intra-day nominations by shippers holding firm capacity should be given scheduling priority over previously scheduled interruptible service.

In Order No. 587–G, issued contemporaneously with this NOPR, the Commission resolved this conflict. It issued regulations requiring pipelines to accord an intra-day nomination submitted by a firm shipper scheduling priority over nominated and scheduled volumes for interruptible shippers. The Commission, however, deferred implementation of this requirement until GISB had developed, and the Commission had adopted, standards to implement the regulation.

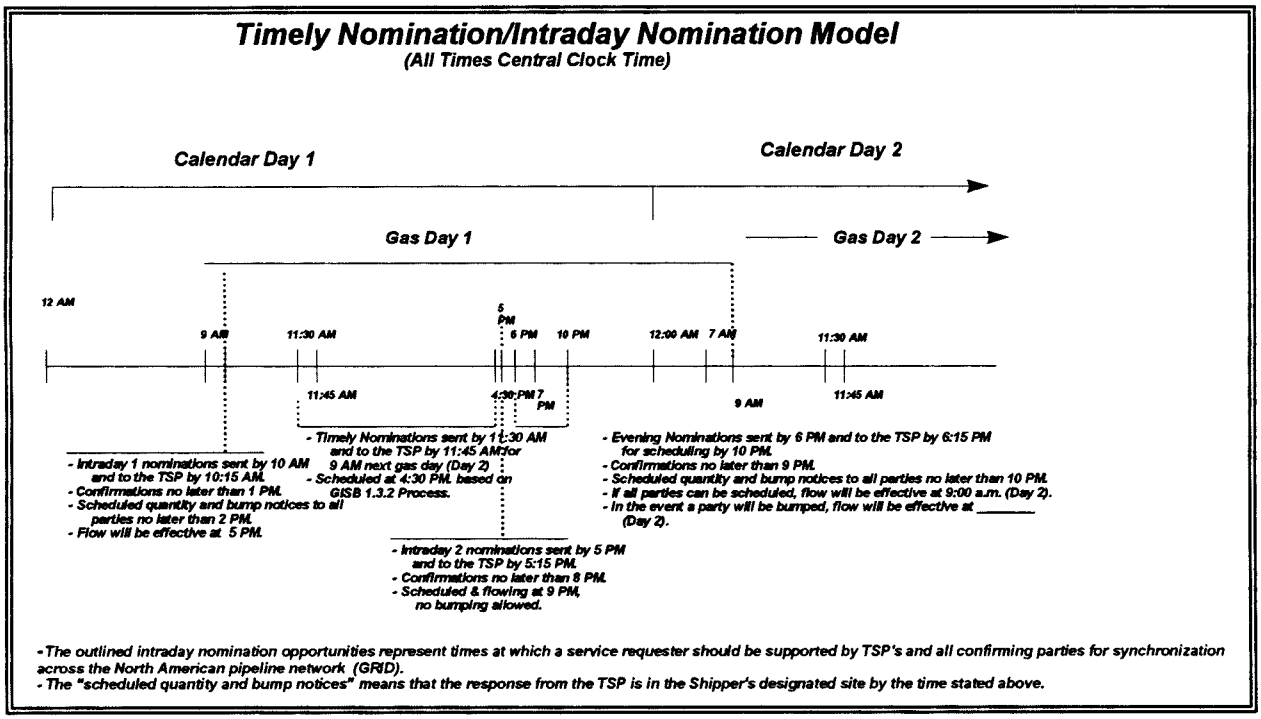
On March 23, 1998, GISB filed with the Commission intra-day nomination standards approved, on March 12, 1998,

[1] Standards For Business Practices of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations Preambles ¶ 31,038 (Jul. 17, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,046 (Jan. 30, 1997), Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,050 (Mar. 4, 1997).

[2] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.3.10.

[3] 18 CFR 284.10(b)(1)(i) (1997), Nominations Related Standards 1.2.4.

by a consensus vote of the gas industry.[4] These standards establish three synchronization times for shippers to coordinate their intra-day nominations: 6 p.m. to take effect the next gas day and 10 a.m. and 5 p.m. to take effect on the same gas day. Under the standards, the 10 a.m. intra-day nomination would become effective, if confirmed, at 5 p.m. the same day, with any bumping notice to interruptible shippers given by 2 p.m. The 5 p.m. intra-day nomination would become effective, if confirmed, at 9 p.m. the same day. No bumping is allowed at the 5 p.m. nomination. The 6 p.m. intra-day nomination would become effective, if confirmed, at 9 a.m. the next morning if all parties can be scheduled, but GISB did not establish the time at which a bumping intra-day nomination would become effective, leaving that determination for the Commission. Bumping notice for the 6 p.m. intra-day nomination would be given by 10 p.m.[5]



The standards also establish protocols for pipeline processing of nominations and confirmations for both regular and intra-day nominations.

As discussed above, the standards do not establish the time at which a firm intra-day nomination submitted on the day prior to gas flow (6 p.m.), which bumps interruptible service, would take effect. The standards leave that date to be determined by the Commission. The Commission already has resolved this issue in Order No. 587–G, adopting a regulation requiring that an intra-day nomination submitted on the day prior to gas flow will take effect at the start of the gas day, 9 a.m. central-clock-time (CCT).[6]

II. Discussion

The Commission is proposing to adopt GISB's consensus standards. Adoption of these standards would provide shippers with greater opportunities to change their nominated quantities to better accord with changes in weather or other market circumstances and would improve the efficiency of the intra-day nomination process. The adoption of the GISB standards would expand from one to three the number of intra-day opportunities to which shippers are entitled. By creating times at which shippers can synchronize their intra-day nominations, these standards, together with the Commission's regulations adopted in Order No. 587–G, also would create the uniform process shippers need to coordinate their intra-day nominations across the pipeline grid. The standards governing nomination and confirmation procedures further should help create a more reliable nomination process in which pipelines will receive accurate information, so they can schedule nominations and intra-day nominations that their systems can accommodate.

GISB approved the standards under its consensus procedures. This process first requires a super-majority vote of 17 out of 25 members with support from at least two members from each of the five industry segments—interstate pipelines, local distribution companies, gas producers, end-users, and services (including marketers and computer service providers). For final approval, 67% of GISB's general membership must ratify the standards.

As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the standards should reflect those business practices that have the widest possible

[4] The new standards are 1.1.17 through 1.1.19, 1.2.8 through 1.2.12, 1.3.39 through 1.3.44. In addition, modifications were made to existing standards. Standards 1.2.7, 1.3.10, and 1.3.12 were deleted. Standards 1.3.2, 1.3.20, 1.3.22, and 1.3.32 were revised.

[5] The term ''TSP'' in the chart stands for transportation service provider.

[6] 18 CFR 284.10(c)(1)(i)(B). Central clock time adjusts for daylight savings time.

[7] Pub. L. No. 104–113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

support. Indeed, in § 12(d) of the National Technology Transfer and Advancement Act (NTT&AA) of 1995, Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like GISB, as means to carry out policy objectives or activities.[7]

In Order No. 587–G, the Commission has deferred implementation of its regulations relating to intra-day nominations, § 284.10(c)(1)(i), until it adopts standards to implement the regulations. The Commission is contemplating a September 1, 1998, implementation date both for the standards proposed to be adopted here and the intra-day nomination regulations adopted in Order No. 587–G.

III. Information Collection Statement

The following collections of information would be affected by this proposed rule and have been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The burden estimate in Order No. 587–G includes the cost for pipelines to comply with the Commission's regulations concerning the scheduling priority of intra-day nominations. The following burden estimates include only the incremental costs of complying with GISB's new and revised standards intended to implement the Commission's regulations. The burden estimates are primarily related to start-up and will not be on-going costs.

Estimated Annual Burden: The estimated annual burden associated with this NOPR is shown below.

Data collection	Number of respondents	Number of responses per respondent	Estimated burden hours per response	Total annual hours
FERC–549C	93	1	45	4,185
FERC–545	93	1	47	4,371

The estimated number of reporting hours attributable to the revisions proposed herein are expected to total 8,556 hours annually.

Information Collection Costs: The Commission seeks comments on the estimated cost to comply with these requirements. It has projected average annualized costs for all 93 respondents to be the following:

	FERC–549C	FERC–545	Totals
Annualized Capital/Startup Costs	$220,580	$230,383	$450,963
Annualized Costs (Operations and Maintenance)	0	0	0
Total Annualized Costs	220,580	230,383	450,963

OMB regulations[8] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of the data collections affected by this proposed rule to OMB.

Title:
FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines
FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal)

Action: Proposed collections.

OMB Control No.: 1902–0174, 1902–0154.

Respondents: Business or other for profit (Interstate natural gas pipelines. (Not applicable to small business.))

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of the Information: This proposed rule, if implemented, would revise the requirements contained in 18 CFR 284.10 to further the process of standardizing business practices and electronic communications with interstate pipelines begun by the Commission in Order No. 587. Adoption of these regulations will provide shippers with increased options to change their scheduled gas quantities to reflect weather and other changed conditions and enable shippers to more efficiently transact business across multiple pipelines.

The information collection requirements of this proposed rule will be reported directly to the industry users. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act to monitor activities of the natural gas industry to ensure its competitiveness and to assure the improved efficiency of the industry's operations. The Commission's Office of Pipeline Regulation will use the data in rate proceedings to review rate and tariff changes by natural gas companies for the transportation of gas, for general industry oversight, and to supplement the documentation used during the Commission's audit process.

Internal Review: The Commission has reviewed these requirements and made a determination that the proposed revisions are necessary to establish a more efficient and integrated pipeline grid. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirement.

Interested persons may obtain information on the reporting requirement by contacting the following: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, Division of Information Services, Phone: (202) 208–1415, fax: (202) 273–0873, email:mmiller@ferc.fed.us].

Comments concerning the collection of information and the associated burden estimates, should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503 [Attention: Desk Officer for the Federal Energy

[8] 5 CFR 1320.11.

Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285].

IV. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[9] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[10] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[11] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[12] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The proposed regulations would impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to reduce the difficulty of dealing with pipelines by all customers, including small businesses. Accordingly, pursuant to § 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

VI. Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. An original and 14 copies of comments must be filed with the Commission no later than May 22, 1998. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and should refer to Docket No. RM96–1–008. All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington, DC 20426, during regular business hours.

Additionally, comments should be submitted electronically. Commenters are encouraged to file comments using Internet E-Mail. Comments should be submitted through the Internet by E-Mail to comment.rm@ferc.fed.us in the following format: on the subject line, specify Docket No. RM96–1–008; in the body of the E-Mail message, specify the name of the filing entity and the name, telephone number and E-Mail address of a contact person; and attach the comment in WordPerfect® 6.1 or lower format or in ASCII format as an attachment to the E-Mail message. The Commission will send a reply to the E-Mail to acknowledge receipt. Questions or comments on electronic filing using Internet E-Mail should be directed to Marvin Rosenberg at 202–208–1283, E-Mail address marvin.rosenberg@ferc.fed.us.

Commenters also can submit comments on computer diskette in WordPerfect® 6.1 or lower format or in ASCII format, with the name of the filer and Docket No. RM96–1–008 on the outside of the diskette.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements; Incorporation by reference.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 284, Chapter I, Title 18, *Code of Federal Regulations,* as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C 7101–7532; 43 U.S.C 1331–1356.

2. In section 284.10, paragraph (b)(1)(i) is revised to read as follows:

§ 284.10 Standards for pipeline business operations and communications.

* * * * *

(b) * * *

(1) * * *

(i) Nominations Related Standards (Version 1.2, July 31, 1997), with the addition of standards 1.1.17 through 1.1.19, 1.2.8 through 1.2.12, 1.3.39 through 1.3.44 (as approved March 12, 1998), the modification of standards 1.3.2, 1.3.20, 1.3.22 1.3.32 (as approved March 12, 1998), and the deletion of standards 1.2.7, 1.3.10, and 1.3.12;

* * * * *

[FR Doc. 98–10684 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–P

[9] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[10] 18 CFR 380.4.

[11] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[12] 5 U.S.C. 601–612.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–251698–96]

RIN 1545–AU77

S Corporation Subsidiaries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the treatment of corporate subsidiaries of S corporations. The proposed regulations interpret the rules added to the Internal Revenue Code by section 1308 of the Small Business Job Protection Act of 1996. The proposed regulations affect S corporations and their subsidiaries.

DATES: Written comments must be received by July 21, 1998.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–251698–96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–251698–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Deanna L. Walton, (202) 622–3050 (Subchapter S) or Lee A. Dean, (202) 622–7540 (Subchapter C); concerning submissions, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collections of information should be received by June 22, 1998. Comments are specifically requested concerning: Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the collections will have a practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in these proposed regulations are in §§ 1.1361–3(a)(1), 1.1361–3(b)(1), 1.1361–5(a)(2), and 1.1362–8. The collections of information are required to determine the manner in which a corporate subsidiary of an S corporation will be treated under the Internal Revenue Code.

These collections of information are required to obtain a benefit. The likely respondents and/or recordkeepers are small businesses or organizations, businesses or other for-profit institutions, and farms.

Estimated total annual reporting/recordkeeping burden: 10,110 hours.

Estimated average annual burden per respondent/recordkeeper: 57 minutes.

Estimated number of respondents/recordkeepers: 10,660.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) relating to S corporations and their subsidiaries under sections 1361 and 1362 of the Internal Revenue Code (Code). Section 1308 of the Small Business Job Protection Act of 1996, Public Law 104–188, 110 Stat. 1755 (the Act), modified section 1361 of the Code to permit an S corporation: (1) To own 80 percent or more of the stock of a C corporation, and (2) to elect to treat a wholly owned subsidiary as a qualified subchapter S subsidiary (QSSS). In Notice 97–4 (1997–2 I.R.B. 24), the IRS announced its intention to issue regulations under section 1308 of the Act and requested comments on certain issues. Section 1601 of the Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 788 (the 1997 Act), made a technical correction to section 1361 to provide regulatory authority regarding the consequences of an election to be a QSSS.

Explanation of Provisions

Overview

Prior law prohibited an S corporation from owning 80 percent or more of the stock of another corporation. The Act repealed section 1362(b)(2)(A) of the Internal Revenue Code (Code), thereby allowing an S corporation to own 80 percent or more of the stock of a C corporation. The Act also added section 1504(b)(8) to the Code to prevent an S corporation from joining in the filing of a consolidated return with its affiliated C corporations. A C corporation subsidiary of an S corporation, however, may file a consolidated return with its affiliated C corporations. See H.R. Conf. Rep. No. 737, 104th Cong., 2d Sess. 224 (1996).

New section 1361(b)(3)(B) defines the term qualified subchapter S subsidiary as any domestic corporation that is not an ineligible corporation if, (1) an S corporation holds 100 percent of the stock of the corporation, and (2) that S corporation elects to treat the subsidiary as a QSSS. Except as otherwise provided in regulations, a corporation for which a QSSS election is made is not treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of the QSSS are treated as assets, liabilities, and items of income, deduction, and credit of the parent S corporation. The legislative history accompanying section 1361(b)(3) indicates that, when the parent corporation makes the election, the subsidiary is deemed to have liquidated under sections 332 and 337 immediately before the election is effective. See S. Rep. No. 281, 104th Cong., 2d Sess. 53 (1996); H.R. Rep. No. 586, 104th Cong., 2d Sess. 89 (1996). However, the legislative history accompanying the technical correction made by the 1997 Act indicates that regulations may provide exceptions to that general rule. See S. Rep. No. 33, 105th Cong., 1st Sess. 320 (1997).

Section 1361(b)(3)(C) provides that any QSSS that ceases to meet the requirements of section 1361(b)(3)(B) will be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before the cessation from its S corporation parent in exchange for the subsidiary's stock. Section 1361(b)(3)(D) provides that a QSSS whose election has terminated (or a successor corporation) may not make an S election or have a QSSS election made with respect to it before its fifth taxable year that begins after the first taxable year for which the termination is effective, unless the Secretary consents to the election.

Under current and prior law, the S election of a corporation with subchapter C corporation earnings and profits terminated if that S corporation received passive investment income, including dividends, in excess of 25 percent of gross receipts for three consecutive years. Section 1362(d)(3)(E) modifies that general rule by excluding dividends from passive investment income to the extent that the dividends are attributable to the active conduct of a trade or business of a C corporation in which the S corporation has an 80 percent or greater ownership interest. Neither the Act nor the legislative history provides rules for determining the attribution of dividends to an active trade or business.

QSSS Formation

Under the proposed regulations, an S corporation makes a QSSS election with respect to an eligible subsidiary by filing a form to be developed by the IRS prior to the time these regulations become final. This proposes to change the temporary election procedure provided in Notice 97–4, which provides that a parent S corporation files a completed Form 966, Corporate Dissolution and

Liquidation (with some modifications), to make a QSSS election. Until these proposed regulations are finalized, taxpayers should continue to use the temporary election procedure in Notice 97–4 to make QSSS elections.

The proposed regulations also provide that the effective date of a QSSS election may be up to 2 months and 15 days prior to the day the QSSS election is made. This is a slight change from the 75 day retroactive period provided in Notice 97–4, but is consistent with the general time period for making S elections. Unlike the S election, however, a QSSS election does not need to be made within 2 months and 15 days of the beginning of a taxable year. A similar retroactive period is provided for revocations of QSSS status. In addition, a taxpayer may choose a prospective effective date for a QSSS election or revocation, so long as the date selected is not more than 12 months after the date the election or revocation is made.

The proposed regulations provide that, when an S corporation makes a valid QSSS election with respect to a subsidiary, the subsidiary is deemed to have liquidated into the parent. The tax treatment of this liquidation, alone or in the context of any larger transaction (for example, a transaction that also includes the acquisition of the subsidiary's stock), is generally determined under all relevant provisions of the Code and general principles of tax law, including the step transaction doctrine. However, a special transition rule applies to certain elections effective prior to the date that is 60 days after publication of final regulations in the **Federal Register**. The transition rule indicates the recognition of special concerns that may have arisen as a result of transactions entered into by taxpayers relying on the legislative history to the Act and without applying the step transaction doctrine to the acquisition of the subsidiary's stock followed by a QSSS election. The IRS requests comments concerning other transactions occurring during the transitional period for which relief from the effect of application of the step transaction doctrine may be warranted.

Special rules may apply when a QSSS election is made following the transfer of one S corporation's stock to another S corporation. For example, if an S corporation acquires the stock of another S corporation in a transaction in which the acquiring S corporation's basis in the stock received is determined by reference to the transferor's basis and makes a QSSS election with respect to the other corporation effective on the day of acquisition, any losses disallowed under section 1366(d) with respect to a former shareholder of the QSSS will be available to that shareholder as a shareholder of the acquiring S corporation. Furthermore, when stock in an S corporation is transferred to another S corporation and a QSSS election is made with respect to the subsidiary effective on the day of acquisition, the S election of the former corporation terminates at the same moment as the QSSS election becomes effective. This rule ensures that the former S corporation is not treated as a C corporation for any period solely because of the transfer.

Generally, the proposed regulations treat the liquidation as occurring at the close of the day before the QSSS election is effective. Under this rule, if a parent corporation makes an S election effective on the same date as a QSSS election with respect to a subsidiary, the deemed liquidation occurs at a time when the parent corporation is still a C corporation. A QSSS election satisfies the requirement of adopting a plan of liquidation under section 332.

Following the deemed liquidation, the QSSS is not treated as a separate corporation (except as otherwise provided in the regulations), and all assets, liabilities, and items of income, deduction, and credit are treated as those of the S corporation. Accordingly, all such items must be reported on the S corporation's return required to be filed under section 6037. A special rule applies for the calculation of these items where either an S corporation or its QSSS is a bank (as defined in section 581). This special rule was first announced in Notice 97–5 (1997–2 I.R.B. 25). Until these proposed regulations are finalized, taxpayers should continue to follow Notice 97–5.

QSSS Termination

The QSSS status of a corporation continues until it terminates. The regulations specify the date of termination for specific terminating events. Section 1361(b)(3)(D) provides that, if a QSSS election terminates, the corporation is treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) from the S corporation in exchange for stock of the new corporation immediately before the termination. The tax treatment of this transaction or of a larger transaction that includes this transaction will be determined under the Code and general principles of tax law, including the step transaction doctrine. Examples are provided to illustrate situations in which the formation of the new corporation will qualify as a nonrecognition transaction under section 351. The proposed regulations also provide that, under certain circumstances, relief may be available under the standards established under section 1362(f) for the inadvertent termination of an S election.

Section 1361(b)(3)(D) provides that a corporation whose QSSS election has terminated (or a successor corporation) may not make an S election or have a QSSS election made with respect to it for five taxable years following the termination without the consent of the Secretary. The proposed regulations provide that, without requesting the Secretary's consent, a corporation may make an election to be treated as an S corporation or may have a QSSS election made with respect to it before the expiration of the five-year period under certain circumstances. Consent is not required if an otherwise valid S election or QSSS election is made for the former QSSS (or its successor corporation) effective immediately following the disposition of its stock. Thus, the proposed regulations allow corporations to move freely between QSSS and S corporation status, provided there is no intervening period for which the corporation is treated as a C corporation.

C Corporation Subsidiaries

The proposed regulations also provide rules relating to certain C corporation subsidiaries held by S corporations. Under section 1362(d)(3)(E), dividends received by an S corporation from a C corporation in which the S corporation has an 80 percent or greater ownership interest are not treated as passive investment income for purposes of sections 1362 and 1375 to the extent the dividends are attributable to the earnings and profits of the C corporation derived from the active conduct of a trade or business. The proposed regulations provide guidance for attributing dividends to the active conduct of a trade or business. Special rules apply to dividends distributed by the common parent of a consolidated group.

Under the proposed regulations, earnings and profits of a C corporation derived from the active conduct of a trade or business are the earnings and profits of the corporation derived from activities that would not produce passive investment income under section 1362(d)(3) if the C corporation were an S corporation. The proposed regulations provide a safe harbor under which the corporation may determine the amount of the active earnings and profits by comparing the corporation's gross receipts derived from non-passive

investment income-producing activities with the corporation's total gross receipts in the year the earnings and profits are produced. If less than 10 percent of the C corporation's earnings and profits for a taxable year are derived from activities that would produce passive investment income, all earnings and profits produced by the corporation during the taxable year are considered active earnings and profits.

The proposed regulations also provide that a C corporation may treat all earnings and profits accumulated by the corporation prior to the time an S corporation held stock meeting the requirements of section 1504(a)(2) as active earnings and profits in the same proportion as the C corporation's active earnings and profits for the three taxable years ending prior to the time when the S corporation acquired 80 percent of the C corporation bear to the C corporation's total earnings and profits for those three taxable years. Provisions also address the allocation of distributions from current or accumulated earnings and profits.

Proposed Effective Date

The regulations are proposed to be effective on the date that final regulations are published in the **Federal Register**. However, the IRS is considering whether certain provisions should be made retroactive. The IRS requests comments concerning whether certain provisions should be made effective for taxable years beginning on or after January 1, 1997.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. It is hereby certified that the collections of information contained in these regulations will not have a significant economic impact on a substantial number of small businesses. This certification is based on the fact that the economic burden imposed on taxpayers by the collections of information and recordkeeping requirements of these regulations is insignificant. For example, the estimated average annual burden per respondent is less than one hour. Furthermore, most taxpayers will only have to respond to the requests for information contained in §§ 1.1361–3(b)(1) and 1.1361–5(a)(2) one time in the life of the corporation. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are timely submitted to the IRS. All comments will be available for public inspection and copying.

A public hearing will be scheduled in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The IRS recognizes that persons outside the Washington, DC, area also may wish to testify at the public hearing through teleconferencing. Requests to include teleconferencing sites must be received by June 22, 1998. If the IRS receives sufficient indications of interest to warrant teleconferencing to a particular city, and if the IRS has teleconferencing facilities available in that city on the date the public hearing is to be scheduled, the IRS will try to accommodate the requests.

The IRS will publish the time and date of the public hearing and the locations of any teleconferencing sites in an announcement in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Deanna L. Walton, Office of the Assistant Chief Counsel (Passthroughs and Special Industries); and Lee A. Dean, Office of the Assistant Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Amend § 1.1361–0 as follows:

1. Revise the introductory text.

2. Remove the entry for § 1.1361–1(d)(3).

3. Add entries for §§ 1.1361–2, 1.1361–3, 1.1361–4, .1361–5, and 1.1361–6.

The revisions and additions read as follows:

Section 1.1361–0 Table of Contents

This section lists captions contained in §§ 1.1361–1, 1.1361–2, 1.1361–3, 1.1361–4, 1.1361–5, and 1.1361–6.

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Section 1.1361–6 Effective Date

Par. 3. Amend § 1.1361–1 as follows:

1. Revise paragraph (b)(1)(i).

2. Remove paragraph (d)(1)(i).

3. Redesignate paragraphs (d)(1)(ii), (d)(1)(iii), (d)(1)(iv), and (d)(1)(v) as paragraphs (d)(1)(i), (d)(1)(ii), (d)(1)(iii), and (d)(1)(iv), respectively.

4. Revise newly designated paragraph (d)(1)(i).

5. Remove paragraph (d)(3).

6. Revise the first sentence of paragraph (e)(1).

The revisions read as follows:

§ 1.1361–1 S corporation defined.

* * * * *

(b) * * *

(1) * * *

(i) More than 75 shareholders (35 for taxable years beginning before January 1, 1997);

* * * * *

(d) * * *

(1) * * *

(i) For taxable years beginning on or after January 1, 1997, a financial institution that uses the reserve method of accounting for bad debts described in section 585 (for taxable years beginning prior to January 1, 1997, a financial institution to which section 585 applies (or would apply but for section 585(c)) or to which section 593 applies);

* * * * *

(e) * * *

(1) *General rule.* A corporation does not qualify as a small business corporation if it has more than 75 shareholders (35 for taxable years beginning prior to January 1, 1997).

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Par. 4. Add §§ 1.1361–2, 1.1361–3, 1.1361–4, 1.1361–5, and 1.1361–6 to read as follows:

§ 1.1361–2 Definitions relating to S corporation subsidiaries.

(a) *In general.* The term *qualified subchapter S subsidiary* (QSSS) means any domestic corporation that is not an ineligible corporation (as defined in section 1361(b)(2) and the regulations thereunder), if—

(1) 100 percent of the stock of such corporation is held by an S corporation; and

(2) The S corporation properly elects to treat the subsidiary as a QSSS under § 1.1361–3.

(b) *Stock treated as held by S corporation.* For purposes of satisfying the 100 percent stock ownership requirement in section 1361(b)(3)(B)(i) and paragraph (a)(1) of this section, stock of a corporation is treated as held by an S corporation if the S corporation is the owner of that stock for federal income tax purposes.

(c) *Examples.* The following examples illustrate the application of this section:

Example 1. X, an S corporation, owns 100 percent of *Y*, a corporation for which a valid QSSS election is in effect for the taxable year. *Y* owns 100 percent of *Z*, a corporation otherwise eligible for QSSS status. *X* may elect to treat *Z* as a QSSS under section 1361(b)(3)(B)(ii).

Example 2. Assume the same facts as in Example 1, except that *Y* is a business entity that is disregarded as an entity separate from its owner under § 301.7701–2(c)(2) of this chapter. *X* may elect to treat *Z* as a QSSS.

Example 3. Assume the same facts as in *Example 1*, except that *Y* owns 50 percent of *Z*, and *X* owns the other 50 percent. *X* may elect to treat *Z* as a QSSS.

Example 4. Assume the same facts as in *Example 1*, except that *Y* is a C corporation. Although *Y* is a domestic corporation that is otherwise eligible to be a QSSS, no QSSS election has been made for *Y*. Thus, *X* is not treated as holding the stock of *Z*. Consequently, *X* may not elect to treat *Z* as a QSSS.

§ 1.1361–3 QSSS election.

(a) *Time and manner of making election*—(1) *In general.* Except as provided in section 1361(b)(3)(D) and § 1.1361–5(d) (five-year prohibition on re-election), an S corporation may elect to treat an eligible subsidiary as a QSSS by filing a completed form to be prescribed by the Internal Revenue Service. The election form must be signed by a person authorized to sign the S corporation's return required to be filed under section 6037 and must be submitted to the service center where the subsidiary filed its most recent tax return (if applicable). If an S corporation forms a subsidiary and makes a valid QSSS election (effective upon the date of the subsidiary's formation) for the subsidiary, the election should be submitted to the service center where the S corporation filed its most recent return.

(2) *Time of making election.* A QSSS election may be made by the S corporation parent at any time during the taxable year.

(3) *Effective date of election.* A QSSS election will be effective on the date specified on the election form or on the date the election form is filed if no date is specified. The effective date specified on the form can not be more than 2 months and 15 days prior to the date of filing and can not be more than 12 months after the date of filing. For this purpose, the definition of the term ''month'' found in § 1.1362–6(a)(2)(ii)(C) applies. If an election form specifies an effective date more than 2 months and 15 days prior to the date on which the election form is filed, it will be effective 2 months and 15 days prior to the date it is filed. If an election form specifies an effective date more than 12 months after the date on which the election is filed, it will be effective 12 months after the date it is filed. The corporation for which the QSSS election is made must meet all the requirements of section 1361(b)(3)(B) at the time the election is made and for all periods for which the election is to be effective.

(4) *Example.* The following example illustrates the application of paragraph (a)(3) of this section:

Example. X has been a calendar year S corporation engaged in a trade or business for several years. *X* acquires the stock of *Y*, a calendar year C corporation, on April 1, 1998. On August 10, 1998, *X* makes an election to treat *Y* as a QSSS. Unless otherwise specified on the election form, the election will be effective as of August 10, 1998. If specified on the election form, the election may be effective on some other date that is not more than 2 months and 15 days prior to August 10, 1998, and not more than 12 months after August 10, 1998.

(5) *Extension of time for making a QSSS election.* An extension of time to make a QSSS election may be available under the procedures applicable under §§ 301.9100–1 and 301.9100–3 of this chapter.

(b) *Revocation of QSSS election*—(1) *Manner of revoking QSSS election.* An S corporation may revoke a QSSS election under section 1361 by filing a statement with the service center where the S corporation's most recent tax return was properly filed. The revocation statement must include the names, addresses, and taxpayer identification numbers of both the parent S corporation and the QSSS. The statement must be signed by a person authorized to sign the S corporation's return required to be filed under section 6037.

(2) *Effective date of revocation.* The revocation of a QSSS election is effective on the date specified on the revocation statement or on the date the revocation statement is filed if no date is specified. The effective date specified on the revocation statement can not be more than 2 months and 15 days prior to the date on which the revocation statement is filed and can not be more than 12 months after the date on which the revocation statement is filed. If a revocation statement specifies an effective date more than 2 months and 15 days prior to the date on which the statement is filed, it will be effective 2 months and 15 days prior to the date it is filed. If a revocation statement specifies an effective date more than 12 months after the date on which the statement is filed, it will be effective 12 months after the date it is filed.

(3) *Revocation after termination.* A revocation may not be made after the occurrence of an event that renders the subsidiary ineligible for QSSS status under section 1361(b)(3)(B).

§ 1.1361–4 Effect of QSSS election.

(a) *Separate existence ignored*—(1) *In general.* Except as otherwise provided in paragraph (a)(3) of this section, for federal tax purposes—

(i) A corporation which is a QSSS shall not be treated as a separate corporation; and

(ii) All assets, liabilities, and items of income, deduction, and credit of a QSSS shall be treated as assets, liabilities, and items of income, deduction, and credit of the S corporation.

(2) *Liquidation of subsidiary.* If an S corporation makes a valid QSSS election with respect to a subsidiary, the subsidiary is deemed to have liquidated into the S corporation. Except as provided in paragraph (a)(5) of this section, the tax treatment of the liquidation or of a larger transaction that includes the liquidation will be determined under the Internal Revenue Code and general principles of tax law, including the step transaction doctrine. Thus, for example, if an S corporation forms a subsidiary and makes a valid QSSS election (effective upon the date of the subsidiary's formation) for the subsidiary, there will be no deemed liquidation of the new subsidiary. Instead, the corporation will be deemed to be a QSSS from its inception. For purposes of section 332, the making of a QSSS election satisfies the requirement of adopting a plan of liquidation.

(3) *Treatment of banks*—(i) *In general.* If an S corporation is a bank, or if an S corporation makes a valid QSSS election for a subsidiary that is a bank, any special rules applicable to banks under the Internal Revenue Code continue to apply separately to the bank parent or bank subsidiary as if the deemed liquidation of any QSSS under paragraph (a)(2) of this section had not occurred. For any QSSS that is a bank, however, all assets, liabilities, and items of income, deduction, and credit of the QSSS, as determined in accordance with the special bank rules, are treated as assets, liabilities, and items of income, deduction, and credit of the S corporation. For purposes of this paragraph (a)(3)(i), the term ''bank'' has the same meaning as in section 581.

(ii) *Examples.* The following examples illustrate the application of this paragraph (a)(3):

Example 1. X, an S corporation, is a bank as defined in section 581. *X* owns 100 percent of *Y* and *Z*, corporations for which valid QSSS elections are in effect. *Y* is a bank as defined in section 581, and *Z* is not a financial institution. Pursuant to paragraph (a)(3)(i) of this section, any special rules applicable to banks under the Internal Revenue Code continue to apply separately to *X* and *Y* and do not apply to *Z*. Thus, for example, section 265(b), which provides special rules for interest expense deductions of banks, applies separately to *X* and *Y*. That is, *X* and *Y* each must make a separate determination under section 265(b) of interest expense allocable to tax-exempt interest, and no deduction is allowed for that interest expense.

Example 2. X, an S corporation, is a bank holding company and thus is not a bank as defined in section 581. *X* owns 100 percent of *Y*, a corporation for which a valid QSSS election is in effect. *Y* is a bank as defined in section 581. Pursuant to paragraph (a)(3)(i) of this section, any special rules applicable to banks under the Internal Revenue Code continue to apply to *Y* and do not apply to *X*. However, all of *Y*'s assets, liabilities, and items of income, deduction, and credit, as determined in accordance with the special bank rules, are treated as those of *X*. Thus, for example, section 582(c), which provides special rules for sales and exchanges of debt by banks, applies only to sales and exchanges by *Y*. However, any gain or loss on such a transaction by *Y* that is considered ordinary income or ordinary loss pursuant to section 582(c) is treated as ordinary income or ordinary loss of *X*.

(4) *Treatment of stock of QSSS.* Except for purposes of section 1361(b)(3)(B)(i) and § 1.1361–2(a)(1), the stock of a QSSS shall be disregarded for all federal tax purposes.

(5) *Transitional relief*—(i) *General rule.* If an S corporation and another corporation (the related corporation) are persons specified in section 267(b) prior to an acquisition by the S corporation of some or all of the stock of the related corporation followed by a QSSS election for the related corporation, the step transaction doctrine will not apply to determine the tax consequences of the acquisition. This paragraph (a)(5) shall apply to QSSS elections effective prior to the date that is 60 days after publication of final regulations in the **Federal Register**.

(ii) *Examples.* The following examples illustrate the application of this paragraph (a)(5):

Example 1. Individual *A* owns 100 percent of the stock of *X*, an S corporation. *X* owns 79 percent of the stock of *Y*, a solvent corporation, and *A* owns the remaining 21 percent. On May 4, 1998, *A* contributes its *Y* stock to *X* in exchange for *X* stock. *X* makes a QSSS election with respect to *Y* effective immediately following the transfer. The liquidation described in paragraph (a)(2) of this section is respected as an independent step separate from the stock acquisition, and the tax consequences of the liquidation are determined under sections 332 and 337. The contribution by *A* of the *Y* stock qualifies under section 351, and no gain or loss is recognized by *A*, *X*, or *Y*.

Example 2. Individual *A* owns 100 percent of the stock of two solvent S corporations, *X* and *Y*. On May 4, 1998, *A* contributes the stock of *Y* to *X*. *X* makes a QSSS election with respect to *Y* immediately following the transfer. The liquidation described in paragraph (a)(2) of this section is respected as an independent step separate from the stock acquisition, and the tax consequences of the liquidation are determined under sections 332 and 337. The contribution by *A* of the *Y* stock to *X* qualifies under section 351, and no gain or loss is recognized by *A*, *X*, or *Y*. *Y* is not treated as a C corporation for any period solely because of the transfer of its stock to *X*, an ineligible shareholder. See § 1.1362–2(b)(4).

(b) *Timing of the liquidation*—(1) *In general.* Except as otherwise provided in paragraphs (b)(2) or (b)(3) of this section, the liquidation described in paragraph (a)(2) of this section occurs at the close of the day before the QSSS election is effective. Thus, for example, if a C corporation elects to be treated as an S corporation and makes a QSSS election (effective the same date as the S election) with respect to a subsidiary, the liquidation occurs immediately before the S election becomes effective, while the S electing parent is still a C corporation.

(2) *Acquisitions.* If an S corporation does not own 100 percent of the stock of the subsidiary on the day before the QSSS election is effective, the liquidation described in paragraph (a)(2) of this section occurs immediately after the time at which the S corporation first owns 100 percent of the stock.

(3) *Coordination with section 338 election.* An S corporation that makes a qualified stock purchase of a target may make an election under section 338 with respect to the acquisition if it meets the requirements for the election, and may make a QSSS election with respect to the target. If an S corporation makes an election under section 338 with respect to a subsidiary acquired in a qualified stock purchase, a QSSS election made with respect to that subsidiary is not effective before the day after the acquisition date (within the meaning of section 338(h)(2)). If the QSSS election is effective on the day after the acquisition date, the liquidation under paragraph (a)(2) of this section occurs immediately after the deemed asset purchase by the new target corporation under section 338. If an S corporation makes an election under section 338 (without a section 338(h)(10) election) with respect to a target, the target must file a final or deemed sale return as a C corporation reflecting the deemed sale. See § 1.338–1(e).

(c) *Carryover of disallowed losses and deductions.* If an S corporation (S1) acquires the stock of another S corporation (S2) in a transaction in which the basis of the S2 stock is determined in whole or in part by reference to the transferor's basis, and S1 makes a QSSS election with respect to S2 effective on the day of the acquisition, any loss or deduction disallowed under section 1366(d) with respect to a former shareholder of S2 is

available to that shareholder as a shareholder of S1. Thus, a loss or deduction of a shareholder of S2 disallowed prior to or during the taxable year of the transaction is treated as incurred by S1 with respect to that shareholder if the shareholder is a shareholder of S1 after the transaction.

(d) *Examples.* The following examples illustrate the application of this section:

Example 1. X, an S corporation, owns 100 percent of the stock of *Y,* a C corporation. On June 2, 1998, *X* makes a valid QSSS election for *Y,* effective June 2, 1998. Assume that, under general principles of tax law, including the step transaction doctrine, *X*'s acquisition of the *Y* stock and the subsequent QSSS election would not be treated as related. The liquidation described in paragraph (a)(2) of this section occurs at the close of the day on June 1, 1998, the day before the QSSS election is effective, and the plan of liquidation is considered adopted on that date. *Y*'s taxable year and separate existence for federal tax purposes end at the close of June 1, 1998.

Example 2. X, a C corporation, owns 100 percent of the stock of *Y,* another C corporation. On December 31, 1998, *X* makes an election under section 1362 to be treated as an S corporation and a valid QSSS election for *Y,* both effective January 1, 1999. Assume that, under general principles of tax law, including the step transaction doctrine, *X*'s acquisition of the *Y* stock and the subsequent QSSS election would not be treated as related. The liquidation described in paragraph (a)(2) of this section occurs at the close of December 31, 1998, the day before the QSSS election is effective. The QSSS election for *Y* is effective on the same day that *X*'s S election is effective, and the deemed liquidation is treated as occurring before the S election is effective, when *X* is still a C corporation. *Y*'s taxable year ends at the close of December 31, 1998. See § 1.381(b)–1.

Example 3. On June 1, 1998, *X,* an S corporation, acquires 100 percent of the stock of *Y,* an existing S corporation, for cash in a transaction meeting the requirements of a qualified stock purchase (QSP) under section 338. *X* immediately makes a QSSS election for *Y* effective June 2, 1998, and also makes a joint election under section 338(h)(10) with the shareholder of *Y.* Under section 338(a) and § 1.338(h)(10)–1, *Y* is treated as having sold all of its assets at the close of the acquisition date, June 1, 1998. *Y* is treated as a new corporation which purchased all of those assets as of the beginning of June 2, 1998, the day after the acquisition date. Section 338(a)(2). The QSSS election is effective on June 2, 1998, and the liquidation under paragraph (a)(2) of this section occurs immediately after the deemed asset purchase by the new corporation.

Example 4. X, an S corporation, owns 100 percent of *Y,* a corporation for which a QSSS election is in effect. On May 12, 1998, a date on which the QSSS election is in effect, *X* issues *Y* a $10,000 note under state law that matures in ten years with a market rate of interest. *Y* is not treated as a separate corporation, and *X*'s issuance of the note to *Y* on May 12, 1998, is disregarded for federal tax purposes.

Example 5. X, an S corporation, owns 100 percent of the stock of *Y,* a C corporation. At a time when *Y* is indebted to *X* in an amount which exceeds the fair market value of *Y*'s assets, *X* makes a QSSS election effective on the date it is filed with respect to *Y.* The liquidation described in paragraph (a)(2) of this section does not qualify under sections 332 and 337 and, thus, *Y* recognizes gain or loss on the assets distributed, subject to the limitations of section 267.

§ 1.1361–5 Termination of QSSS election.

(a) *In general*—(1) *Effective date.* The termination of a QSSS election is effective—

(i) On the effective date contained in the revocation statement if a QSSS election is revoked under § 1.1361–3(b);

(ii) At the close of the last day of the parent's last taxable year as an S corporation if the parent's S election terminates under § 1.1362–2; or

(iii) At the close of the day on which an event (other than an event described in paragraph (a)(1)(ii) of this section) occurs that renders the subsidiary ineligible for QSSS status under section 1361(b)(3)(B).

(2) *Information to be provided upon termination of QSSS election by failure to qualify as a QSSS.* If a QSSS election terminates because an event renders the subsidiary ineligible for QSSS status, the S corporation must attach to its return for the taxable year in which the termination occurs a notification that a QSSS election has terminated, the date of the termination, and the names, addresses, and employer identification numbers of both the parent corporation and the QSSS.

(3) *Examples.* The following examples illustrate the application of this paragraph (a):

Example 1. Termination because parent's S election terminates. X, an S corporation, owns 100 percent of *Y.* A QSSS election is in effect with respect to *Y* for 1998. Effective on January 1, 1999, *X* revokes its S election. Because *X* is no longer an S corporation, *Y* no longer qualifies as a QSSS at the close of December 31, 1998.

Example 2. Termination due to transfer of QSSS stock. X, an S corporation, owns 100 percent of *Y.* A QSSS election is in effect with respect to *Y* for 1998. On December 10, 1998, *X* sells one share of *Y* stock to *A,* an individual. Because *X* no longer owns 100 percent of the stock of *Y, Y* no longer qualifies as a QSSS. Accordingly, the QSSS election made with respect to *Y* terminates at the close of December 10, 1998.

Example 3. No termination on stock transfer between QSSS and parent. X, an S corporation, owns 100 percent of the stock of *Y* and *Y* owns 100 percent of the stock of *Z.* QSSS elections are in effect with respect to both *Y* and *Z. Y* transfers all of its *Z* stock to *X.* Because *X* is treated as owning the stock of *Z* both before and after the transfer of stock solely for purposes of determining whether the requirements of section 1361(b)(3)(B)(i) and § 1.1361–2(a)(1) have been satisfied, the transfer of *Z* stock does not terminate *Z*'s QSSS election. Because the stock of *Z* is disregarded for all other federal tax purposes, no gain is recognized under section 311.

(b) *Effect of termination of QSSS election*—(1) *Formation of new corporation.* If a QSSS election terminates under paragraph (a) of this section, the former QSSS is treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before the termination from the S corporation parent in exchange for stock of the new corporation. The tax treatment of this transaction or of a larger transaction that includes this transaction will be determined under the Internal Revenue Code and general principles of tax law, including the step transaction doctrine.

(2) *Carryover of disallowed losses and deductions.* If a QSSS terminates because the S corporation distributes the QSSS stock to some or all of the S corporation's shareholders in a transaction to which section 368(a)(1)(D) applies by reason of section 355 (or so much of section 356 as relates to section 355), any loss or deduction disallowed under section 1366(d) with respect to a shareholder of the S corporation immediately before the distribution is allocated between the S corporation and the former QSSS with respect to the shareholder. The amount of the disallowed loss or deduction allocated to the S corporation is an amount that bears the same ratio to each item of disallowed loss or deduction as the value of the shareholder's stock in the S corporation bears to the total value of the shareholder's stock in both the S corporation and the former QSSS, in each case as determined immediately after the distribution.

(3) *Examples.* The following examples illustrate the application of this paragraph (b):

Example 1. X, an S corporation, owns 100 percent of the stock of *Y,* a corporation for which a QSSS election is in effect. *X* sells 21 percent of the *Y* stock to *Z,* an unrelated corporation, for cash, thereby terminating the QSSS election. *Y* is treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) in exchange for *Y* stock immediately before the termination from the S corporation. The deemed exchange by *X* of assets for *Y* stock does not qualify under section 351 because *X* is not in control of *Y* within the meaning of section 368(c) immediately after the transfer as a result of the sale of stock to *Z.* Therefore, *X* must recognize gain, if any, on the assets transferred to *Y* in exchange for its stock. *X*'s losses, if any, on the assets transferred are subject to the limitations of section 267.

Example 2. Assume the same facts as in *Example 1*, except that, instead of purchasing *Y* stock, *Z* contributes to *Y* an operating asset in exchange for 21 percent of the *Y* stock. *Y* is treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) in exchange for *Y* stock immediately before the termination. Because *X* and *Z* are co-transferors that control the transferee immediately after the transfer, the transaction qualifies under section 351.

Example 3. X, an S corporation, owns 100 percent of the stock of *Y*, a corporation for which a QSSS election is in effect. *X* distributes all of the *Y* stock pro rata to its shareholders, and the distribution terminates the QSSS election. The transaction can qualify as a distribution to which sections 368(a)(1)(D) and 355 apply if the transaction otherwise satisfies the requirements of those sections.

Example 4. X, an S corporation, owns 100 percent of the stock of *Y*, a corporation for which a QSSS election is in effect. *X* subsequently revokes the QSSS election. *Y* is treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before the revocation from its S corporation parent in a deemed exchange for *Y* stock. On a subsequent date, *X* sells 21 percent of the stock of *Y* to *Z*, an unrelated corporation, for cash. Assume that under general principles of tax law including the step transaction doctrine, the sale is not taken into account in determining whether *X* is in control of *Y* immediately after the deemed exchange of assets for stock. The deemed exchange by *X* of assets for *Y* stock and the deemed assumption by *Y* of its liabilities qualify under section 351 because, for purposes of that section, *X* is in control of *Y* within the meaning of section 368(c) immediately after the transfer.

(c) *Inadvertent terminations.* Relief from the consequences of an inadvertent termination of a QSSS election may be available under the standards established by the Commissioner for the inadvertent termination of an S election under § 1.1362–4.

(d) *Election after QSSS termination*—(1) *In general.* Absent the Commissioner's consent, and except as provided in paragraph (d)(2) of this section, a corporation whose QSSS election has terminated under paragraph (a) of this section (or a successor corporation as defined in § 1.1362–5(b)) may not make an S election under section 1362 or have a QSSS election under section 1361(b)(3)(B)(ii) made with respect to it for five taxable years (as described in section 1361(b)(3)(D)). The Commissioner may permit an S election by the corporation or a new QSSS election with respect to the corporation before the 5-year period expires. The corporation requesting consent to make the election has the burden of establishing that, under the relevant facts and circumstances, the Commissioner should consent to a new election.

(2) *Exception.* If a corporation's QSSS election terminates by reason of a disposition of the corporation's stock, the corporation may, without requesting the Commissioner's consent, make an S election or have a QSSS election made with respect to it before the expiration of the five-year period described in section 1361(b)(3)(D) and paragraph (d)(1) of this section, provided that—

(i) Immediately following the disposition of its stock, the corporation (or its successor corporation) is otherwise eligible to make an S election or have a QSSS election made for it; and

(ii) The relevant election is made effective immediately following the disposition of the stock of the corporation.

(3) *Examples.* The following examples illustrate the application of this paragraph (d):

Example 1. Termination upon distribution of QSSS stock to shareholders of parent. X, an S corporation, owns *Y*, a QSSS. *X* distributes all of its *Y* stock to *X*'s shareholders. The distribution terminates the QSSS election because *Y* no longer satisfies the requirements of a QSSS. Assuming *Y* is otherwise eligible to be treated as an S corporation, *Y*'s shareholders may elect to treat *Y* as an S corporation effective on the date of the stock distribution without requesting the Commissioner's consent.

Example 2. Sale of 100 percent of QSSS stock. X, an S corporation, owns *Y*, a QSSS. *X* sells 100 percent of the stock of *Y* to *Z*, an unrelated S corporation. *Z* may elect to treat *Y* as a QSSS effective on the date of purchase without requesting the Commissioner's consent.

§ 1.1361–6 Effective date.

Except as provided in § 1.1361–4(a)(5)(i), the provisions of §§ 1.1361–2 through 1.1361–5 apply to taxable years beginning on or after the date that final regulations are published in the **Federal Register**.

Par. 5. Amend § 1.1362–0 as follows:

1. Add an entry for § 1.1362–2(b)(4).
2. Add entries for § 1.1362–8.

The additions read as follows:

§ 1.1362–0 Table of contents.

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Section 1.1362–2 Termination of Election

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(b) * * *

(4) Termination when stock transferred to another S corporation.

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Section 1.1362–8 Dividends Received From Affiliated Subsidiaries

(a) In general.

(b) Determination of active or passive earnings and profits.

(1) In general.

(2) Lower tier subsidiaries.

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(4) Special rules for earnings and profits accumulated by a C corporation prior to 80 percent acquisition.

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(c) Allocating distributions to active or passive earnings and profits.

(1) Distributions from current earnings and profits.

(2) Distributions from accumulated earnings and profits.

(3) Adjustments to active earnings and profits.

(4) Special rules for consolidated groups.

(d) Examples.

(e) Effective date.

Par. 6. Amend § 1.1362–2 as follows:

1. Amend paragraph (b)(1) by adding a sentence to the end of the paragraph.
2. Add paragraph (b)(4).
3. Amend paragraph (c)(5)(ii)(C) by adding a sentence to the end of the paragraph.

The additions read as follows:

§ 1.1362–2 Termination of election.

* * * * *

(b) * * *

(1) * * * See paragraph (b)(4) of this section for a special rule applying to the termination of an S election caused by the transfer of the corporation's stock to another S corporation.

* * * * *

(4) *Termination when stock transferred to another S corporation.* If all of the stock of an S corporation (S1) is transferred to another S corporation (S2) and a QSSS election for S1 is made effective as of the day of the transfer, S1's S election terminates at the same time as the deemed liquidation under § 1.1361–4(a)(2). Accordingly, S1 is not treated as a C corporation for any period solely because of the transfer of S1 stock to S2, an ineligible S corporation shareholder. See, however, § 1.338–1(e)(3) if an election under section 338 (without an election under section 338(h)(10)) is made. This paragraph (b)(4) is effective on the date final regulations are published in the **Federal Register**.

(c) * * *

(5) * * *

(ii) * * *

(C) * * * See § 1.1362–8 for special rules regarding the treatment of dividends received by an S corporation from a C corporation in which the S corporation holds stock meeting the requirements of section 1504(a)(2).

* * * * *

Par. 7. Add § 1.1362–8 to read as follows:

§ 1.1362–8 Dividends received from affiliated subsidiaries.

(a) *In general.* For purposes of section 1362(d)(3), if an S corporation holds stock in a C corporation meeting the

requirements of section 1504(a)(2), the term ''passive investment income'' does not include dividends from the C corporation to the extent those dividends are attributable to the earnings and profits of the C corporation derived from the active conduct of a trade or business (''active earnings and profits''). For purposes of applying section 1362(d)(3), earnings and profits of a C corporation are active earnings and profits to the extent that the earnings and profits are derived from activities that would not produce passive investment income (as defined in section 1362(d)(3)) if the C corporation were an S corporation.

(b) *Determination of active or passive earnings and profits*—(1) *In general.* An S corporation may use any reasonable method to determine the amount of dividends that are not treated as passive investment income under section 1362(d)(3)(E). Paragraph (b)(5) of this section describes a method of determining the amount of dividends that are not treated as passive investment income under section 1362(d)(3)(E) that is deemed to be reasonable under all circumstances.

(2) *Lower tier subsidiaries.* If a C corporation subsidiary (upper tier corporation) holds stock in another C corporation (lower tier subsidiary) meeting the requirements of section 1504(a)(2), the upper tier corporation's gross receipts attributable to a dividend from the lower tier subsidiary are considered to be derived from the active conduct of a trade or business to the extent the lower tier subsidiary's earnings and profits are attributable to the active conduct of a trade or business by the subsidiary under paragraph (b)(1), (b)(3), (b)(4), or (b)(5) of this section. For purposes of this section, distributions by the lower tier subsidiary will be considered attributable to active earnings and profits according to the rule in paragraph (c) of this section. This paragraph (b)(2) does not apply to any member of a consolidated group (as defined in § 1.1502–1(h)).

(3) *De minimis exception.* If less than 10 percent of a C corporation's earnings and profits for a taxable year are derived from activities that would produce passive investment income if the C corporation were an S corporation, all earnings and profits produced by the corporation during that taxable year are considered active earnings and profits.

(4) *Special rules for earnings and profits accumulated by a C corporation prior to 80 percent acquisition.* A C corporation may treat all earnings and profits accumulated by the corporation in all taxable years ending before the S corporation held stock meeting the requirements of section 1504(a)(2) as active earnings and profits in the same proportion as the C corporation's active earnings and profits for the three taxable years ending prior to the time when the S corporation acquired 80 percent of the C corporation bears to the C corporation's total earnings and profits for those three taxable years.

(5) *Gross receipts safe harbor.* A corporation may treat its earnings and profits for a year as active earnings and profits in the same proportion as the corporation's gross receipts (as defined in § 1.1362–2(c)(4)) derived from activities that would not produce passive investment income (if the C corporation were an S corporation), including those that do not produce passive investment income under paragraphs (b)(2) through (b)(4) of this section, bear to the corporation's total gross receipts for the year in which the earnings and profits are produced.

(c) *Allocating distributions to active or passive earnings and profits*—(1) *Distributions from current earnings and profits.* Dividends distributed by a C corporation from current earnings and profits are attributable to active earnings and profits in the same proportion as current active earnings and profits bear to total current earnings and profits of the C corporation.

(2) *Distributions from accumulated earnings and profits.* Dividends distributed by a C corporation out of accumulated earnings and profits for a taxable year are attributable to active earnings and profits in the same proportion as accumulated active earnings and profits for that taxable year bear to total accumulated earnings and profits for that taxable year immediately prior to the distribution.

(3) *Adjustments to active earnings and profits.* For purposes of applying paragraph (c)(1) or (c)(2) of this section to a distribution, the active earnings and profits of a corporation shall be reduced by the amount of any prior distribution properly treated as attributable to active earnings and profits from the same taxable year.

(4) *Special rules for consolidated groups.* For purposes of applying section 1362(d)(3) and this section to dividends received by an S corporation from the common parent of a consolidated group (as defined in § 1.1502–1(h)), the following rules apply—

(i) The current earnings and profits, accumulated earnings and profits, and active earnings and profits of the common parent shall be determined under the principles of § 1.1502–33 (relating to earnings and profits of any member of a consolidated group owning stock of another member); and

(ii) The gross receipts of the common parent shall be the sum of the gross receipts of each member of the consolidated group (including the common parent), adjusted to eliminate gross receipts from intercompany transactions (as defined in § 1.1502–13(b)(1)(i)).

(d) *Examples.* The following examples illustrate the principles of this section:

Example 1. (i) *X*, an S corporation, owns 85 percent of the one class of stock of *Y*. On December 31, 1998, *Y* declares a dividend of $100 ($85 to *X*), which is equal to *Y*'s current earnings and profits. In 1998, *Y* has total gross receipts of $1,000, $200 of which would be passive investment income if *Y* were an *S* corporation.

(ii) One-fifth ($200/$1,000) of *Y*'s gross receipts for 1998 is attributable to activities that would produce passive investment income. Accordingly, one-fifth of the $100 of earnings and profits is passive, and $17 (⅕ of $85) of the dividend from *Y* to *X* is passive investment income.

Example 2. (i) The facts are the same as in *Example 1*, except that *Y* owns 90 percent of the stock of *Z*. *Y* and *Z* do not join in the filing of a consolidated return. In 1998, *Z* has gross receipts of $15,000, $12,000 of which are derived from activities that would produce passive investment income. On December 31, 1998, *Z* declares a dividend of $1,000 ($900 to *Y*) from current earnings and profits.

(ii) Four-fifths ($12,000/15,000) of the dividend from *Z* to *Y* are attributable to passive earnings and profits. Accordingly, $720 (⅘ of $900) of the dividend from *Z* to *Y* is considered gross receipts from an activity that would produce passive investment income. The $900 dividend to *Y* gives *Y* a total of $1,900 ($1,000 + $900) in gross receipts, $920 ($200 + $720) of which is attributable to passive investment income-producing activities. Under these facts, $41 ($920/1,900 of $85) of *Y*'s distribution to *X* is passive investment income to *X*.

(e) *Effective date.* This section applies to dividends received in taxable years beginning on or after the date that final regulations are published in the **Federal Register**.

§ 1.1368–0 [Amended]

Par. 8. Amend § 1.1368–0 in the entry for § 1.1368–2(d)(2) by revising ''Reorganizations'' to read ''Liquidations and reorganizations''.

§ 1.1368–2 [Amended]

Par. 9. Amend § 1.1368–2 in paragraph (d)(2) by revising ''Reorganizations'' to read ''Liquidations and reorganizations'' in the heading and by revising ''section 381(a)(2)'' to read ''section 381(a)'' in the first sentence.

Par. 10. Amend § 1.1374–8 by adding two sentences to the end of paragraph (b) to read as follows:

§ 1.1374–8 Section 1374(d)(8) transactions.

* * * * *

(b) *Separate determination of tax.* * * * If a C corporation elects to be treated as an S corporation, and also makes a QSSS election under section 1361(b)(3) (effective on the same date as the S election) with respect to a subsidiary, the assets held by the QSSS at the time of the QSSS election will be treated as assets held by the parent when it became an S corporation. The preceding sentence applies to QSSS elections made after the date final regulations are published in the **Federal Register**.

* * * * *

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–10373 Filed 4–21–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2550

Insurance Company General Accounts; Notice of Hearing

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Proposed regulation; notice of hearing.

SUMMARY: This document provides notice of a public hearing regarding a proposed regulation under section 401(c) of the Employee Retirement Income Security Act of 1974 as amended (ERISA) which clarifies the application of ERISA to insurance company general accounts. The proposed regulation was set forth in a notice of proposed rulemaking published in the **Federal Register** at 62 FR 66908 on December 22, 1997.

DATES: The hearing will be held on Monday, June 1, 1998, and Tuesday, June 2, 1998, beginning at 9:30 a.m. and ending at 5:00 p.m. E.S.T. on each day.

ADDRESSES: The hearing will be held in Room C–5310 of the Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Wendy McColough, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5649, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 219–8194. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On December 22, 1997, the Department of Labor (the Department) published a notice of proposed rulemaking in the **Federal Register** (62 FR 66908) which clarifies the application of ERISA to insurance company general accounts. In that notice, the Department invited all interested persons to submit written comments concerning the proposed regulation on or before March 23, 1998.

In view of the importance of the proposed regulation, the Department has decided to hold a hearing on the proposed regulation on Monday, June 1, 1998, and Tuesday, June 2, 1998, beginning at 9:30 a.m. and ending at 5:00 p.m. E.S.T. on each day, in Room C–5310 of the Department of Labor Building, 200 Constitution Avenue, N.W., Washington D.C. 20210.

Any interested person who wishes to be assured of an opportunity to present oral comments at the hearing should submit by 3:30 p.m. E.S.T. May 15, 1998: (1) a written request to be heard and (2) an outline (preferably five copies) of the topics to be discussed, indicating the time allocated to each topic. The request to be heard and accompanying outline should be sent to the Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5649, 200 Constitution Avenue, N.W., Washington, D.C. 20210, and marked ''Attention: Insurance Company General Accounts Hearing.'' Individuals who did not file written comments regarding the proposed regulation may nonetheless submit a request to make oral comments at the hearing.

The Department will prepare an agenda indicating the order of presentation of oral comments. In the absence of special circumstances, each commentator will be allotted fifteen minutes in which to complete his or her presentation and answer questions that may be posed by a panel of Pension and Welfare Benefits Administration employees and by the Department's consultant on this proposed regulation, Dr. Dan McGill. Information about the agenda may be obtained on or after May 21, 1998 by telephoning Wendy McColough, Washington, D.C. (202) 219–8194 (not a toll free number). Individuals not listed in the agenda will be allowed to make oral comments at the hearing to the extent time permits. Those individuals who make oral comments at the hearing should be prepared to answer questions regarding their comments. The hearing will be transcribed.

Individuals with disabilities, who need special accommodations, should notify Wendy McColough on or before May 21, 1998.

Notice of Public Hearing

Notice is hereby given that a public hearing will be held on Monday, June 1, 1998, and Tuesday, June 2, 1998, regarding a proposed regulation which clarifies the application of ERISA to insurance company general accounts. The hearing will be held beginning at 9:30 a.m. E.S.T. on each day, in Room C–5310 of the Department of Labor Building, 200 Constitution Avenue, N.W., Washington D.C. 20210.

Signed at Washington, D.C., this 16th day of April, 1998.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–10635 Filed 4–21–98; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Self-Rescue Devices; Use and Location Requirements

AGENCY: Mine Safety and Health Administration, (MSHA) Labor.

ACTION: Extension of comment period.

SUMMARY: Due to requests from the mining community, MSHA is extending the comment period on its draft policy letter (PPL) relating to the approval guidelines for storage plans for Self-Contained Self-Rescue (SCSR) Devices in underground coal mines.

DATES: Submit all comments on or before May 29, 1998.

ADDRESSES: Comments may be transmitted by electronic mail, fax or mail. Comments by electronic mail must be clearly identified as such and sent to this e-mail address: comments@msha.gov. Comments by fax must be clearly identified as such and sent to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, 703–235–5551. Send mail comments to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203–1984. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any questions about format.

FOR FURTHER INFORMATION CONTACT: Milton D. Conley, Division of Health, Coal Mine Safety and Health, (703) 235–1358.

SUPPLEMENTARY INFORMATION: On September 26, 1997, (62 FR 50541), MSHA published a notice in the **Federal Register** requesting comments on a draft policy letter (PPL) relating to the approval guidelines for storage plans for Self-Contained Self-Rescue (SCSR) Devices in underground coal mines. MSHA published the notice to voluntarily afford an opportunity for interested persons to comment on the PPL before its anticipated issuance and effective date.

The comment period was scheduled to close on February 23, 1998; but was extended until April 13, 1998 (63 FR 6886). In response to requests from the mining community for additional time to prepare their comments, MSHA is extending the comment period until May 29, 1998.

The Agency believes that this extension will provide sufficient time for all interested parties to review and comment on the draft policy. All interested parties are encouraged to submit their comments on or prior to May 29, 1998.

Dated: April 16, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 98–10689 Filed 4–21–98; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[SPATS No. MO–034—FOR]

Missouri Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Missouri Abandoned Mine Land Reclamation Plan (hereinafter referred to as the ''Missouri plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, as amended. The proposed amendment pertains to a formal request by the Missouri Department of Natural Resources, Land Reclamation Commission, Land Reclamation Program (LRP) to assume responsibility of the abandoned mine land reclamation (AMLR) emergency program in Missouri. The proposed amendment is intended to provide information to verify that Missouri has the authority under its existing plan to conduct the AMLR emergency program on behalf of OSM.

This notice sets forth the times and locations that the Missouri plan and the proposed amendment to that plan will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., c.d.t., May 22, 1998. If requested, a public hearing on the proposed amendment will be held on May 18, 1998. Requests to speak at the hearing must be received by 4:00 p.m., c.d.t., May 7, 1998.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Russell W. Frum, Mid-Continent Regional Coordinating Center, at the address listed below.

Copies of the Missouri plan, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Mid-Continent Regional Coordinating Center.

Russell W. Frum, Mid-Continent Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463–6460.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, Missouri 65102, Telephone: (573) 751–4041.

FOR FURTHER INFORMATION CONTACT: Russell W. Frum, Mid-Continent Regional Coordinating Center, Telephone: (618) 463–6460.

I. Background on the Missouri Plan

On January 29, 1982, the Secretary of the Interior approved the Missouri plan. Background information on the Missouri plan, including the Secretary's findings, the disposition of comments, and the approval of the plan can be found in the January 29, 1982, **Federal Register** (47 FR 4253). Subsequent actions concerning the Missouri plan and amendments to the plan can be found at 30 CFR 925.25.

II. Description of the Proposed Amendment

Section 410 of SMCRA authorizes the Secretary to use funds under the AMLR program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. On September 29, 1982 (47 FR 42729), OSM invited States to amend their AMLR plans for the purpose of undertaking emergency reclamation programs on behalf of OSM. States would have to demonstrate that they have the statutory authority to undertake emergencies, the technical capability to design and supervise the emergency work, and the administrative mechanisms to quickly respond to emergencies either directly or through contractors.

By letter dated March 31, 1998, (Administrative Record No. AML–MO–103), Missouri submitted a proposed amendment to its plan pursuant to SMCRA. Missouri submitted the proposed amendment at its own initiative. This amendment is intended to demonstrate Missouri's capability to effectively undertake the AMLR emergency program on behalf of OSM. The proposed amendment would allow Missouri to assume the administration of the AMLR emergency program in Missouri on behalf of OSM. In its formal submittal, Missouri stated that a review of the Missouri plan indicates that the authority already exists for the LRP to assume responsibility for the AML emergency program. Missouri noted that the designation by the governor and legal opinion of the state attorney general that is included in its plan are applicable to all AML activities, including the emergency program, and that all other existing policies and procedures in its plan are adequate to cover the emergency program, with two minor exceptions. These exceptions are being addressed in Missouri's proposed amendment.

A. The following information, taken from the approved Missouri plan, is included by reference in Missouri's formal submission to OSM to verify that the authority already exists for the LRP to assume AMLR emergency program responsibilities:

1. A letter from the Governor that designates the Missouri Department of Natural Resources, Land Reclamation Commission as the agency responsible for the Abandoned Mine Land Reclamation Program in Missouri.

2. A legal opinion from the Attorney General that the Missouri Department of Natural Resources, Land Reclamation Commission has the power to

administer the Abandoned Mine Land Reclamation Program in Missouri.

3. A copy of the Missouri Land Reclamation Act (Revised Statutes of Missouri (RSMo) sections 444.810, .825, .915, .920, .930, and .940). RSMo section 444.915(5) authorizes the LRP to spend monies from the State Abandoned Mine Reclamation Fund for restoration, reclamation, abatement, control or prevention of adverse effects of coal mining practices which constitutes an emergency.

4. A copy of the Missouri Abandoned Mine Land Reclamation Program regulations (Code of State Regulations, 10 CSR 40–9.010, .020, .030, .040, .050, and .060). Missouri's regulations at 10 CSR 40–9.030(4) provides the right to enter upon any land where an amergency exists and on any other land to have access to the land where the emergency exists to restore, reclaim, abate, control or prevent the adverse effects of coal mining practices and to do all things necessary or expedited to protect the public health, safety or general welfare. Procedures are provided for this entry.

B. Missouri submitted the following statement to demonstrate the LRP's technical capability to design and supervise the emergency work:

> Over the past four years, Missouri has successfully completed several high priority shaft closure and four subsidence reclamation projects. Although these were non-emergency projects, they were completed in a timely manner and the scope of work was similar to Missouri's past AML emergency projects. With six Land Reclamation Specialists and a registered professional engineer on the AML Section staff, the LRP has the technical capability to respond rapidly to AML emergency situations. Project designs and contract documents can be prepared in-house, avoiding the usual time delays associated with procuring and coordinating consulting engineering services agreements. The AML Section can also provide in-house resident inspection services, since emergency reclamation projects are typically of short duration.

C. Missouri proposes to update the following policy and procedure sections of its plan to reflect that Missouri has the administrative mechanisms to quickly respond to emergencies either directly or through contractors:

1. Section 884.13(c)(6), Rights of Entry

Missouri proposed to remove the following language from this section to reflect that it will now administer the emergency program:

> Under most circumstances, emergency entries will be made upon request from the Office of Surface Mining. This agency will perform as its agent provided that the Land Reclamation Commission is agreeable to such entry and has determined that an emergency does exist.

2. Section 884.13(d)(3), Purchasing and Procurement

Missouri proposed to revise this section to show the current procurement thresholds for services, supplies and products contracts. The procurement threshold requiring the use of formal sealed bids is being raised from $10,000 to $25,000. The procurement threshold requiring compliance with State small purchase procedures is being raised from $10,000 to $25,000. The negotiated procurement threshold is being lowered from $10,000 to $3,000. Procurements in excess of $25,000 are to be recorded with the specified justification information. Missouri's existing policy requires special justification if procurements are in excess of $10,000.

D. After assuming the emergency program, Missouri would conduct investigations of potential emergency sites, and following OSM concurrence that emergency situations exist, perform remedial reclamation. Missouri stated in its proposal that it would follow procedures that are in compliance with Chapter 4–30, ''Characteristics of Grantee-Administered Emergency Reclamation Activities'' of the Federal Assistance Manual in administering the AMLR emergency program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 884.14. If the amendment is deemed adequate, it will become part of the Missouri plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Mid-Continent Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t. on May 7, 1998. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based

on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State or Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 925

Abandoned mine land reclamation, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 14, 1998.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–10580 Filed 4–21–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 042–1042(b); FRL–5979–5]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve revisions pertaining to the consolidation of Missouri local agency ordinances and codes currently contained in the Federally approved State Implementation Plan (SIP). These revisions were submitted to the EPA on March 20, 1997, to simply compliance for certain sources in order to maintain air quality in Missouri.

In the final rules section of the **Federal Register**, the EPA is approving the plan as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing on or before May 22, 1998.

ADDRESSES: Comments may be mailed to Joshua A. Tapp, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Joshua A. Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the final rules section of the **Federal Register**.

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

Dated: February 25, 1998.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 98–10509 Filed 4–21–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VT–006–01–1219b; A–1–FRL–5997–9]

Approval and Promulgation of Air Quality Implementation Plans; Vermont; VOC Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Vermont on February 4, 1993, August 9, 1993, and August 10, 1994. These SIP revisions establish requirements for certain categories of sources which emit volatile organic compounds. In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views these revisions as noncontroversial amendments and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this document, no further activity is contemplated in relation to this proposed rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before May 22, 1998.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, VT 05676.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: For additional information, see the direct

final rule which is located in the Rules Section of this **Federal Register**.

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

Dated: April 1, 1998.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 98–10714 Filed 4–21–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180 and 186

[OPP–300602A; FRL–5784–2]

RIN 2070–AC18

Proposed Revocation of Tolerances for Canceled Food Uses; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of comment period.

SUMMARY: EPA is reopening the comment period for the proposed rule entitled ''Revocation of Tolerances for Canceled Food Uses'' that was published in the **Federal Register** of February 5, 1998. One commenter, the European Union, requested additional time to make an analysis. In response, the Agency is reopening the comment period until May 5, 1998. The original comment period closed April 6, 1998.

DATES: Written comments must be received on or before May 5, 1998.

ADDRESSES: By mail, submit written comments, identified by docket control number ''OPP–300602A'' 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, deliver 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 Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 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: Joseph Nevola, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Crystal Station #1, 3rd floor, 2800 Crystal Drive, Arlington, VA, (703), Telephone: 308–8037, e-mail: nevola.joseph@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 5, 1998 (63 FR 5907) (FRL–5743–9), EPA issued a proposed rule to revoke tolerances for canceled food uses. The original due date for comments to the proposed rule was April 6, 1998. EPA is extending the comment period until May 5, 1998 because EPA received a request for an extension due to the need to collect specific information that may be responsive to the proposal.

II. Public Record and Electronic Submissions

The official record for the rulemaking, as well as the public version, has been established for the rulemaking under docket control number ''OPP–300602A'' (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 rulemaking record is located at the Virginia 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 ''OPP–300602A.'' Electronic comments on this document may be filed online at many Federal Depository Libraries.

List of Subjects

40 CFR Part 180

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

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: April 9, 1998.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 98–10711 Filed 4–21–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[FRL–6001–7]

Notice of Public Hearing on Proposed Rule XL Projects at OSi Specialties, Inc., Sistersville, WV

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing.

SUMMARY: The EPA is announcing a public hearing that will take place on Tuesday, April 28, 1998, at 6:30 p.m. in Sistersville, West Virginia. On March 6, 1998, EPA published a proposed rule that would implement an XL project at the Sistersville, West Virginia facility of OSi Specialties Inc. (63 FR 11200–11202). Also, on March 6, 1998, EPA published a companion direct final rule at 63 FR 11124–11147. Since EPA has received an adverse comment on the direct final rule which included a request for a public hearing, EPA is today removing the direct final rule and scheduling this public hearing.

DATES: The public hearing will take place on Tuesday, April 28, 1998.

ADDRESSES: The public hearing will take place at the Wells Inn, 316 Charles Street, Sistersville, West Virginia 26174, (304) 652–1312.

Docket. A docket containing documents relevant to this action is available for public inspection and copying at the EPA's docket office located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603–9230. Refer to RCRA docket number F–98–MCCP–FFFFF.

A duplicate copy of the docket is available for inspection and copying at U.S. EPA, Region 3, 841 Chestnut Street, Philadelphia, PA, 19107–4431, during normal business hours. Persons wishing to view the duplicate docket at the Philadelphia location are encouraged to contact Mr. Tad Radzinski in advance, by telephoning (215) 566–2394.

FOR FURTHER INFORMATION CONTACT: Mr. Tad Radzinski, U.S. Environmental Protection Agency, Region 3 (3WC11), Waste Chemical Management Division, 841 Chestnut Street, Philadelphia, PA, 19107–4431, (215) 566–2394.

List of Subjects in 40 CFR Parts 264 and 265

Environmental protection, Air pollution control, Control device, Hazardous waste, Monitoring, Reporting and recordkeeping requirements, Surface impoundment, Treatment storage and disposal facility, Waste determination.

Dated: April 16, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–10862 Filed 4–21–98; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980406085–8086–00; I.D. 031198C]

RIN 0648–AJ27

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Management Measures for Nontrawl Sablefish

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement management measures recommended by the Pacific Fishery Management Council (Council) for the limited entry, fixed gear sablefish fishery north of 36° N. lat. These measures would provide a three-tiered management regime with three different cumulative landings limits for permit holders participating in the regular, limited entry, fixed gear sablefish fishery. The cumulative landings limit available to a permit holder would depend on the tier to which the permit is assigned, and tier assignment would be based on historical participation in the fixed gear sablefish fishery. Both the limited entry and open access fixed gear sablefish fisheries would be closed for 48 hours immediately before and for 30 hours immediately after the regular fishery. The preamble to this proposed rule discusses how these recommendations fit within long-term changes to management of this fishery that were made in 1997. Provisional 1997 regulatory language also would be updated by this proposed rule. These actions are intended to recognize the historical and more recent participation and investment in the fixed gear sablefish fishery while eliminating the traditional ''derby'' style management system.

DATES: Comments must be received on or before May 22, 1998.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115–0070; or to William Hogarth, Administrator, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) may be obtained from the Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to one of the NMFS addresses above and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Svein Fougner at 562–980–4000.

SUPPLEMENTARY INFORMATION: NMFS is proposing this rule based on recommendations of the Council, under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The background and rationale for the Council's recommendations are summarized below. More detail appears in the EA/RIR prepared by the Council for this action.

Background

Sablefish (*Anoplopoma fimbria*), also known as ''black cod,'' is one of the most valuable species in the groundfish fishery off Washington, Oregon, and California. Because sablefish is an important species in the Pacific Coast groundfish complex, there have been numerous allocation conflicts over sablefish between different sectors of the West Coast groundfish fleet. The Council has made several major decisions on dividing the available harvest, to resolve allocation issues that are inextricably linked to resource conservation.

Since 1987, the annual sablefish non-tribal harvest guideline has been allocated between trawl gear and nontrawl gear fisheries. In the nontrawl sector there have been two operationally distinct gear types, pot (or trap) and longline, that have been the primary gears competing for the nontrawl sablefish harvest allocation, and which now make up the fixed gear portion of the limited entry fleet. Historically, the trawl fishery has been managed with trip or cumulative trip limits, which means the amount of fish that may be harvested during a fishing trip or during a set time period. Trip or cumulative trip limits are mainly imposed to extend the fishery throughout most of the year by slowing the rate of harvest. Trip limits provide more stable employment in the fishery, but over time, have the effect of allocating the available resource from larger to smaller producers.

The advantage of trip limit management is that participants know exactly how much of a particular species is available to them during a set period, so there is no incentive for high-powered participants to upgrade their vessel or gear beyond what is required to catch the limit for that species. Conversely, there is an incentive for persons who initially participate in the fishery at low levels of effort to upgrade their gear and equipment until they are able to catch the available limits. As more fishery participants improve their harvesting ability over time, or if the available harvest declines, trip limits must be lowered to keep the total harvest within the annual harvest guideline, and participants find themselves with boats and gear that are far too powerful for the available trip limits.

For the health of the fish stocks, the major disadvantage of trip limits is that when fishers are able to easily attain their trip limits, they may overshoot a trip limit, and then must discard any fish that exceed that limit. These ''regulatory discards'' are particularly prevalent where fishers target on a mixed group of fish species, because trip limits must be set for each species

and it is difficult to predict the changing proportion of different fish stocks within that mixed group. Discard mortality is largely unmeasured, and thus is a danger to the long-term health of the fish stocks.

Following the 1987 sablefish allocation between trawl and fixed gear, the fixed gear fleet continued to take most of its sablefish allocation in an unrestricted fishery (a fishery without landings limits). In the early years of this unrestricted fishery, the price of sablefish was relatively low, so there were few incentives for many fishers to target on sablefish with any intensity. In 1987, 1988, and 1989, the unrestricted season was 9, 8, and 7.5 months long, respectively. Most of the sablefish target fishing occurred in the spring and summer, so it was reasonable to expect that the fishery would close at the end of the summer. The Council managed the fixed gear allocation so that there was just enough sablefish available for bycatch to other fisheries in the months after the closure of the unrestricted, primary fishery. This sablefish bycatch was available as trip limits of 250–500 lb (113–227 kg).

By 1992, sablefish prices had risen to more lucrative levels, and the Pacific Northwest salmon harvest had been greatly restricted. Fishers who had long targeted salmon with hook-and-line gear were turning to sablefish to make up their loss of salmon income. Fishers from other fisheries and new entrants were attracted to sablefish as well. The 1992 unrestricted, regular sablefish season was only 15 days long. By this time, it was evident that effort concentration in the fixed gear fleet had separated the sablefish fishery into an intense primary season coupled with a small, year-round bycatch allowance for the mixed species groundfish fishery.

In 1994, the Pacific Coast groundfish limited entry plan went into effect and limited the number of potential participants in this primary fishery. Although the limited entry program limits the number of participants in the overall groundfish fishery, it did nothing specifically to address the problem of the increasingly frenetic primary sablefish fishery. In fact, many fishers who had qualified for limited entry permits based on landings of groundfish other than sablefish began to turn to sablefish to supplement and then support their incomes.

The primary seasons of 1995 and 1996 were olympic derbies of 7 and 5 days in duration, respectively. A ''derby'' fishery is a short, intense open competition with no trip or cumulative landings limits. The history of this fishery had followed the classic pattern of unrestricted fisheries, with intensifying effort by each participant and by the fleet as a whole, leading to a brief season when the fleet landed the bulk of the year's allocation in just a few days. The only trip limit during the open competition of the derby fishery was for small sablefish less than 22 inches (56 cm) in length. With seasons measured in days, the Council considered the derby to be hazardous, because it gave fishers strong incentives to stay on the ocean during bad weather, working at sea with heavy machinery and little or no sleep throughout the season.

Management Background

In 1991, when the primary fixed gear sablefish season was 3 months long, the Council began to discuss development of an individual fishing quota (IFQ) program for this fishery. IFQ discussions lasted 3 years, until the Council developed a fixed gear IFQ amendment, Amendment 8 to the FMP (now tabled). These discussions were long and divisive, primarily because the Council could not get agreement from within the industry on how heavily catch history should be weighted in calculating initial quota shares. Disagreements between different sectors of the fleet lengthened the public discussion process. The Council postponed action on Amendment 8 partly because of the controversy of the program, and partly in response to a request from some members of Congress that the Council defer action while important policy decisions were being made at the national level. After that postponement, Congress prohibited NOAA from funding the development of new IFQ programs. When Congress reauthorized the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) in October 1996, through passage of the Sustainable Fisheries Act, it included a moratorium on development of new IFQ programs until October 1, 2000. The Council's delay in adopting an IFQ program for the fixed gear fleet thus prevented it from using that management strategy to address the problems of a severely overcapitalized, short, and dangerous fishery.

In addition to the problems of managing the primary fishery, increasing numbers of vessels were treating the small daily trip limit fishery as a target fishery. Rather than catching a few pounds of sablefish as bycatch in trips targeting other deepwater groundfish, many fishers specifically began targeting the daily trip limits for sablefish. Sablefish caught with fixed gear in the daily trip limit fishery then became subject to the problems of trip limit management, similar to those experienced by the trawl fishery. While nontrawl vessels targeting sablefish generally do not face trip limits on multiple species, discards due to highgrading for larger and more valuable fish remain a problem. As in the trawl fishery, these trip limit induced discards are unmonitored.

The derbies of 1995 and 1996 were especially controversial with the fishing fleet because vessel owners feared that the short season duration would lead to more risk-taking behavior among fleet participants, possibly resulting in danger to human life and safety. In addition to general concern about the dangers of the derby, the Council faced an allocation conflict between the two different sectors of the limited entry, fixed gear fleet. Long-term primary fishery participants who had managed their boats and gears with the expectation that there would be a brief, annual season where most of the fixed gear sablefish allocation would be taken were asking the Council for a management regime that would continue the historical sablefish catch distribution between fishery participants. Others who were better equipped to participate in and profit from the daily trip limit fishery were asking the Council to restructure the management regime so that the fixed gear sablefish allocation could be taken in small, monthly cumulative limits, as in the trawl fishery.

The Council began to address these problems by reducing effort in the fixed gear sablefish fishery in 1997 with Amendment 9 to the FMP, which requires limited entry permit owners to qualify for a sablefish endorsement in order to participate in the primary, fixed gear fishery. Sablefish endorsement qualifications were based on a single year of permit catch history in which the amount of Council-managed sablefish caught with longline or fishpot gear was at least 16,000 lb (7,257 kg) round weight, during the 1984 through 1994 qualifying period. The Council recognized that any program that would restrict access to the fishery would be controversial, yet saw a strong need both to reduce the number of potential participants in the primary fishery to constrain further capitalization, and to reduce the intensity of the competition for sablefish catch during the primary fishery to improve fishery safety.

Of the 231 limited entry, fixed gear permit owners, 162 now hold sablefish endorsements. The Council expected that by adopting the 16,000 lb (7,257 kg) qualification threshold that extended over an 11-year period, permit owners

with the greatest dependence on sablefish landings, including more recent landings, would receive endorsements. Further, the Council expected that persons who did not qualify for sablefish endorsements would be those who had more heavily relied on other groundfish species for their groundfish income, or on other sources of income, rather than on the primary sablefish fishery. During this time, the Council also looked for other ways to increase safety in the fishery by moving the opening to a time of year when weather conditions would likely be safer and by implementing an at-sea closure to end last minute, reckless rushes for port.

1997 Primary Fishery

Following the adoption of the sablefish endorsement program, the Council had two other issues to deal with for the 1997 limited entry, fixed gear fishery. First, the Council had to consider how to manage the 1997 primary fishery. While the number of potential derby participants had decreased, the Council was still concerned that the endorsed fleet's catching ability was significant enough to limit the season to another short derby fishery. The second issue arose in the spring of 1997, when it became apparent that the catch of the daily trip limit fishery was rapidly expanding. Many of the limited entry permit holders who were unsure of their past sablefish catch history, or who knew that they would not qualify for the sablefish endorsement as recommended by the Council, intensified their efforts for sablefish in the 1997 limited entry, daily trip limit fishery, pushing the 1997 catch rate far above historic catch rates for that fishery.

Council discussions of 1997 management measures for the primary fishery were prolonged and difficult. Within the affected fleet, fishers with different cumulative catch histories and different current catch strategies could not agree on a future management scheme. The traditionally lower producers, who make up the majority of the fishery participants, but a minority of the total sablefish catch, favored an end to the derby and a system of equal cumulative limits for all participants. While the traditionally higher producers did not necessarily wish to continue with derby-style management, many were dissatisfied with the available management options, and saw open competition as the best way to maintain past trends in income distribution between fishery participants. Nevertheless, even under open competition, the share caught by higher producers had been declining over time.

For 1997 and beyond, the Council decided to separate fishery management actions at 36° N. lat. South of 36° N. lat., the Council recommended eliminating the primary fishery structure so that sablefish landed in that area by limited entry, fixed gear sablefish fishers is taken only in a daily trip limit fishery. For 1997 only, north of 36° N. lat., the Council recommended implementing a regular season of no more than 21 days, with each permit holder allowed to fish towards an equal cumulative landing limit. The Council's intent was to provide a safe period of time during which vessels would be able to harvest their limits. Council members expressed their preference for a system of tiered cumulative limits for 1997; however, there was insufficient time to develop and implement such a proposal prior to the 1997 season.

NMFS rejected the Council's initial recommendations finding that most vessels would likely be able to take the full cumulative limit, thus making the combination of the limited entry permit and sablefish cumulative limit function effectively as an IFQ program. As previously discussed, the Magnuson-Stevens Act placed a moratorium on implementing IFQ programs until October 1, 2000. Following the NMFS rejection, the Council reconsidered whether to allow the fishery to continue as a derby in 1997 or to shorten the regular season so that a sufficient number of vessels would not be able to take their cumulative limits in the allotted time in order to avoid a determination that the fishery was an IFQ. The Council recognized that, while the safety benefits of such a change would be somewhat reduced, cumulative limits would still provide some control over fishing rates and safety hazards. Therefore, the Council recommended a season of no more than 10 days, with each permit holder allowed to fish towards an equal cumulative landing limit. This recommendation significantly redistributed 1997 catch away from historically strong producers. Because the Council did not want to support an equal limits regime for long-term, fixed gear sablefish management, it recommended this regime for 1 year only and announced that it would consider a tiered cumulative limits system for 1998 and beyond. The 1997 limited entry, fixed gear regular fishery began on August 25, lasted for 9 days and gave each participant the opportunity to catch up to a cumulative limit of 34,100 lb (15,468 kg).

Members of the Council were forced to weigh the long-voiced anger over the continuing danger of the derby against the severe redistributive results of a management option to set equal cumulative limits for all of the eligible participating vessels. The Magnuson-Stevens Act's national standards recognize the importance of both these issues. National standard 10 recognizes the importance of the safety of human life at sea, yet national standard 4 requires that if allocation of fishing privileges among U.S. fishermen is necessary, then that allocation be fair and equitable. In the case of the Pacific Coast fixed gear sablefish fishery, the Council concluded that a long-term, equal allocation scheme that disregarded historical participation and dependence on the fishery would not be ''fair and equitable.''

1997 Daily Trip Limit Fishery

In the months before and after the primary fishery, many limited entry fishers caught sablefish in the daily trip limit fishery. As previously mentioned, although the daily trip limit fishery was originally conceived primarily as a bycatch fishery, the recent and heavy influx of small operations focusing on sablefish has changed the character of the daily trip limit fishery into a target fishery. At the beginning of 1997, this fishery was under landing limits of 300 lb (136 kg) per day, with no limit on the amount of fish that could be landed in a month. Landings receipts from the early part of the year showed that a number of permit holders were landing the 300 lb (136 kg) limit almost every day of each month.

At its March 1997 meeting, the Council discussed the daily trip limit fishery and expressed concern that the amount of catch taken in the daily trip limit fishery had continued to increase from year to year. To slow the rate of catch in that fishery, the Council recommended, and NMFS implemented, a monthly cap of 5,100 lb (2,313 kg), effective May 1, 1997. The Council decided to establish a policy of maintaining a 1997 daily trip limit fishery catch similar to that fishery's catch in 1996. The Council announced that it would try to manage the 1997 daily trip limit fishery so that it would also take a total of 850,000 lb (385 mt) over the entire year.

Catch estimates from the daily trip limit fishery for sablefish presented at the June 1997 Council meeting showed that by the end of June, an expected 780,000–800,000 lb (354–363 mt) of sablefish would be landed in the daily trip limit fishery. Updated 1996 landings information showed that

sablefish landings from the entire daily trip limit fishery in 1996 were 915,000 lb (415 mt). Consequently, the Council revised its management target for the 1997 daily trip limit fishery to 915,000 lb (415 mt). To try to constrain the daily trip limit fishery to the 1996 catch level, the Council had to make drastic changes in the monthly cap for this fishery. Effective July 1, 1997, NMFS implemented the Council's recommendation to drop the monthly cap in the daily trip limit fishery to 600 lb (272 kg). The Council expected that even this low cap could only constrain daily trip limit landings enough so that the 1997 fishery total would be about 15 percent higher (about 1,100,000 lb (499 mt)) than the 1996 total.

There is an open access sablefish daily trip limit fishery in addition to the limited entry fishery. The open access fishery has a specific sablefish allocation, and trip limits are set with the aim of maintaining a year-round fishing opportunity. Open access sablefish daily trip limits at the beginning of 1997 were 300 lb (136 kg) per day and 1,500 lb (680 kg) per month. Like the limited entry fishery, 1997 open access sablefish harvest in the daily trip limit fishery was proceeding at an accelerated rate over previous years. When the Council recommended restricting the limited entry monthly cap for fixed gear sablefish to 600 lb (272 kg), it also recommended lowering the open access monthly cap to 600 lb (272 kg). The Council was concerned that, if it recommended a more restrictive monthly cap in the limited entry daily trip limit fishery as compared to the open access daily trip limit fishery, limited entry vessels would then flood the open access fishery and force an early closure of that daily trip limit fishery.

The 600 lb (272 kg) caps restrained the two daily trip limit fisheries to moving at a pace slow enough to keep the fisheries within the harvest guidelines. However, at the September 1997 Council meeting, the Council saw data showing that the 600 lb (272 kg) cap had constrained the open access fishery to a degree that the fishery would not likely meet the open access allocation for the year. Data from the limited entry daily trip limit fishery showed that even with the 600 lb (272 kg) cap, the fishery would likely exceed the 915,000 lb (415 mt) target for 1997. Analysis for these fisheries suggested that, if the Council were to raise the monthly cap for both daily trip limit fisheries to 1,500 lb (680 kg) from October through December, the combined totals taken from the open access and limited entry daily trip limit fisheries would likely meet the combined target amounts for the open access allocation and the limited entry daily trip limit fisheries. On October 1, 1997, NMFS implemented the Council's recommendation of a 1,500 lb (680 kg) monthly cap for the open access and limited entry daily trip limit fisheries, which remained in place for the rest of the year.

Three-Tier Cumulative Limit Management

At its June 1997 meeting, the Council adopted a recommendation for limited entry, fixed gear sablefish management measures for 1998 and beyond that is intended to maintain the basic structure of the fishery. The target amount of the fixed-gear allocation would be taken during the ''regular'' fishery, with a smaller amount taken in a mop-up fishery a few weeks later. A sablefish endorsement is required for participation in the regular and mop-up fisheries, which together constitute the ''primary'' fishery. The new proposal would divide limited entry permits with sablefish endorsements into three tiers. A permit's placement in a tier would be based on the cumulative sablefish catch associated with that permit from 1984 through 1994. Each tier would be associated with a different cumulative limit during the regular, limited entry, fixed gear fishery. These measures would apply only north of 36° N. lat.

The Council recommendation specifies qualifying criteria for assigning limited entry permits to one of the three tiers. To qualify for the highest tier, Tier 1, a permit would need to be associated with at least 898,000 lb (407.33 mt) of cumulative sablefish landings made from 1984 through 1994. To qualify for the middle tier, Tier 2, a permit would need to be associated with between 411,000 lb (186.43 mt) and 897,999 lb (407.33 mt) of cumulative sablefish landings made from 1984 through 1994. Permits with sablefish endorsements that are associated with less than 411,000 lb (186.43 mt) of cumulative sablefish landings from 1984 through 1994 would qualify for the lowest tier, Tier 3.

Analysts examined the distribution of sablefish cumulative catch histories over the 1984 through 1994 period to determine whether there were any large gaps between the cumulative catch histories of limited entry permits with sablefish endorsements that might serve as logical breakpoints between tiers. Such breakpoints did exist, and the Council selected a qualifying amount of 898,000 lb (407.33 mt) for Tier 1, which was the lowest large breakpoint in cumulative catch histories among a series of high breakpoints. Below 898,000 lb (407.33 mt), there were no significant breaks in cumulative catch histories for many thousands of pounds. Similarly, a cumulative catch amount of 411,000 lb (186.43 mt) was selected as the qualifying level for Tier 2 because it was the lowest large breakpoint among a series of mid-range breaks in cumulative catch histories. Because all permit owners who will be in the tier system have qualified for sablefish endorsements, those permits in the lowest tier are known to have had at least one year with landings greater than 16,000 lb (7.26 mt) during the 1984 through 1994 period, but a cumulative catch history of less than 411,000 lb (186.43 mt) from 1984 through 1994. In the package sent out for public review, the Council included a four-tier option as well as options that allowed qualification based either on cumulative landings from 1984 through 1994 or on cumulative landings from 1994 and 1995. After reviewing the analysis and testimony of the public and its advisors, the Council chose the option associated with the qualifications described above.

The catch histories for tier qualification include only sablefish landed from the Pacific Coast fishery. However, the database used for the analysis described above inadvertently included some sablefish taken in waters off Alaska and later landed at a Pacific Coast port. Analysts discovered this mistake after the November 1997 Council meeting. Removal of Alaska sablefish data does not significantly change the breaks in cumulative catch histories already identified by the Council. The break for Tier 1, 898,000 lb (407.33 mt), actually became larger, and so is a more effective fleet-division indicator than it was when the Alaska data were included in the cumulative catch histories. The qualifying amount for Tier 2, 411,000 lb (186.43 mt), also occurs at a large break in cumulative catch histories, but it is no longer the lowest large breakpoint in its class. Once the Alaska data are removed, 398,000 lb (180.53 mt) becomes the lowest large breakpoint among mid-range breaks, and is also a larger break in cumulative catch histories than the break at 411,000 lb (186.43 mt). At the March 1998 meeting, the Council commented on this issue, stating that it prefers to retain its original logic and to use the lowest large breakpoint in the mid-range area. In order to cushion any further possible data mistakes, the Council recommended setting the Tier 2 qualifying poundage at 380,000 lb (172.37 mt). Qualifying poundage for Tier 3 would be less than 380,000 lb

(172.37 mt). If NMFS adopts this proposed rule as a final rule, the public comments and the Council recommendations on this issue would be considered in the final rule.

Permit catch history includes the catch history of the vessel(s) that initially qualified for the permit, and subsequent catch histories accrued when the limited entry permit or permit rights were associated with other vessels. Permit catch history also includes the catch associated with any interim permit held during the appeal of an initial NMFS decision to deny the initial issuance of a limited entry permit, but only if (1) the appeal for which an interim permit was issued was lost by the appellant, and (2) the owner's current permit was used by the owner in the 1995 limited entry sablefish fishery. The catch history of an interim permit where the full ''A'' permit was ultimately granted will also be considered part of the catch history of the ''A'' permit. Only sablefish catch regulated by the FMP that was legally taken with longline or fishpot gear will be considered for tier placement. Harvest taken in tribal sablefish set-asides will not be included in calculating permit catch histories.

If the current permit is the result of the combination of two or more permits, then the permit with the highest cumulative catch history will be used in tier placement for that permit. The Council specifically decided not to allow permit owners who had combined two permits to use the combined catch histories of both permits when determining tier placement. This is consistent with the endorsement program (Amendment 9), where the endorsement qualification was based only on the catch history of one of the combined permits, not on the total catch history of all combined permits. In addition, the analysis presented to the Council at the time it made a decision on this issue indicated that, based on the available data, no permit owner would be denied qualification to a higher tier if the cumulative catch history of the higher of two combined permits was used as the qualifying catch history for that permit, rather than the summed cumulative catch history of both permits that were used to create the currently held permit. However, upon a more detailed review of the database, analysts discovered that this statement was wrong and that a permit owner would be assigned to a higher tier if allowed to sum the cumulative catch histories of the permits that had been combined to create the current permit. At the March 1998 meeting, the Council recommended allowing owners of permits that were combined prior to March 12, 1998, to aggregate their cumulative catch histories in qualifying for tier placement. If NMFS adopts this proposed rule as a final rule, public comments and the Council recommendations on this issue would be considered in the final rule.

In accordance with Amendment 9 to the FMP, if two limited entry, fixed gear permits are combined to generate a single permit with a larger length endorsement, the resulting permit will also have a sablefish endorsement only if all permits being combined have sablefish endorsements. After tier assignments are issued by NMFS, if permits are combined, the resulting permit will be assigned to the highest tier held by either of the original permits prior to combination. The Council concluded that because harvest would be restricted by the cumulative limits and that one permit's cumulative limit would be eliminated through the combination of permits, this approach was preferable. Other alternatives would have allowed persons combining permits to expand harvest, imposed an unfair restriction on the amount that could be harvested by combined permits, or would have functioned too much like an IFQ system.

The management option that the Council chose maintains a ratio that approximates the 1991–1995 catch relationships between permits assigned to each tier on a group average basis. Setting cumulative limits by ratios ensures that the long-term relationships between the cumulative limits for each tier will remain stable. With cumulative limits set by ratio, impacts from changes in the numbers of permits distributed to each tier will be shared by all vessels in the fleet. The cumulative limits ratio for the tiers would be 3.85 (Tier 1); 1.75 (Tier 2); and 1 (Tier 3). For example, if Tier 3 had a cumulative limit of 10,000 lb (4,536 kg), Tier 2 would have a corresponding cumulative limit of 17,500 lb (7,938 kg), and Tier 1 would have a corresponding cumulative limit of 38,500 lb (17,463 kg).

As with the 1997 equal cumulative limit fishery, the Council recommended using overhead guidelines in setting the cumulative limits for each tier and for the overall expected catch for the total fishery. ''Overhead'' is defined as the difference between the expected harvest level and the total harvest that would occur if each permitted vessel took its cumulative limit (maximum potential harvest). The concept of overhead is based on the premise that not all participants in this fishery will harvest the cumulative limit. NMFS considers a fishery where all participants have the opportunity to catch a cumulative limit and they are all able to catch that limit to be an IFQ program.

The Council recommended setting cumulative limits and season lengths in 1998 and beyond to achieve a projected overhead, based on the most reasonable assumptions, of at least 25 percent and an overhead based on worst-case assumptions of at least 15 percent for the fleet as a whole. The goal overhead for any single tier would be at least 15 percent, based on the most reasonable assumptions. This recommendation is consistent with the 1997 fishery structure, where the equal cumulative limit and season length were set within parameters of a harvest overhead of at least 25 percent using the best estimate of projected harvest, and with an overhead of at least 15 percent using a reasonable worst-case scenario. The resulting season structure of a 9-day fishery with a cumulative limit of 34,100 lb (15,468 kg) was successful in both keeping the harvest within the allocation and in maintaining adequate overhead. In 1997, the regular fishery achieved an overhead of 61 percent, and the amount taken in that fishery was about 70 percent of the total available harvest for the primary fishery. Of the 163 potential participants in the 1997 limited entry, fixed gear regular fishery, about 60 vessels had landings within 90 percent of the full cumulative limit of 34,100 lb (15,468 kg).

1998 Fishery Season Structure

When the Council adopted its recommendation for a tiered access program, it retained most of the basic season structure requirements that were in place for 1997, as described below.

There would be a 48–hour closure before the start of the regular season, during which time all fixed gear north of 36° N. lat. must be out of the water and no sablefish may be landed by a fixed gear vessel. The existing regulation contains a 72–hour closure, with an allowance for pots to be set 24 hours before the start of the season.

At its November 1997 meeting, the Council recommended a 1998 season start date of August 1. The limited entry, fixed gear sablefish regulations contain a framework to allow NMFS to announce annually, in consultation with the Council, a season start on any day between August 1 and September 30.

Preliminary estimates at the November 1997 Council meeting showed that the 1998 limited entry, fixed gear regular sablefish season would be at least 5 days long. The Council recommended setting the season length as long as possible, while

maintaining a 25–percent overhead for the entire fleet and a 15–percent overhead for each tier within the fleet.

There would be a 30–hour closure after the end of the regular season, during which time no sablefish may be taken and retained with fixed gear north of 36° N. lat. During that 30–hour period, sablefish taken and retained during the regular season could be possessed and landed, and gear could remain in the water. However, fishers may not set or pull their gear from the water during this period. The existing regulation contains a 48–hour closure.

Once the landings from the regular season have been calculated, there would be a mop-up season to catch any sablefish left from the primary fishery (regular + mop-up seasons) that is not needed for the planned daily trip limit fishery. NMFS and the three states generally require 3 weeks from the end of the regular season to calculate the amount of sablefish, if any, available to the mop-up fishery.

At its November 1997 meeting, the Council recommended a 1998 commercial harvest guideline of 4,212 mt for all sablefish landed north of 36° N. lat., a significant reduction from recent years. The 1997 commercial harvest guideline for sablefish landed north of 36° N. lat. was 7,020 mt. At its September 1997 meeting, the Council recommended a policy for 1998 of maintaining recent-year sablefish catch ratios between different commercial sectors. Under this policy, the limited entry, fixed gear trip limit fishery will be managed with daily and monthly limits that keep the overall catch of the fishery to approximately 15 percent of the total sablefish available to the limited entry, fixed gear fleet in 1998. While the exact division between the primary fishery and the daily trip limit fishery is not specified in the current regulations governing this fishery or in Amendment 9, maintaining the recent ratio between these two fisheries is consistent with management practices in recent years.

NMFS and Council staff estimate that under a total harvest guideline of 4,212 mt for all gears and sectors, the 1998 limited entry, fixed gear, regular sablefish season would be 6 days in duration. At the March 1998 Council meeting, the Council recommended a method for setting the season length and the cumulative limits for each of the three tiers if the three-tier program is adopted as a final rule. At the April 1998 Council meeting, NMFS reported to the Council that under the Council's preferred method for setting season length and cumulative limits, and within the parameters for the three-tier program described above, the 1998 season of 6 days in duration would have cumulative limits of 52,000 lb for Tier 1, 23,500 lb for Tier 2, and 13,500 lb for Tier 3. Overheads would be expected to be 30% overall, 16 percent overall under a worst-case scenario, 46 percent for Tier 1, 25 percent for Tier 2, and 21 percent

for Tier 3. All of these overheads exceed the Council's conservative overhead recommendations for the three-tier regime, as described above.

Biological Impacts

Marine biological background and biological impacts of the sablefish fishery are analyzed in ''Status of the Pacific Coast Groundfish Fishery Through 1997 and Recommended Acceptable Biological Catches for 1998: Stock Assessment and Fishery Evaluation'' (SAFE Document) and in the EA for the ''Proposal to Change the Management of the Limited Entry Fixed Gear Sablefish Segment of the Groundfish Fishery for 1998 and Beyond.'' These documents may be obtained from the Council. (See **ADDRESSES**).

NMFS expects that the biological impacts of implementing a three-tier cumulative limit system would be negligible. The sablefish acceptable biological catch and harvest guideline would not be affected by this action.

Socio-economic Impacts

As previously mentioned, the primary fishery would be managed to maintain a 25–percent catch overhead, which would mean that some fleet participants would be expected to catch the entire cumulative limit within the time allotted for the fishery, but many would not be able to do this. If the fishery is managed to maintain a 25–percent overhead, it is expected that about one-third of the fleet participants (the larger sablefish producers) would be able to slow their rate of harvest over the rate at which they would have fished in a derby. For that one-third of the fleet, there would be increased safety benefits from implementing the three-tiered access system. An open competition derby fishery would be several days shorter than the three-tiered cumulative limit fishery. Individuals in the two-thirds of the fleet that would not be expected to slow their rates of harvest to achieve their cumulative limits would garner safety benefits from the three-tiered access system if they choose to fish at a slower rate because they would have more time available to them than in a derby fishery to catch a comparable amount of sablefish. However, it is reasonable to expect that most fishery participants would fish at the fastest rate possible if they have any doubts about whether they will be able to catch their available cumulative limits. Smaller sablefish producers would be able to expand their harvest, while harvest by larger producers will likely be restricted.

The Council recommended keeping the 1997 management measures for the limited entry, fixed gear, regular sablefish fishery in place for 1 year only, and stated that a prolonged equal cumulative limit fishery would be too redistributive of sablefish catch and income. Analysts expected that the equal limit regime would result in a 29–percent redistribution of the harvest from traditionally high producers to traditionally low producers—a redistribution of ex-vessel revenue of about $2.5 - 3.0 million. In designing the three-tiered access system, the Council intended to recommend management measures that would allow fleet participants to harvest sablefish at levels more closely aligned to their historical annual harvests than was possible under equal allocation.

The three-tiered regime still has redistributive effects as compared to the open competition derby, the management regime that the fishery would revert to if no action were taken for 1998. If the Council's recommended option is implemented, permit owners with sablefish endorsements would have their sablefish harvest limited by their tier assignments. Many of the larger producers would still see a reduction in their gross revenues, as compared to the revenues that they might have expected under a continued derby fishery, but a less significant revenue reduction than would have occurred under an equal limits regime. Fishery participants with strong harvest levels in 1995 and 1996, but with little cumulative catch prior to 1995 may also face a drop in harvest if their 1984 through 1994 cumulative harvest places them in Tier 2 or 3.

Under the three-tiered option that the Council recommended for 1998, 52 fishery participants can expect to catch less sablefish than they would have under a continued derby option, and 106 fishery participants can expect to catch more sablefish than they would have under a continued derby option. About 24 percent of the harvest would be redistributed away from the fishers who would be losing harvest shares under the three-tiered option recommended by the Council.

As a group, vessels in Tier 1 would be expected to take shares of harvest that are below their long-term and recent averages. As a group, vessels in

Tier 3 would be expected to take shares of harvest that are above their long-term averages and close to their recent averages. Estimates of changes in harvest shares are based on a comparison between what vessels are expected to catch under the different management options that could have been chosen by the Council for recommendation to NMFS. The potential impact of implementing the three-tiered access system would be separate from the impact of the decreased harvest guideline for 1998. The amount of sablefish that each vessel catches in 1998 is likely to be lower than the amounts they have caught in years past because the overall sablefish harvest guideline is lower than it has been in past years.

Tier Assignment

Tier assignments for limited entry permits with sablefish endorsements would be issued by NMFS, prior to the start of the regular 1998 limited entry, fixed gear sablefish season. NMFS would use landings records from the Pacific States Marine Fisheries Commission's Pacific Fisheries Information Network (PacFIN) to determine which limited entry permits meet the Council-recommended qualifications for each tier.

The Sustainable Fisheries Division (SFD), NMFS Northwest Region, would notify each limited entry permit owner with a sablefish endorsement by letter whether PacFIN records indicate that his or her permit qualifies for Tier 1, Tier 2, or Tier 3.

Permit owners who believe that their permit qualifies for a different tier than the tier indicated by PacFIN records would have 30 days to send supporting documentation, such as fish tickets, to the SFD to demonstrate how the qualifying criteria for a different tier have been met. A new tier assignment would be issued if the permit owner demonstrates that his or her permit met the qualifying criteria. If the SFD, after review of the information submitted by the permit owner, decides that the permit does not qualify for the tier requested by the owner, the owner would have 30 days to appeal the decision to the Regional Administrator, NMFS Northwest Region. Unlike the initial limited entry permitting process but similar to the sablefish endorsement issuance process, there would be no industry appeals board to review appeals of tier placement.

For the 1998 season only, permit owners with sablefish endorsements would be issued certificates of tier assignment that would need to be kept with, and considered part of, their limited entry permits. When limited entry permit owners renew their permits for 1999, tier assignments for those limited entry permit owners with sablefish endorsements would be indicated directly on the limited entry permit.

Sablefish Endorsement Application Deadline

Amendment 9 to the FMP recommended at section 14.5: ''NMFS will establish a reasonable application period for the fixed gear sablefish endorsement. Untimely applications will be rejected and no sablefish endorsement will be issued thereon * * *.'' When NMFS implemented the sablefish endorsement program, the agency sent letters of qualification status to each limited entry permit owner that told the permit owner whether PacFIN records indicated that his or her permit was associated with enough sablefish catch to qualify that permit for a sablefish endorsement. Where PacFIN records indicated that a permit did not qualify for an endorsement, that permit owner could apply for an endorsement by providing additional information on his or her sablefish landings for the qualifying years. Permit owners whose permits did qualify for sablefish endorsements according to PacFIN records were given no deadline to apply for sablefish endorsements. If NMFS finalizes this rule and implements a three-tier system for 1998, the agency will need to know how many limited entry permit owners meet the tier system qualification of having a sablefish endorsement. To implement section 14.5 of Amendment 9 and to facilitate possible implementation of the three tier system, NMFS is proposing a sablefish endorsement application deadline for those persons who were initially told that their permits qualified for sablefish endorsements based on PacFIN landing records. Sablefish endorsement applications will not be accepted after November 30, 1998, which is the limited entry permit renewal deadline for the 1999 fishing year.

Classification

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

The Council prepared an IRFA that describes the impact that this proposed rule, if adopted, would have on small entities. A copy of this analysis is available from the Council (see ADDRESSES). All of the permit owners and vessels in the Pacific Coast, limited entry, fixed gear fleet are considered small entities. NMFS considers an impact to be ''significant'' if it results in a reduction in annual gross revenues by more than 5 percent, an increase in annual compliance costs of greater than 5 percent, compliance costs at least 10 percent higher for small entities than for large entities, compliance costs that require significant capital expenditures, or the likelihood that 2 percent of the small entities would be forced out of business. NMFS considers a ''substantial number'' of small entities to be more than 20 percent of those small entities affected by the regulation engaged in the fishery.

As indicated in the EA/RIR/IRFA for this action, there are 162 limited entry, fixed gear permit owners holding sablefish endorsements. All are small entities. Of these, 42 (26 percent) would suffer a greater than 5 percent loss in total gross annual revenue over what they would have been expected to earn if the open competition derby management had been continued in 1998.

The analysis of whether this action would reduce annual gross revenues of limited entry permit owners with sablefish endorsements was based on comparing estimates of each permit owners' sablefish-derived income to his or her total fishing income. There are members of this fleet who have non-fishing income sources that contribute to their annual gross revenues. However, NMFS and Council analysts have no access to information about the non-fishing revenues of these businesses. Thus, the following discussion on the number of businesses that would be expected to have reductions in annual gross revenues is based on information about the fishing revenues of these permit owners. As a result, the conclusions of this analysis are a ''worst-case'' scenario; those permit owners with non-fishing revenue sources may not be as severely impacted as indicated by this analysis.

There are 162 limited entry, fixed gear permit owners with sablefish endorsements. As indicated in the EA/RIR/IRFA for this action, 42 permit holders with sablefish endorsements (26 percent) would suffer a greater than 5 percent loss in total gross fishing income over what they would have been expected to earn if the open competition derby management had been continued for 1998.

The Council considered six different management options aside from status quo, open competition derby management. Of those six options, two options would have resulted in fewer than 26 percent of endorsement holders suffering a greater than 5 percent loss in gross annual revenue. An option to

continue the 1997 style fishery management of a single period equal cumulative limit regime would have resulted in 18 percent of endorsement holders suffering a greater than 5 percent loss in total gross annual revenue. Although this option would have resulted in fewer businesses with economic loss, those businesses that would have lost economically under this option would have lost revenue to a greater degree than those businesses losing revenue under any of the tier options. Thus, while the option chosen by the Council results in a greater number of businesses with losses, the impacts of that option are spread more evenly through the fleet. The Council also specifically decided when it recommended a single period equal cumulative limit for 1997 that it would not recommend continuing such an option for 1998.

The other option that would have resulted in fewer than 26 percent of permit owners suffering a greater than 5 percent loss in gross annual revenue was a four-tiered access system. This option was projected as leading to greater than a 5 percent loss in gross annual revenue for 22 percent of permit holders with sablefish endorsements. One major impediment to Council recommendation of a four-tiered option was that maintaining an overhead to prevent designation as an IFQ system would have been more difficult under a four-tiered option. The greater the number of tiers in a tiered access system, the more likely it is that fishers will be able to achieve a harvest share close to their historical harvest share. In an IFQ fishery, all fishers would be allowed to use as much time as necessary to catch whatever cumulative limits are available. The Council chose the option that would have the least impact on fishers' revenues while still maintaining enough overhead to avoid the NMFS IFQ classification criteria and eliminating derby management.

The IRFA indicates that this proposed action would not be expected to result in an increase in annual compliance costs of greater than 5 percent, compliance costs at least 10 percent higher for small entities than for large entities, compliance costs that require significant capital expenditures, or the likelihood that 2 percent of the small entities would be forced out of business.

This rule contains and refers to collection-of-information requirements subject to the Paperwork Reduction Act (PRA). These collections have been approved by OMB under OMB Control Number 0648–0203. Public reporting burden for appeals of permit determinations is estimated at 2 hours per response; reporting burden for the renewal or transfer of limited entry permits is estimated at 20 minutes per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is invited regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: April 17, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

l. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 660.323 is amended by revising paragraph (a)(2) to read as follows:

§ 660.323 Catch restrictions.

(a) * * *

(2) *Nontrawl sablefish*. This paragraph (a)(2) applies to the regular and mop-up seasons for the nontrawl limited entry sablefish fishery north of 36° N. lat., except for paragraphs (a)(2)(ii), (iv), and (vii) of this section, which also apply to the open access fishery north of 36° N. lat. Limited entry and open access fixed gear sablefish fishing south of 36° N. lat. is governed by routine management measures imposed under paragraph (b) of this section.

(i) *Sablefish endorsement*. In order to participate lawfully in the regular or mop-up season for the nontrawl limited entry fishery, the owner of a vessel must hold (by ownership or otherwise) a limited entry permit for that vessel, affixed with both a gear endorsement for longline or trap (or pot) gear, and a sablefish endorsement.

(ii) *Pre-season closure—open access and limited entry fisheries*. (A) Sablefish taken with fixed gear in the limited entry or open access fishery in the EEZ may not be retained or landed during the 48 hours immediately before the start of the regular season for the nontrawl limited entry sablefish fishery.

(B) All fixed gear used to take and retain groundfish must be out of EEZ waters during the 48 hours immediately before the opening of the regular season for the nontrawl limited entry sablefish fishery.

(iii) *Regular season—nontrawl limited entry sablefish fishery*. (A) The Regional Administrator will announce a season for waters north of 36° N. lat. to start on any day from August 1 through September 30, based on consultations with the Council, taking into account tidal conditions, Council meeting dates, alternative fishing opportunities, and industry comments.

(B) During the regular season, each vessel registered for use with a limited entry permit with a sablefish endorsement will be able to land up to the cumulative trip limit announced for the tier to which the permit is assigned. Each permit will be assigned to one of three tiers. A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed, or landed per vessel in a specified period of time, with no limit on the number of landings or trips.

(C) The Regional Administrator will annually calculate the length of the regular season and the size of the cumulative trip limit for each tier in accordance with the process specified in chapter 1 of the EA/RIR/IRFA for ''Fixed Gear Sablefish Tiered Cumulative Limits,'' dated February 1998, which is available from the Council. The season length and the size of the cumulative trip limits will vary depending on the amount of sablefish available for the regular and mop-up fisheries and the projected harvest for the fishery. The season will be set to be as long as possible, under the constraints described in chapter 1 of the EA/RIR/IRFA, up to a maximum season length of 10 days.

(D) During the regular and mop-up season, limited entry nontrawl sablefish fishers may also be subject to trip limits to protect juvenile sablefish.

(E) There will be no limited entry, daily trip limit fishery during the regular season.

(iv) *Post-season closure—limited entry and open access.* No sablefish taken with fixed gear north of 36° N. lat. may be taken and retained during the 30 hours immediately after the end of the regular season for the nontrawl limited entry sablefish fishery. Sablefish taken and retained during the regular season may be possessed and landed during that 30–hour period. Gear may remain in water during the 30–hour post-season closure. Fishers may not set or pull from the water fixed gear used to take and retain groundfish during the 30–hour post-season closure.

(v) *Mop-up season—limited entry fishery.* A mop-up season to take the remainder of the limited entry nontrawl allocation will begin in waters north of 36° N. lat. about 3 weeks, or as soon as practicable, after the end of the regular season. During the mop-up fishery, a cumulative trip limit will be imposed. A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed, or landed per vessel in a specified period of time, with no limit on the number of landings or trips. The length of the mop-up season and the amount of the cumulative trip limit, will be determined by the Regional Administrator in consultation with the Council or its designees, and will be based primarily on the amount of fish remaining in the limited entry nontrawl allocation, the amount of sablefish needed for the remainder of the daily trip limit fishery, and the number of mop-up participants anticipated. The Regional Administrator may determine that too little of the nontrawl allocation remains to conduct an orderly or manageable fishery, in which case there will not be a mop-up season. There will be no limited entry daily trip limit fishery during the mop-up season.

(vi) *Other announcements.* The dates and times that the regular season starts and ends (and trip limits on sablefish of all sizes are resumed), the size of the cumulative trip limits for the three tiers in the regular fishery, the dates and times for the 30–hour post-season closure, the dates and times that the mop-up season begins and ends, and the size of the cumulative trip limit for the mop-up fishery will be announced in the **Federal Register**, and may be modified. Unless otherwise announced, these seasons will begin and end at 12 noon on the specified date.

(vii) *Trip limits.* Trip and/or frequency limits may be imposed in the limited entry fishery before and after the regular season, and after the mop-up season, under paragraph (b) of this section. Trip and/or size limits to protect juvenile sablefish in the limited entry or open-access fisheries also may be imposed at any time under paragraph (b) of this section.

* * * * *

3. In § 660.333, the first sentence of paragraph (c)(1), paragraphs (d) introductory text, (f)(2), and (h)(2)(iii) are revised to read as follows:

§ 660.333 Limited entry fishery—general.

* * * * *

(c) *Transfer and registration of limited entry permits and gear endorsements.* (1) Upon transfer of a limited entry permit, the SFD will reissue the permit in the name of the new permit holder with such gear and, if applicable, species endorsements and tier assignments as are eligible for transfer with the permit. * * *

* * * * *

(d) *Evidence and burden of proof.* A vessel owner (or person holding limited entry rights under the express terms of a written contract) applying for issuance, renewal, transfer, or registration of a limited entry permit has the burden to prove evidence that qualification requirements are met. The owner of a permit endorsed for longline or trap (or pot) gear applying for a sablefish endorsement or a tier assignment under § 660.336(c) or (d) has the burden to submit evidence to prove that qualification requirements are met. The following evidentiary standards apply:

* * * * *

(f) * * *

(2) Gear endorsements, sablefish endorsements, and sablefish tier assignments may not be transferred separately from the limited entry permit.

* * * * *

(h) * * *

(2) * * *

(iii) Two or more limited entry permits with ''A'' gear endorsements for the same type of limited entry gear may be combined and reissued as a single permit with a larger size endorsement. With respect to permits endorsed for nontrawl limited entry gear, a sablefish endorsement will be issued for the new permit only if all of the permits being combined have sablefish endorsements. If two or more permits with sablefish endorsements are combined, the new permit will receive the same tier assignment as the tier with the largest cumulative landing limit of the permits being combined. The vessel harvest capacity rating for each of the permits being combined is that indicated in Table 2 of this part for the LOA (in feet) endorsed on the respective limited entry permit. Harvest capacity ratings for fractions of a foot in vessel length will be determined by multiplying the fraction of a foot in vessel length by the difference in the two ratings assigned to the nearest integers of vessel length. The length rating for the combined permit is that indicated for the sum of the vessel harvest capacity ratings for each permit being combined. If that sum falls between the sums for two adjacent lengths on Table 2 of this part, the length rating shall be the higher length.

* * * * *

4. In § 660.336, the section heading, paragraphs (a)(1), (a)(2), (b) introductory text, (b)(1), (c) heading, and paragraph (c)(1), are revised; and paragraphs (b)(3), (d), and (e) are added to read as follows:

§ 660.336 Limited entry permits—sablefish endorsement and tier assignment.

(a) * * *

(1) A sablefish endorsement with a tier assignment will be affixed to the permit and will remain valid when the permit is transferred.

(2) A sablefish endorsement and its associated tier assignment are not separable from the limited entry permit, and therefore may not be transferred separately from the limited entry permit.

(b) *Endorsement and tier assignment qualifying criteria.* A sablefish endorsement will be affixed to any limited entry permit that meets the sablefish endorsement qualifying criteria and for which the owner submits a timely application. Limited entry permits with sablefish endorsements will be assigned to one of three different cumulative trip limit tiers, based on the qualifying catch history of the permit.

(1) Permit catch history will be used to determine whether a permit meets the qualifying criteria for a fixed gear sablefish endorsement and to determine the appropriate tier assignment for endorsed permits. Permit catch history includes the catch history of the vessel(s) that initially qualified for the permit, and subsequent catch histories accrued when the limited entry permit or permit rights were associated with other vessels. The catch history of a permit also includes the catch of any interim permit held by the current owner of the permit during the appeal of an initial NMFS decision to deny the initial issuance of a limited entry permit, but only if the appeal for which

an interim permit was issued was lost by the appellant, and the owner's current permit was used by the owner in the 1995 limited entry sablefish fishery. The catch history of an interim permit where the full ''A'' permit was ultimately granted will also be considered part of the catch history of the ''A'' permit. If the current permit is the result of the combination of multiple permits, then for the combined permit to qualify for an endorsement, at least one of the permits that were combined must have had sufficient sablefish history to qualify for an endorsement; or the permit must qualify based on catch occurring after it was combined, but taken within the qualifying period. If the current permit is the result of the combination of multiple permits, the catch history to be used in calculating the tier assignment is the catch history of the permit with the largest catch history of those being combined, together with any catch history (during the qualifying period) of the combined permit. Only sablefish catch regulated by this part that was taken with longline or fish trap (or pot) gear will be considered for this endorsement. Sablefish harvested illegally or landed illegally will not be considered for this endorsement.

* * * * *

(3) Only limited entry, fixed gear permits with sablefish endorsements will receive cumulative trip limit tier assignments. The qualifying criteria for Tier 1 are: At least 898,000 lb (406,794 kg) cumulative round weight of sablefish caught with longline or trap (or pot) gear over the years 1984 through 1994. The qualifying criteria for Tier 2 are: At least 411,000 lb (186,183 kg), but no more than 897,999 lb (406,793 kg) cumulative round weight of sablefish caught with longline or trap (or pot) gear over the years 1984 through 1994. Fixed gear permits with less than 411,000 lb (186,183 kg) cumulative round weight of sablefish caught with longline or trap (or pot) gear over the years 1984 through 1994 qualify for Tier 3. All catch must be sablefish managed under this part. Sablefish taken in tribal set aside fisheries does not qualify.

(c) *Issuance process for sablefish endorsements.* (1) The SFD has notified each limited entry, fixed gear permit holder by letter of qualification status whether Pacific States Marine Fisheries Commission's Pacific Fisheries Information Network (PacFIN) records indicate that his or her permit qualifies for a sablefish endorsement. A person who has been notified by the SFD by letter of qualification status that his or her permit qualifies for a sablefish endorsement will be issued a revised limited entry permit with a sablefish endorsement if, by November 30, 1998, that person returns to the SFD the endorsement application and pays the one-time processing fee. No new applications for sablefish endorsements will be accepted after November 30, 1998.

* * * * *

(d) *Issuance process for tier assignments.* (1) The SFD will notify each owner of a limited entry permit with a sablefish endorsement, by letter of qualification status, of the tier assignment for which his or her permit qualifies, as indicated by PacFIN records. The SFD will also send to the permit owner a tier assignment certificate.

(2) If a permit owner believes there is sufficient evidence to show that his or her permit qualifies for a different tier than that listed in the letter of qualification status, that permit owner must, within 30 days of the issuance of the SFD's letter of qualification status, submit information to the SFD to demonstrate that the permit qualifies for a different tier. Section 660.333(d) sets out the relevant evidentiary standards and burden of proof.

(3) After review of the evidence submitted under paragraph (d)(2) of this section, and any additional information the SFD finds to be relevant, the SFD will notify a permit owner whether the evidence submitted is sufficient to alter the initial tier assignment. If the SFD determines the permit qualifies for a different tier, the permit owner will be issued a revised tier assignment certificate once the initial certificate is returned to the SFD for processing.

(4) If a permit owner chooses to file an appeal of the determination under paragraph (d)(3) of this section, the appeal must be filed with the Regional Administrator within 30 days of the issuance of the letter (at paragraph (d)(3) of this section). The appeal must be in writing and must allege facts or circumstances, and include credible evidence demonstrating why the permit qualifies for a different tier assignment. The appeal of a denial of an application for a different tier assignment will not be referred to the Council for a recommendation under § 660.340(e).

(5) Absent good cause for further delay, the Regional Administrator will issue a written decision on the appeal within 30 days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

(e) *Tier assignment certificates.* For the 1998 season only, permit holders with sablefish endorsements will be issued certificates of tier assignment that are to be kept with and are considered part of their limited entry permits. When limited entry permit holders renew their permits for 1999, tier assignments for those limited entry permit holders with sablefish endorsements will be indicated directly on the limited entry permit.

[FR Doc. 98–10726 Filed 4–21–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 63, No. 77

Wednesday, April 22, 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

[Docket No. 98–021N]

National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Meat and Poultry Subcommittee of the National Advisory Committee on Microbiological Criteria for Food (NACMCF) will meet on May 6 and 7, 1998, to discuss a number of issues that have been raised with regard to the Committee's Hazard Analysis and Critical Control Point (HACCP) Principles and Application Guidelines, a document that was adopted August 1997 at the NACMCF meeting in Seattle, Washington. On May 6, the Subcommittee will have further discussion of such issues as Good Manufacturing Practices, Hazard Identification, Critical Control Points, Corrective Actions, Verification, and Monitoring. On May 7, the Subcommittee plans to work on further development of HACCP guidelines for very small establishments.

DATES: The meeting will be held on May 6 and 7, 1998, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Department of Agriculture/Animal and Plant Health Inspection Service Conference Center, 4700 River Road, in Conference Rooms A and B, Riverdale, Maryland 20737.

FOR FURTHER INFORMATION CONTACT: The Subcommittee is encouraging persons with information on the discussion items in the **SUMMARY** to present their comments and recommendations to the group. Persons interested in making presentations, submitting technical papers, or providing comments should submit them by April 27, 1998, to Dr. Richard L. Ellis, Suite 6913 Franklin Court, 1400 Independence Avenue, SW, Washington DC 20250–3700. The materials should be in a format suitable for preparing hard copy for review by Subcommittee members. Persons requiring a sign language interpreter or other special accommodation should contact Ms. Amelia Wright at the above address or by telephone (202) 501–7343 by April 27, 1998. All technical papers, comments, and data about the meeting will be available for public viewing beginning May 21, 1998, in the FSIS Docket Room, Room 102, Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700.

SUPPLEMENTARY INFORMATION:

The meeting is open to the public on a space-available basis. Comments may be made before or after the meeting is held. All comments will become part of the public record on this meeting.

The Committee was established in April 1988. It provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning microbiological and epidemiological aspects of food safety and foodborne diseases and also provides specific information to the Departments of Defense and Commerce.

Done at Washington, DC, on April 15, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–10602 Filed 4–21–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–022N]

Codex Alimentarius: Meeting of the Codex Committee on Milk and Milk Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) and the Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA); and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services, are sponsoring a public meeting on May 8, 1998, to provide information and receive public comments on agenda items that will be discussed at the *Codex* Committee on Milk and Milk Products Meeting. The meeting will be held in Montevideo, Uruguay, May 18–22, 1998.

DATES: The public meeting is scheduled for Friday, May 8, 1998, from 9:00 a.m. to 12:00 noon.

ADDRESSES: The public meeting will be held in Room 0745, South Agriculture Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Director, U.S. Codex Office, Food Safety and Inspection Service; Telephone: (202) 205–7760; Fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. *Codex* is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, *Codex* seeks to ensure that the world's food supply is sound, wholesome, free from adulteration and correctly labeled.

The *Codex* Committee on Milk and Milk Products was established to elaborate codes and standards for Milk and Milk Products. The Government of New Zealand hosts this committee and will chair the committee meeting.

Issues to be Discussed at the Public Meeting

The following specific issues will be discussed during the public meeting:

1. Matters referred by the *Codex Alimentarius Commission* and other *Codex* committees.

2. Draft Code of Principles Concerning Milk and Milk Products.

3. Common Labeling Provisions of Milk Products Standards.

4. Review of the Draft and Draft Revised Standards: Butter; Milk Products; Evaporated Milks; Sweetened Condensed Milks; Milk and Cream Powders; Cheese; Whey Cheese; Cheese in Brine; and Unripened Cheeses; at Step 7.

5. Review of the Proposed Draft and Proposed Draft Revised Standards: Criteria for Elaboration or Revocation of Individual Standards for Cheeses; Cream; Dairy Spreads; Fermented Milk Products; and Processed Cheese; at Step 4.

6. Heat Treatment Definitions.

7. Model Export Certificate for Milk Products.

8. Review of Proposed Standard for ''Parmesan.''

Done at Washington, DC: April 16, 1998.

F. Edward Scarbrough,

U.S. Manager for Codex.

[FR Doc. 98–10652 Filed 4–21–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–023N]

HACCP Implementation for Small Plants

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is holding a public meeting to discuss ways to help owners and managers of small plants prepare for the HACCP implementation date of January 25, 1999. The meeting will give all stakeholders an opportunity to hear what is currently being done to help small plants and to discuss additional ways of ensuring that small plants receive the assistance they need to make the transition to HACCP.

DATES: The meeting will be held on May 7, 1998, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Crowne Plaza Hotel, 14th and K Streets, NW, Washington, DC; telephone (202) 682–0111.

FOR FURTHER INFORMATION CONTACT: To register for the meeting, contact Ms. Sheila Johnson of the Planning Staff, FSIS, at (202) 501–7138 or by FAX at (202) 501–7642. If a sign language interpreter or another special accommodation is required, please contact Ms. Johnson at (202) 501–7138 by April 30, 1998.

SUPPLEMENTARY INFORMATION: On July 25, 1996, FSIS published a final rule, ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems (61 FR 38806). The rule established a HACCP implementation schedule for establishments based on their size. Large plants began implementing HACCP on January 26, 1998. Medium to small plants have a scheduled implementation date of January 25, 1999, and very small plants are required to implement HACCP by January 25, 2000.

Since publication of the final rule, FSIS has been holding a series of public meetings to facilitate implementation of HACCP plans, especially by small and very small establishments. The Agency also has provided extensive information and technical assistance that would be helpful to plant managers in development of their HACCP systems. The Agency also has developed and distributed generic HACCP models and guidance materials specifically to aid small plant managers.

The May 7 meeting will include presentations on what assistance the Agency is currently providing and what additional help will be offered. There also will be a panel discussion on the role of the private sector and general discussion on what else can be done to assist small plants with HACCP implementation. The meeting is open to the public on a space-available basis.

Done in Washington, DC, on April 15, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–10603 Filed 4–21–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and Portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions; thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after April 23, 1998. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kristine M. Lee; Regional Appeals and Litigation Coordinator; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone: (406) 329–3647.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana:
The Missoulian, Great Falls Tribune, and The Billings Gazette.
Regional Forester decisions in Northern Idaho and Eastern Washington:
The Spokesman Review.
Regional Forester decisions in North Dakota: Bismarck Tribune.
Regional Forester decisions in South Dakota: Rapid City Journal.

Beaverhead/Deerlodge—Montana Standard
Bitterroot—Ravalli Republic
Clearwater—Lewiston Morning Tribune
Custer—Billings Gazette (Montana)
Bismarck Tribune (North Dakota)
Rapid City Journal (South Dakota)
Flathead—Daily Interlake
Gallatin—Bozeman Chronicle
Helena—Independent Record
Idaho Panhandle—Spokesman Review
Kootenai—Daily Interlake
Lewis & Clark—Great Falls Tribune
Lolo—Missoulian
Nez Perce—Lewiston Morning Tribune

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: April 15, 1998.

Kathleen A. McAllister,

Deputy Regional Forester.

[FR Doc. 98–10641 Filed 4–21–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Nutrient Management Technical and Program Assistance Activities

AGENCY: Natural Resources Conservation Service (NRCS), Agriculture.

ACTION: Notice of proposed policy revision.

SUMMARY: Notice is hereby given of the intention of NRCS to adopt a revised policy for nutrient management related technical and program assistance activities. This revised policy will impact the NRCS national conservation practice standards for Nutrient Management (Code 590) and Waste Utilization (Code 633).

DATES: Comments must be received by June 22, 1998. This revised policy will be adopted after the close of the 60 day comment period. It will be issued as part 503 of the NRCS National Agronomy Manual.

FOR FURTHER INFORMATION CONTACT: Questions or comments about this policy should be directed to Ecological Sciences Division, NRCS, Washington, D.C. Submit questions or comments in writing to Charles H. Lander, Nutrient Management Specialist, Natural Resources Conservation Service, P.O. Box 2890, Room 6155–S, Washington, D.C. 20013–2890.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires the NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 60 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Signed in Washington, D.C., on April 6, 1998.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service, Washington, D.C.

NATURAL RESOURCES CONSERVATION SERVICE

National Agronomy Manual, Subpart B—Nutrient Management; Proposed Policy

Policy Section

503.20 General

(A) The following definitions apply to terms used in this policy.

(1) Nutrient Management: Managing the amount, source, placement, form, and timing of the application of nutrients and soil amendments to ensure adequate soil fertility for plant production and to minimize the potential for environmental degradation, particularly water quality impairment.

(2) Nutrient: Any of the elements considered essential for plant growth, particularly the primary nutrients; nitrogen, phosphorus, and potassium.

(3) Conservation Management Unit (CMU): A field, group of fields, or other land units of the same land use and having similar treatment needs and planned management. A CMU is a grouping by the planner to simplify planning activities and facilitate development of conservation management systems. A CMU has definite boundaries, such as fence, drainage, vegetation, topography, or soil lines.

(4) Nutrient Source: Any material (i.e. commercial fertilizer, animal manure, sewage sludge, irrigation water, etc.) that supplies one or more of the elements essential for plant growth.

(5) Third Party Vendor: An individual (excluding Natural Resources Conservation Service (NRCS) employees) who has been certified by an approved certification organization as being qualified to provide specified types of conservation assistance, and whose certifying organization participates in the Department of Agriculture (USDA) Approved Vendor Process outlined in Part 504, ''Conservation Assistance from Third Party Vendors'' of the NRCS Conservation Programs Manual. Third Party Vendor certification programs may include, but are not limited to:

(a) Certified Crop Advisor (CCA) Program of the American Society of Agronomy.

(b) Land Grant University certification programs.

(c) National Alliance of Independent Crop Consultants (NAICC).

(d) Professional engineering organizations.

(6) Nutrient Management Specialist: A person who provides technical assistance for nutrient management and has the certification required by this policy.

(7) Nutrient Management Plan: A documented record of how nutrients will be used for plant production. The content of such plans shall be developed in accordance with the provisions of this policy. Plans developed by NRCS employees shall be developed as a component of the more comprehensive conservation plan developed for the CMU.

(B) The policy and procedures contained in this section are applicable to all technical assistance that involves nutrient management and/or the utilization of organic by-products, including animal manure, where nutrients are applied to the land. All NRCS employees shall follow these policies and procedures when providing such technical assistance. Third party vendors shall utilize these policies and procedures when assisting with the implementation of Federal conservation programs for which NRCS has national technical responsibility and that includes nutrient management components.

(C) Nutrient management plans shall be developed in compliance with applicable Federal, State, and/or local regulation. This policy takes precedence over State and/or local regulations when such regulations are less restrictive than NRCS policy. In situations where State and/or local regulations are more restrictive than NRCS policy, they take precedence over this policy.

(D) NRCS encourages third party vendors be a focal point for providing nutrient management and related technical assistance to farmers and others who apply nutrients for plant production. To promote third party vendor activity, NRCS will make available lists of names of persons certified to provide various types of technical assistance.

(E) NRCS at the State level can supplement this policy to make it more restrictive or inclusive.

503.21 Certification

(A) NRCS employees and third party vendors who review and/or approve new or revised nutrient management plans shall be certified by a certification program acceptable to NRCS within the pertinent State.

(B) NRCS employees and third party vendors who review approved new or revised nutrient management plans may also be required to meet additional requirements as established by NRCS in the State in which they are employed.

(C) The CCA program is recommended for use in States that have or use no other recognized certification programs in the State.

503.22 Nutrient Management Plans

(A) All nutrient management plans are considered elements of the overall conservation plan for the CMU. As such, the provisions of the nutrient management plans shall recognize other requirements of the conservation plan and not include provisions that make it impossible for producers to comply with both the nutrient management provisions and other provisions of the conservation plan.

(B) Nutrient management plans shall be developed in accordance with technical requirements of the NRCS Field Office Technical Guide (FOTG) and procedures contained in the National Planning Procedures Handbook. As a minimum, the following components shall be included in the description of a nutrient management plan where applicable.

(1) Aerial Site Photographs or Maps and a Soil Map

(2) Current and/or Planned Plant Production Sequence or Crop Rotation

(3) Soil Test and Plant Tissue Test Results

(4) A Complete Nutrient Budget for the Plant Production System

(5) Realistic Yield Goals

(6) Quantification of all important Nutrient Sources (this could include but not be limited to commercial fertilizer, animal manure and other organic by-products, irrigation water, atmospheric deposition, etc.).

(7) Recommended Rates, Methods, and Timing of Nutrient Application

(8) Location of Designated Sensitive Areas or Resources (if present on the conservation management unit).

(9) Guidance for Implementation, Operation, and Maintenance

(C) The format and appearance of nutrient management plans shall be in accordance with the NRCS National Planning Procedures Handbook and other guidelines adopted by NRCS in the State.

(D) Except for situations described in Sections 503.24(c) and 503.25(A)(3), all nutrient management plans shall be

developed to meet the nutrient application requirements for a Resource Management System (RMS) level of treatment, as described in Section 503.24.

(E) Progressive plans for nutrient management, described in Sections 503.24(C) and 503.25(A)(3), may be developed with existing operations that produce and apply animal manure or other organic by-products to the land, when they lack the land resources needed to meet RMS nutrient application rate requirements.

(F) If the conservation management unit lies within a hydrologic unit area that has been designated as having impaired water quality associated with nutrients, nutrient management plans shall include an assessment of the potential risk for nitrogen or phosphorus to be associated with the water quality impairment. The Nitrogen Leaching Index and/or Phosphorus Index (PI), or other acceptable assessment tools, may be used to make these assessments. When such assessments are required, nutrient management plans shall include:

(1) A record of the site vulnerability ratings for each field.

(2) Information about conservation practices and management actions that can reduce the potential for phosphorus movement from the field.

(G) Review And Revision Of Nutrient Management Plans

(1) The provisions of nutrient management plans shall be reviewed annually to determine if short term adjustments or modifications to the plan are needed for the next crop. The results of the review will be documented in the plan, as will the identification of the person who made the review.

(a) Annual reviews may be completed by the producer or the representative of the producer. Persons completing the annual review are not required to be certified according to the provisions of Section 503.21 of this policy.

(b) When an annual status review indicates that a revision of the plan is needed, the revised plan shall be approved by a certified nutrient management specialist.

(2) A thorough review of the nutrient management plan shall be done on a regular cycle not to exceed five years or the length of the crop rotation. NRCS State Conservationists may require a more frequent review cycle. The plan shall be revised, as needed, to reflect significant changes in the operation that affect the overall nutrient budget.

503.23 Soil and Plant Tissue Testing

(A) Current soil test information shall be used in the development of all nutrient management plans. As a minimum, tests will include information for pH, phosphorus, and potassium. NRCS State Conservationists may require other tests.

(1) For the purposes of developing a new nutrient management plan, current soil tests are those that are no older than 1 year.

(2) For the purpose of reviewing and revising previously developed nutrient management plans, current soil tests are those that are:

(a) No older than five years.

(b) Compliant with other guidance that requires other types of soil tests or more frequent soil test intervals as determined by the NRCS State Conservationists.

(B) Soil Sampling

(1) In general, soil samples shall be taken in accordance with Land Grant University guidance or standard industry practice if accepted by the Land Grant University within the State.

(2) In situations where there are special production or environmental considerations, States may require other sampling techniques. For example:

(a) Sub-soil sampling for residual nitrate in irrigated crop production systems.

(b) Pre-sidedress Nitrogen Test (PSNT) and/or Pre-Plant Soil Nitrate test.

(c) Sampling of the surface layer (0–2 inches) for elevated soil phosphorus or soil acidity when there is permanent vegetation, non-inversion tillage, or when animal manure or other organic by-products are broadcast or surface applied.

(C) Soil test analysis shall be performed by laboratories that are accepted in one or more of the following programs:

(1) State Certified Programs.

(2) The North American Proficiency Testing Program (Soil Science Society of America).

(3) Other laboratories whose tests are accepted by the Land Grant University in the State in which the tests are used as the basis for nutrient application.

(D) NRCS State Conservationists may recommend the use of tissue analysis and other such tests when needed to insure acceptable nutrient management.

(E) The nutrient content of animal manure and other organic by-products shall be based on:

(1) Laboratory analysis of the material.

(2) Accepted book values recognized by NRCS in the absence of laboratory analysis.

503.24 Nutrient Application Rates

(A) Except for situations described in Sections 503.24 (C) and 503.25(A)(3), the actual rate of nutrient application of all plans shall be for a RMS level of treatment.

(B) Actual nutrient application rates for an RMS shall not exceed the rates recommended based on soil test or other analysis, except for the application of phosphorus and potassium associated with the use of animal manure and other organic by-products. When animal manure or other organic by-products are land applied, the following guidance applies:

(1) For phosphorus, one of the following options may be used to establish acceptable phosphorus application rates for an RMS:

(a) When soil specific phosphorus threshold (TH) data is available that identifies the soil phosphorus level at which soluble losses of phosphorus in runoff become significant, the phosphorus application may be based upon the following guidance: Soil Test P Level, Allowed P Application Rates; <¾TH Value, Nitrogen Based Application; =>¾TH <1½TH, Crop Removal; =>1½TH <2TH, ½ Crop Removal; =>2TH, No Application;

(b) When soil specific phosphorus threshold (TH) data is not available, the phosphorus application shall be based upon the following guidance: Soil Test P Level, Allowed P Application Rates; Low, Nitrogen Based Application; Medium, Nitrogen Based Application; High, 1.5 times Crop Removal; Very High, Crop Removal; Excessive, No Application;

(2) No limit is placed on potassium application associated with manure or other organic by-products.

(C) The nutrient application rates described in progressive plans shall meet RMS requirements, except for the application of phosphorus. Initially, planned phosphorus application rates in progressive plans may be based on a nitrogen standard for the utilization of animal manure or other organic by-products.

503.25 Special Considerations

(A) When developing nutrient management plans that include the use of manure or other organic by-products:

(1) All nutrient management plans developed in accordance with Section 503.24(A) shall identify adequate land resources to enable eventual plan implementation based on phosphorus, even when initial implementation will be based on nitrogen, unless other provisions that do not involve land application are made for utilizing the manure. Such plans shall identify the year in which the producer may need access to these additional land resources to move to a phosphorus base for future implementation of the plan.

(2) The nutrient management plans shall include a field-by-field assessment of the potential risk for phosphorus to be associated with water quality impairment. This assessment may be accomplished using the Phosphorus Index or other recognized assessment tool.

When a phosphorus assessment is completed, the nutrient management plans shall describe:

(a) A record of the vulnerability ratings for each field.

(b) Information about other conservation practices and management activities that can reduce the potential for phosphorus movement from the field.

(3) Progressive plans developed with producers who do not have adequate land resources to develop and implement a plan based on phosphorus shall:

(a) Be developed on a ''case-by-case'' basis with individual producers.

(b) Include conservation practices and management activities designed to move the producer toward a plan that meets the requirements described in Section 503.24(A) within 10 years. Such plans shall include milestones (installation schedules) that identify actual movement toward an RMS during the progressive planning period.

(c) Be effective for a period not to exceed 10 years. The initial progressive plan shall be for a period not to exceed five years. A second five-year progressive plan may be developed if it is still impossible to meet the requirements of Section 503.24(A), but progress has been shown during the first five-year period.

(B) When nutrient management plans are developed and implemented in a way that results in expected increases in soil phosphorus levels, the plans shall include:

(1) Discussion about the potential for phosphorus accumulation in the soil and for such accumulation to contribute to water quality impairment, animal health, or crop production problems.

(2) Discussion of the time interval after which it may be desirable (or necessary) to convert to phosphorus based manure application rates for plan implementation.

(3) Discussion of the potential for soil phosphorus draw-down from the production and harvesting of crops.

(C) In areas with specially protected water bodies, plans shall be developed incorporating any special requirements that are applicable within these areas.

(D) Land application of sewage sludge.

(1) When sewage sludge is applied to agricultural land, the accumulations of potential pollutants from such sources (including: Arsenic, Cadmium, Copper, Lead, Mercury, Selenium, and Zinc) in the soil shall be monitored in accordance with the US Code Reference 40 CFR Parts 403 and 503 or applicable State laws. States may determine if such provisions shall also be required for the land application of animal manure and other organic by-products that contain any of these metals.

(2) Sewage sludge shall be analyzed prior to land application to determine its nutrient value.

(3) Acceptable application rates of sewage sludge shall be determined using guidelines in this policy, or applicable Federal, State or local regulations.

(E) When producing ''fresh, edible crops for the produce market, like vegetables, root, or tuber crops'' and using sewage sludge, animal manure, or other organic materials as a source of nutrients, applications shall be in accordance with provisions of applicable Federal, State, local laws or policies laws.

503.26 Record Keeping

(A) Records will be kept by the producer for nutrient management and waste utilization plans in accordance with this policy, the NRCS General Manual, and the FOTG. As a minimum, the following records shall be kept by fields or management units:

(1) Soil test results and recommended nutrient application rates.

(2) Quantities and sources of nutrients applied; and heavy metals if applicable.

(3) Specific dates nutrients were applied.

(4) Methods by which nutrients were applied (e.g., broadcast, incorporated after broadcast), injected, or fertigation).

(5) Crops planted and dates of planting.

(6) Harvest dates and yields of crops.

(7) Where applicable, results of water quality tests (including irrigation water), plant tissue, or other organic by-products tests.

(8) Annual reviews including the identification of the person completing the review and recommendations that resulted from the review.

(B) Records shall be retained for a period of five years, for a period equal to the implementation period of the plan if longer than five years, or for a period longer than five years if specified by other Federal or State agencies.

BILLING CODE 3410–16–M

P L A N T S

Providing the Plant Information Foundation to NRCS Activities, Clients, & Cooperators

[FR Doc. 98–10548 Filed 4–21–98; 8:45 am]
BILLING CODE 3410–16–C

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 1:00 p.m. on Saturday, May 2, 1998, at the Travelodge Hotel-Harbor Island, 1960 Harbor Island Drive, San Diego, California 92101. The purpose of the meeting is to discuss followup to the Santa Rosa forum and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 13, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–10697 Filed 4–21–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn 4:00 p.m. on Thursday, May 7, 1998, at the Commonwealth Park Suites Hotel, Ninth and Bank Streets, Richmond, Virginia 23203. The purpose of the meeting is to: (1) hold an administrative orientation; (2) approve a draft report on the treatment of black males in the Hampton and Newport News justice systems; and (3) plan new projects and meeting schedule.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 13, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–10696 Filed 4–21–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Annual Survey of U.S. Direct Investment Abroad

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 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 June 22, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to: R. David Belli, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50(OC), Washington, DC 20230 (Telephone: 202–606–9800).

SUPPLEMENTARY INFORMATION:

I. Abstract

The BE–11, Annual Survey of U.S. Direct Investment Abroad, provides a variety of measures of the overall operations of U.S. parent companies and their foreign affiliates, including total assets, sales, net income, employment and employee compensation, research and development expenditures, and merchandise trade. The BE–11 is a cut-off sample survey that covers all foreign affiliates (and their U.S. parent companies) above a size-exemption level. The sample data are used to derive universe estimates in nonbenchmark years by carrying forward similar data reported in the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, which is taken every five years. The data are needed to measure the economic significance of direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies.

The data from the survey are primarily intended as general purpose statistics. They should be readily available to answer any number of research and policy questions related to U.S. direct investment abroad. Policy areas of particular and lasting interest are trade in both goods and services, employment and employee compensation, taxes, and technology.

The form remains the same as in the past. No changes in language, data collected, or exemption levels are proposed.

II. Method of Collection

The survey will be sent each year to potential respondents in March and responses are due by May 31. A report must be filed by, or on behalf of, each nonbank U.S. business enterprise (U.S. Reporter) that owned 10 percent or more of the voting stock (or equivalent) of a nonbank foreign business enterprise owned at least 20 percent by all U.S. Reporters of the foreign business enterprise combined, whether held directly or indirectly, for which any one of the following three items was greater than $20 million (positive or negative) at the end of, or for, the foreign business enterprise's fiscal year: (1) Total assets, (2) sales or gross operating revenues excluding sales taxes, or (3) net income after provision for foreign income taxes.

Potential respondents are the U.S. parent companies of foreign business enterprises that reported in the last benchmark survey of U.S. direct investment abroad, which covered the year 1994, along with the U.S. parent companies of those foreign business enterprises that subsequently entered the direct investment universe. The data collected are cut-off sample data. Universe estimates are developed from the reported sample data.

III. Data

OMB Number: 0608–0053.
Form Number: BE–11.
Type of Review: Renewal.
Affected Public: Businesses or other for-profit.
Estimated Number of Respondents: 1,550.
Estimated Time Per Response: 73 hours is the average, but may vary according to the number, size, and

complexity of the businesses covered by the response.

Estimated Total Annual Burden: 113,150 hours.

Estimated Total Annual Cost: $3,394,500 (based on an estimated reporting burden of 113,150 hours and an estimated hourly cost of $30).

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 has 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 of enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 16, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–10669 Filed 4–21–98; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; James Lee, Also Known as Li Jin; Order Denying Permission To Apply for or Use Export Licenses

In the Matter of: James Lee, also known as Li Jin, 410 Auburn Way, No. 34, San Jose, California 95129.

On January 14, 1998, James Lee, also known as Li Jin (Lee), was convicted in the United States District Court for the Northern District of California of violating Section 38 of the Arms Export Control Act (currently codified at 22 U.S.C.A. 2778 (1990 & Supp. 1998)) (the AECA). Specifically, Lee was convicted of knowingly and willfully exporting and attempting to export defense articles to the People's Republic of China without obtaining the required export license from the Department of State.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. sections 2401–2420 (1991 & Supp. 1997)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1997)) (the Regulations) for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Lee's conviction for violating the AECA, and following consultations with the Acting Director, Office of Export Enforcement, I have decided to deny Lee permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on January 14, 2008. I have also decided to revoke all licenses issued pursuant to the Act in which Lee had an interest at the time of his conviction.

Accordingly, *it is hereby ordered:*

I. Until January 14, 2008, James Lee, also known as Li Jin, 410 Auburn Way, No. 34, San Jose, California 95129, may not, directly or indirectly, participate in any way, in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may do, directly or indirectly, any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by a denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (62 F.R. 43629, August 15, 1997), continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. Sections 1701–1706 (1991 & Supp. 1998)).

[2] Pursuant to appropriate delegations of authority, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Lee by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until January 14, 2008.

VI. A copy of this Order shall be delivered to Lee. This Order shall be published in the **Federal Register**.

Dated: April 6, 1998.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 98–10695 Filed 4–21–98; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Penny Ray, Also Known as Lei Ping; Order Denying Permission To Apply for or Use Export Licenses

In the Matter of: Penny Ray, also known as Lei Ping, 7100 Rainbow Drive #30, San Jose, California 95129.

On January 14, 1998, Penny Ray, also known as Lei Ping (Ray), was convicted in the United States District Court for the Northern District of California of violating Section 38 of the Arms Export Control Act (currently codified at 22 U.S.C.A. 2778 (1990 & Supp. 1998)) (the AECA). Specifically, Ray was convicted of knowingly and willfully exporting and attempting to export defense articles to the People's Republic of China without obtaining the required export license from the Department of State.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. sections 2401–2420 (1991 & Supp. 1997)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1997)) (the Regulations) for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Ray's conviction for violating the AECA, and following consultations with the Acting Director, Office of Export Enforcement, I have decided to deny Ray permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of her conviction. The 10-year period ends on January 14, 2008. I have also decided to revoke all licenses issued pursuant to the Act in which Ray had an interest at the time of her conviction.

Accordingly, *it is hereby ordered*

I. Until January 14, 2008, Penny Ray, also known as Lei Ping, 7100 Rainbow Drive #30, San Jose, California 95219, may not, directly or indirectly, participate in any way, in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may do, directly or indirectly, any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by a denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Ray by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), and August 13, 1997 (62 FR 43629, August 15, 1997), continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. sections 1701–1706 (1991 & Supp. 1998)).

[2] Pursuant to appropriate delegations of authority, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-producted direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until January 14, 2008.

VI. A copy of this Order shall be delivered to Ray. This Order shall be published in the **Federal Register**.

Dated: April 6, 1998

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 98–10694 Filed 4–21–98; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 973]

Grant of Authority for Subzone Status, Hewlett-Packard Company (Computer and Related Electronic Products), Miami, Florida

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Greater Miami Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 32, for authority to establish special-purpose subzone status at the computer and electronic products manufacturing facility of the Hewlett-Packard Company, located at sites in Miami, Florida, was filed by the Board on September 17, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 72–97, 62 FR 50556, 9/26/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application, as amended, is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the computer and related electronic products manufacturing facilities of the Hewlett-Packard Company, located in Miami, Florida (Subzone 32A), at the locations described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 15th day of April 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–10735 Filed 4–21–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 972]

Grant of Authority for Subzone Status, Hewlett-Packard Company (Computer and Related Electronic Products), Richmond, Virginia, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Capital Region Airport Commission, grantee of Foreign-Trade Zone 207, for authority to establish special-purpose subzone status at the computer and electronic products manufacturing facility of the Hewlett-Packard Company, located at sites in the Richmond, Virginia, area, was filed by the Board on June 19, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 51–97, 62 FR 35152, 6/30/97; amended 8/25/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application, as amended, is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the computer and related electronic products manufacturing facilities of the Hewlett-Packard Company, located in the Richmond, Virginia, area (Subzone 207B), at the locations described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 15th day of April 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–10736 Filed 4–21–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–810]

Certain Stainless Steel Pipe From Korea: Termination of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: In response to a request from respondents, the Department of Commerce (the Department) published in the **Federal Register** (63 FR 10002, February 27, 1998) the notice of initiation of the administrative review of the antidumping duty order on certain welded stainless steel pipe from Korea, for the period December 1, 1996 through November 30, 1997. On April 3, 1998, we received a request to withdraw the request for this review from respondents, SeAH Steel Corporation, Ltd., (SeAH). Because this request was timely submitted and because no other interested party requested a review, we are terminating this review.

EFFECTIVE DATE: April 22, 1998.

FOR FURTHER INFORMATION CONTACT: Lesley Stagliano or Maureen Flannery,

AD/CVD Enforcement, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0468, (202) 482–3020.

Applicable Statute and Regulations: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to the Department's regulations set forth at 19 CFR Part 351 (May 19, 1997).

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1997, respondents, SeAH Steel Corporation (SeAH), requested an administrative review of certain welded stainless steel pipe from Korea for the period December 1, 1996 through November 30, 1997 pursuant to 19 CFR 351.213(b). On February 27, 1998, in accordance with 19 CFR 351.221(b), we initiated an administrative review of this order. On April 3, 1998, we received a timely withdrawal of request for review from respondents.

Pursuant to 19 CFR 351.213(d) of the Department's regulations, the Department may allow a party that requests an administrative review to withdraw such request not later than 90 days after the date of publication of the notice of initiation of the administrative review.

Because respondent's request for termination was submitted within the 90-day time limit and there were no requests for review from other interested parties, we are terminating this review.

This termination of administrative review and notice are in accordance with section 751(a)(1) of the Act 19 CFR 351.213(d).

Dated: March 16, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 98–10734 Filed 4–21–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–827]

Notice of Amended Antidumping Duty Order of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 22, 1998.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or David Genovese, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1776 or (202) 482–0498, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 353 (April 1, 1996).

Scope of Order

The products covered by this order are synchronous, asynchronous, and specialty static random access memory semiconductors (SRAMs) from Taiwan, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or die, uncut die and cut die. Processed wafers produced in Taiwan, but packaged, or assembled into memory modules, in a third country, are included in the scope; processed wafers produced in a third country and assembled or packaged in Taiwan are not included in the scope.

The scope of this order includes modules containing SRAMs. Such modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), dual in-line memory modules (DIMMs), memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board.

The scope of this order does not include SRAMs that are physically integrated with other components of a motherboard in such a manner as to constitute one inseparable amalgam (*i.e.*, SRAMs soldered onto motherboards).

The SRAMs within the scope of this order are currently classifiable under the subheadings 8542.13.8037 through 8542.13.8049, 8473.30.10 through 8473.30.90, and 8542.13.8005 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Amended Antidumping Duty Order

On April 9, 1998, the International Trade Commission (ITC) notified the Department of its final determination, pursuant to section 735(b)(1)(A)(i) of the Act, that an industry in the United States is materially injured by reason of imports of static random access memory semiconductors (SRAMs) from Taiwan.

On April 16, 1998, in accordance with section 736(a)(1) of the Act, the Department published the antidumping duty order on SRAMs from Taiwan. However, the antidumping duty order published on April 16, 1998, only included the weighted-average dumping margins for the four companies for which the Department calculated a margin based on company-specific data (*i.e.*, Alliance Semiconductor Corporation, Integrated Silicon Solutions (Taiwan), Inc., United Microelectronics Corporation, and Winbond Electronics Corporation); it did not include the weighted-average dumping margins for the three companies for which the Department relied on the facts otherwise available to calculate a margin (*i.e.*, Advance Microelectronics Products Inc., Best Integrated Technology, Inc., and Texas Instruments-Acer Incorporated, all of which either did not respond to the Department's questionnaire or only provided a partial response). This amended order is being published to correct this error.

In accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all entries of SRAMs from Taiwan. These antidumping duties will be assessed on all unliquidated entries of SRAMs from Taiwan entered, or withdrawn from warehouse, for consumption on or after October 1, 1997, the date on which the Department published its preliminary determination in the **Federal Register** (62 FR 51442). On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the

same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average dumping margins as noted below. The ''All Others'' rate applies to all exporters of SRAMs not specifically listed below.

The ad valorem weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Advance Microelectronics Products Inc	113.85
Alliance Semiconductor Corporation	50.15
Best Integrated Technology, Inc	113.85
Integrated Silicon Solutions (Taiwan), Inc	7.56
Texas Instruments-Acer Incorporated	113.85
United Microelectronics Corporation	93.71
Winbond Electronics Corporation	101.53
All Others	41.75

This amended order is published pursuant to section 736(a) of the Act and 19 CFR 353.21.

Dated: April 17, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–10737 Filed 4–21–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Centers for Disease Control and Prevention, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 98–006. *Applicant:* Centers for Disease Control and Prevention, Morgantown, WV 26505–2888. *Instrument:* Stereological Microscope System, Model BX50. *Manufacturer:* Olympus Denmark, Denmark. *Intended Use:* See notice at 63 FR 11870, March 11, 1998. *Reasons:* The foreign instrument provides sophisticated sampling procedures to achieve efficient and unbiased estimates of cell number, cell density and cell size for stereological characterization of 2-D and 3-D microscopic images. *Advice received from:* National Institutes of Health, March 5, 1998.

Docket Number: 98–007. *Applicant:* University of Minnesota, Minneapolis, MN 55455. *Instrument:* 7-Channel Multi-electrode Manipulator, System Echorn 7. *Manufacturer:* Thomas Recording, Germany. *Intended Use:* See notice at 63 FR 11870, March 11, 1998. *Reasons:* The foreign instrument provides a seven-channel electrode micropositioner for brain cell recording during visually guided movements in monkeys. *Advice received from:* National Institutes of Health, March 6, 1998.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–10739 Filed 4–21–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Vermont; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98–002. *Applicant:* University of Vermont, Burlington, VT 05405. *Instrument:* HD Collector Upgrade for Mass Spectrometer. *Manufacturer:* Pro-Vac Services, United Kingdom. *Intended Use:* See notice at 63 FR 8164, February 18, 1998.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an existing instrument purchased for the use of the applicant.

The accessory is pertinent to the intended uses and we know of no comparable domestic accessory which can be readily adapted to the existing instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–10738 Filed 4–21–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Deep Seabed Mining Final Regulations for Exploration Licenses; 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 June 22, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to James P. Lawless, Office of Ocean and Coastal Resources Management, SSMC–4, 1305 East-West Highway, Silver Spring, MD 20910 (telephone 301–713–3155, ext. 194).

SUPPLEMENTARY INFORMATION:

I. Abstract

Public Law 96–282, the Deep Seabed Hard Mineral Resources Act, authorizes the Administrator of NOAA to issue licenses to eligible U.S. citizen applicants for the exploration of deep seabed mineral resources. Information must be submitted as part of a license application so that NOAA can determine if statutory requirements for eligibility are met. License holders are required to do environmental monitoring and to submit reports to allow NOAA to track activities and their impact on the environment.

II. Method of Collection

The requirements are contained in 15 CFR 970. No forms are used.

III. Data

OMB Number: 0648–0145.

Form Number: N/A.

Type of Review: Regular Submission.

Affected Public: Businesses and other for-profit.

Estimated Number of Respondents: 2.

Estimated Time Per Response: An annual report is expected to take about 20 hours. An application would take from 2,000–4,000 hours.

Estimated Total Annual Burden Hours: 40 hours (no applications have been received for a number of years and none are expected).

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 17, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–10670 Filed 4–21–98; 8:45 am]

BILLING CODE 3510–08

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041698E]

Mid-Atlantic Fishery Management Council; Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council and the New England Fishery Management Council will hold a Joint Dogfish Committee meeting.

DATES: The meeting will be held on Friday, May 8, 1998, from 10:00 a.m. until 5:00 p.m.

ADDRESSES: This meeting will be held at the Holiday Inn Logan Airport, 225 McLellan Highway, E. Boston, MA; telephone: 617–569–5250.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher Moore, Ph.D., Acting Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 16.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to establish qualifying criteria for limited access permits, adopt the definition of overfishing, discuss stock rebuilding strategies, and adopt draft management measures.

Although other issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson- Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: April 16, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–10727 Filed 4–21–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041698D]

North Pacific Fishery Management Council (Council); Meetings

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

ACTION: Notice of committee meetings.

SUMMARY: The Council's Vessel Bycatch Accountability (VBA) Committee and the newly-established Halibut Bycatch Mortality Avoidance Program (HMAP) and Individual Vessel Checklist Program (IVCP) Committees have scheduled meetings for May 13–15, 1998, in Seattle, WA.

DATES: The VBA Committee will meet Wednesday, May 13, 1998, between 8:00 a.m. and 5:00 p.m.

The HMAP Committee will meet beginning at 8:00 a.m. on Thursday, May 14, 1998, with the IVCP Committee beginning later that same day. The meeting will conclude at noon on Friday, May 15, 1998.

ADDRESSES: All meetings will be held at the Nordby Conference Center, Suite A, Fishermen's Terminal, 1711 West Nickerson, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The VBA Committee will continue work to finalize options for analysis of a

program for individual vessel bycatch accountability. The HMAP and IVCP Committees will hold their initial meetings to discuss tasking and to develop workplans.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: April 16, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–10728 Filed 4–21–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041698C]

South Atlantic Fishery Management Council; Public Workshop.

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

ACTION: Notice of public workshop.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a workshop on the dolphin-fish and wahoo. A review panel and workshop participants will review biological information and current management programs pertaining to these species. The review panel will make consensus recommendations to the Council on management options for these species in the form of a written report. The public is invited to observe this workshop.

DATES: The workshop will be held May 6-8, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The workshop will be held at the Town and Country Inn, 2001 Savannah Highway, Charleston, SC 29407; telephone: (803) 571-1000.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (803) 571-4366; fax: (803) 769-4520; email: susan.buchanan@noaa.gov

SUPPLEMENTARY INFORMATION:

Workshop Dates

May 6, 1998, 1:00 p.m. to 6:00 p.m.—Sessions I & II

Workshop participants will review and discuss available information regarding the biology, population structure and migration patterns, as well as fisheries and population dynamics of dolphin-fish and wahoo species in the Caribbean and the Southeastern United States;

May 7, 1998, 9:00 a.m. to 11:30 a.m.—Session III

Workshop participants will discuss and develop consensus recommendations relative to dolphin-fish and wahoo natural mortality, growth rate and longevity, age/size at first reproduction and fecundity, stock structure and migration patterns, data collection and research needs, and the status of these stocks before formulating consensus recommendations to the Council on data, input parameters and stock status;

May 7, 1998, 1:00 p.m. to 3:00 p.m.—Session IV

Workshop participants will review available information pertaining to current dolphin-fish and wahoo management programs in the Caribbean and the Southeastern United States, and receive an update on the South Atlantic Council's request to be designated as lead council for dolphin-fish and wahoo management;

May 7, 1998, 3:30 p.m. to 6:00 p.m.—Session V

Workshop participants will consider a wide range of management options for managing dolphin-fish and wahoo throughout the South Atlantic Council's area of management jurisdiction for these species and formulate consensus recommendations on options for the Council to consider in the Dolphin-fish/Wahoo Fishery Management Plan;

May 8, 1998, 8:30 a.m. to noon--Session VI

The panel will review, discuss and approve the final workshop report and the timeframe for Council action will also be discussed.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by May 1, 1998.

Dated: April 16, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–10730 Filed 4–21–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032798A]

Marine Mammals

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Robin Baird, Marine Mammal Research Group, Box 6244, Victoria, B.C., Canada V8P 5L5, has been issued an amendment to scientific research Permit No. 926.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Building 1, Seattle, WA 98115–0070 (206/526–6150); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

SUPPLEMENTARY INFORMATION: On January 30, 1998, notice was published in the **Federal Register** (63 FR 4625) that an amendment of permit No. 926, issued June 10, 1994 (59 FR 31217), had been requested by the above-named individual. The requested amendment

has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 926 authorizes: (1) radio tag via suction cup attachment up to 25 killer whales (*Orcinus orca*) and up to 100 Dall's porpoise (*Phocoenoides dalli*) annually in the waters off Washington state over a 5-year period; and (2) harassment of up to 300 killer whales and 200 Dall's porpoise annually during the conduct of the tagging activities. The purpose of the research is to study the behavior and ecology of these species. The Permit has been amended to expand the geographic coverage of the research to include the waters of southeast Alaska, Oregon, and California and to increase the number of killer whales to be tagged, via suction cup, from 25 to 50 to accommodate the expanded geographic range of the study.

Dated: April 16, 1998.

Ann D. Terbush, Chief,

Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–10729 Filed 4–21–98; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Intent to Renew Information Collection #3038–0005: Rules pertaining to the operations and activities of commodity pool operators and commodity trading advisors and to monthly reporting by futures commission merchants.

SUMMARY: The Commodity Futures Trading Commission is planning to renew information collection 3038–0005, Rules Pertaining to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants, which is due to expire on July 31, 1998. The information collected pursuant to this rule provides a basis for determining compliance with Part 4 of the Commission's regulations which pertains to Commodity Pool Operators and Commodity Trading Advisors. In compliance with the Paperwork Reduction Act of 1995, the Commission solicits comments to (1) evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the 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.

DATES: Comments must be received on or before June 22, 1998.

ADDRESSES: Persons wishing to comment on this information collection should contact the CFTC Clearance Officer, 1155 21st Street NW., Washington, DC 20581, (202) 418–5160.

Title: Rules Pertaining to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants.

Control Number: 3038–0005.

Action: Extension.

Respondents: Commodity Pool Operations, Commodity Trading Advisors.

Estiamted Annual Burden: 55,725.58.

Respondents	Regulation (17 CFR)	Estimated # of Respondents	Annual Responses	Est. Avg. Hours. Per Response
CPO/CTA	Part 4	4,174	11,243.25	124.75

Issued in Washington, DC, on April 15, 1998.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–10700 Filed 4–21–98; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Intent to Renew Information Collection #3038–0023—Regulations and forms relating to registration with the commission.

SUMMARY: The Commodity Futures Trading Commission is planning to renew information collection #3038–0023, Regulations and Forms Relating to Registration with the Commission which is due to expire on June 30, 1998. The Commodity Exchange Act, as amended, requires the registration of all futures commission merchants, floor traders, floor brokers, associated persons, commodity trading advisors, commodity pool operators, introducing brokers, and leverage transaction merchants. In compliance with the Paperwork Reduction Act of 1995, the Commission solicits comments to: (1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the 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.

DATES: Comments must be received on or before June 22, 1998.

ADDRESSES: Copies of the submission may be obtained from the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160.

Title: Regulations and Forms Relating to Registration with the Commission.

Control Number: 3038–0023.

Action: Extension.

Respondents: Commission Registrants.

Estimated Annual burden: 27,467 hours.

Issued in Washington, D.C., on April 15, 1998.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 98–10701 Filed 4–21–98; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Intent to Renew Information Collection # 3038–0035—Rules relating to the offer and sale of foreign futures and foreign options.

SUMMARY: The Commodity Futures Trading Commission is planning to renew information collection 3038–0035, Rules relating to the offer and sale of foreign futures and foreign options which is due to expire on June 30, 1998. The information collection pursuant to this rule is intended to detect fraud in the offer and sale of foreign futures and foreign options to people located in the United States. In compliance with the Paperwork Reduction Act of 1995, the Commission solicits comments to: (1) evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the 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.

DATES: Comments must be received on or before June 22, 1998.

ADDRESSES: Persons wishing to comment on this information collection should contact the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160.

Title: Rules Reading to the Offer and Sale of Foreign Futures and Foreign Options.

Control Number: 3038–0035.

Action: Extension.

Respondents: FCMs, IBs, CPOs, CTAs and APs.

Estimated Annual Burden: 3,149 hours.

Respondents	Regulation (17 CFR)	Estimated number of respondents	Annual responses	Est. Avg. hours per response
FCMs, IBs, CPOs, CTAs, and APs	30.4	560	560	1.00
	30.5	136	136	1.00
	30.6	440	440	.50
	30.7	120	120	.50
	30.8	120	1,440	1.00
	30.10	120	120	4.00

Issued in Washington, D.C. on April 15, 1998.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 98–10702 Filed 4–21–98; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of the Schedules of Income Eligibility Levels for Participation in the Foster Grandparent and Senior Companion Programs

AGENCY: Corporation for National and Community Service.

ACTION: Revision of income eligibility levels.

SUMMARY: This Notice revises the schedules of income eligibility levels for participation in the Foster Grandparent Program (FGP) and the Senior Companion Program (SCP) of the Corporation for National and Community Service, published in 62 FR 26294 on May 13, 1997.

DATES: These guidelines go into effect on April 22, 1998.

FOR FURTHER INFORMATION CONTACT: Corporation for National and Community Service, National Senior Service Corps, Attn: Ruth Archie, 1201 New York Avenue, N.W., Washington, DC 20525, or by telephone at (202) 606–5000, ext. 289.

SUPPLEMENTARY INFORMATION: The revised schedules are based on changes in the Poverty Guidelines issued by the Department of Health and Human Services (DHHS), published in 63 FR 9235, February 24, 1998. In accordance with program regulations, the income eligibility level for each State, Puerto Rico, the Virgin Islands and the District of Columbia is 125 percent of the DHHS Poverty Guidelines, except in those areas determined by the Corporation to be of a higher cost of living. In such instances, the income eligibility levels shall be 135 percent of the DHHS Poverty levels. The level of eligibility is rounded to the next highest multiple of $5.00.

In determining income eligibility, consideration should be given to the following definitions, as set forth in 59 FR 15120, March 31, 1994:

Allowable medical expenses are annual out-of-pocket expenses for health insurance premiums, health care services, and medications provided to the applicant, enrollee, or spouse and were not and will not be paid for by Medicare, Medicaid, other insurance, or by any other third party and, shall not exceed 15 percent of the applicable Corporation income guideline.

Annual income is counted for the past 12 months and includes: The applicant or enrollee's income and the applicant or enrollee's spouse's income, if the spouse lives in the same residence. Sponsors may count the value of shelter, food, and clothing, if provided at no cost by persons related to the applicant, enrollee or spouse.

Any person whose income is not more than 100 percent of the DHHS Poverty Guideline for her/his specific family unit shall be given special consideration for participation in the Foster Grandparent and Senior Companion Programs.

1998 FGP/SCP INCOME ELIGIBILITY LEVELS

[Based on 125 Percent of DHHS Poverty Guidelines]

States	Family Units* of			
	One	Two	Three	Four
All, except High Cost Areas, Alaska & Hawaii	$10,065	$13,565	$17,065	$20,565

*(For family units with more than four members, add $3,500 for each additional member in all States except designated High Cost Areas, Alaska and Hawaii.)

1998 FGP/SCP INCOME ELIGIBILITY LEVELS FOR HIGH COST AREAS

[Based on 135 Percent of DHHS Poverty Guidelines]

Area	Family Units* of			
	One	Two	Three	Four
All except Alaska & Hawaii	$10,870	$14,650	$18,430	$22,210
Alaska	13,595	18,320	23,045	27,770
Hawaii	12,505	16,850	21,195	25,545

*(For family units with more than four members, add $3,780 for all areas, $4,350 for Alaska, and $4,350 for Hawaii, for each additional member.)

The income eligibility levels specified above are based on 135 percent of the DHHS poverty guidelines and are applicable to the following high cost metropolitan statistical areas and primary metropolitan statistical areas:

High Cost Areas

(Including all Counties/Locations Included in that Area as Defined by the Office of Management and Budget)

Alaska

(All Locations)

California

Los Angeles-Compton-San Gabriel-Long Beach-Hawthorne (Los Angeles County)
Santa Barbara/Santa Maria/Lompoc (Santa Barbara County)
Santa Cruz-Watsonville (Santa Cruz County)
Santa Rosa-Petaluma (Sonoma County)
San Diego-El Cajon (San Diego County)
San Jose-Los Gatos (Santa Clara County)
San Francisco/San Rafael (Marin County)
San Francisco/Redwood City (San Mateo County)
San Francisco (San Francisco County)
Oakland-Berkeley (Alameda County)
Oakland-Martinez (Contra Costa County)
Anaheim-Santa Ana (Orange County)
Oxnard-Ventura (Ventura County)

District of Columbia/Maryland/Virginia

District of Columbia and Surrounding Counties in Maryland and Virginia. MD counties: Calvert, Charles, Cecil, Frederick, Montgomery and Prince Georges Counties. VA counties: Arlington, Fairfax, Loudoun, Prince William, Stafford, Alexandria City, Fairfax City, Falls Church City, Manassas City and Manassas Park City.

Hawaii

(All Locations)

Illinois

Chicago-Des Plaines-Oak Park-Wheaton-Woodstock (Cook, DuPage and McHenry Counties)

Massachusetts

Fall River (Bristol County)
Boston-Malden (Essex, Norfolk, Plymouth, Middlesex and Suffolk Counties)
Salem-Gloucester (Essex County)
Worcester (Worcester County)
Brockton-Quincy-Braintree (Norfolk County)
Dorchester (Suffolk County)
Fitchburg-Leominster (Worcester County)

New Jersey

Bergen-Passaic-Paterson (Bergen and Passaic Counties)
Middlesex-Somerset-Hunterdon (Hunterdon, Middlesex and Somerset Counties)
Monmouth-Ocean-Spring Lake (Monmouth and Ocean Counties)
Newark-East Orange (Essex, Morris, Sussex and Union Counties)
Trenton (Mercer County)

New York

Nassau-Suffolk-Long Beach-Huntington (Suffolk and Nassau Counties)
New York-Bronx-Brooklyn (Bronx, Kings, New York, Putnam, Queens, Richmond and Rockland Counties)
Westchester-White Plains-Yonkers-Valhalla (Westchester County)

Pennsylvania

Philadelphia-Doylestown-West Chester-Media-Norristown (Bucks, Chester, Delaware, Montgomery and Philadelphia Counties)

Wyoming

(All Locations)

The revised income eligibility levels presented here are calculated from the base DHHS Poverty Guidelines now in effect as follows:

1998 DHHS POVERTY GUIDELINES FOR ALL STATES

Family Units of	States			
	One	Two	Three	Four
All, except Alaska/Hawaii	$8,050	$10,850	$13,650	$16,450
Alaska	10,070	13,570	17,070	20,570
Hawaii	9,260	12,480	15,700	18,920

Authority: These programs are authorized pursuant to 42 U.S.C. 5011 and 5013. The income eligibility levels are determined by the current guidelines published by DHHS pursuant to Sections 652 and 673 (2) of the Omnibus Budget Reconciliation Act of 1981 which requires poverty guidelines to be adjusted for Consumer Price Index changes.

Dated: April 16, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–10649 Filed 4–21–98; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army

American Heritage Rivers Advisory Committee

AGENCY: Assistant Secretary of the Army (Civil Works), Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), this notice sets forth the schedule and proposed agenda of the forthcoming meeting of the American Heritage Rivers Advisory Committee (''Committee''), a Presidential Commission. The meeting will be open to the public except for the last portion of the meeting where the Committee will select up to 20 river communities from which the President will chose river communities for designation as American Heritage Rivers. The partial closure is necessary in order to permit the selection of the 20 finalist applicant rivers for submission to the President and to prevent premature disclosure of their identity. Because the seating capacity of the meeting room might be limited, an advance notice of intent to attend, although not required, is requested. This will help make adequate arrangements for those wishing to attend. Members of the public will not be permitted to make oral statements at the meeting due to equity considerations and time constraints. Written comments may be submitted for the record to Mr. Charles R. Smith, Executive Secretary, at the address listed below. Comments must be received by 5:00 p.m. on May 8.

NAME OF COMMITTEE: American Heritage Rivers Advisory Committee.

DATES OF MEETING: Monday, May 11, 1998, and Tuesday, May 12, 1998, from 9:00 a.m. to 5:00 p.m.

PLACE: The meeting will be at the White House Conference Center, 726 Jackson Place, N.W., Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Charles R. (Chip) Smith, Office of the Assistant Secretary of the Army (Civil Works), 108 Army, Pentagon (2E569), Washington, D.C. 20310–0108. Mr. Smith also can be reached by telephone (703) 693–3655, or FAX (703) 697–3366.

SUPPLEMENTARY INFORMATION: This Committee shall consist of up to 20 members appointed by the President from the public and private sectors, whose charge shall be to appraise the quality of nominations for selection of rivers as ''American Heritage Rivers.'' The Committee shall recommend up to 20 rivers for designation as American Heritage Rivers by the President.

In its review of nominations submitted by communities, the Committee shall provide its assessment of:

1. The scope of each nomination's application and the adequacy of its design to achieve the community's goals;

2. Whether the natural, economic (including agricultural), scenic, historic, cultural, and/or recreational resources featured in the application are distinctive or unique;

3. The extent to which the community's plan of action is clearly defined and the extend to which the plan addresses all three American Heritage Rivers objectives—natural resource and environmental protection, economic revitalization, and historic and cultural preservation—either through planned actions or past accomplishments, as well as any other characteristics of the proposals that distinguish a nomination, such as:

(A) Community vision and partnership:

(B) Sustainability of products and projects, including project maintenance;

(C) Resources, both committed and anticipated, including means of generating additional support from both private and public sources;

(D) Anticipated Federal role as defined by the applicants;

(E) Schedule or timeline;

(F) Citizen involvement;

(G) Public education relating to the designation of the river;

(H) Logistical support, operating procedures, and policies;

(I) Prior accomplishments, if relevant, and relationship to existing plans and projects in the area; and

(J) Measures of performance.

4. The strength and diversity of support for the nomination and plan of action as evidenced by letters from local and state governments, Indian tribes, elected officials, any and all parties who participate in the life and health of the area to be nominated, or who have an interest in the economic life and cultural and environmental vigor of the involved community.

The Committee also should seek to recommend the selection of rivers that as a group:

1. Represent the natural, historic, cultural, social, economic, and agricultural diversity of American rivers;

2. Showcase a variety of stream sizes and an assortment of urban, rural, and mixed settings from around the country, including both relatively pristine and degraded rivers;

3. Highlight a variety of innovative programs in such areas as historic preservation, sustainable development through tourism, wildlife management, fisheries restoration, recreation, community revitalization, agricultural practices, and flood plain and watershed management;

4. Include community efforts in early stages of development as well as those that are more well-established; and

5. Stand to benefit from targeted Federal assistance.

Submitted by Office of the Assistant Secretary of the Army (Civil Works):

Charles R. Smith,

Executive Secretary, American Heritage Rivers Advisory Committee.

[FR Doc. 98–10792 Filed 4–21–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC–576 IC98–576–000]

Proposed Information Collection and Request for Comments

April 16, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before June 22, 1998.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy

Regulatory Commission, Attn: Michael Miller, Information Services Division, CI–1, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–576 ''Report by Gas Pipeline Companies on Service Interruptions'' (OMB No. 1902–0004) is used by the Commission to implement the statutory provisions of the Natural Gas Act (NGA) (15 U.S.C. 717–717w). Under Sections 4, 7, 10(a) and 16 of the NGA the Commission is empowered to oversee continuity of service in the transportation of natural gas in interstate commerce. The information collected under FERC–576 notifies the Commission in a timely manner of any interruption to service or possible hazard to public health or safety. The Commission uses this information to assess the validity of its regulations and policies which are implemented to insure the availability of adequate supplies at reasonable prices. The data collected pertains to serious interruptions of service to any wholesale customer involving facilities operated under certificate authorization from the Commission. Specifically, the data collected includes: (1) Date of service interruption, (2) date of reporting the interruption to the Commission, (3) location, (4) brief description of facility involved and cause of interruption, (5) customers affected, (6) duration of interruption, and (7) volumes of gas interrupted.

The Commission implements these mandatory information collection requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 260.9.

Action: The Commission is requesting a three-year extension of the current expiration date.

Burden Statement: Public reporting burden for this collection is estimated as follows:

Number of respondents annually	Number of responses per respondent	Average burden hours per response	Total annual burden hours
(1)	(2)	(3)	(1)×(2)×(3)
12	1.25	1.0	15

Estimated cost burden to respondents: 15 hours divided by 2,088 hours per year times $110,000 per year equal $790 (rounded). The estimated cost per respondent is equal to $65.83.

The reporting burden includes the total time, effort, or financial resource expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purpose of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.*, permitting electronic submission of responses.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10609 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2381–000]

CMP Trading & Marketing; Notice of Filing

April 16, 1998.

Take notice that on March 30, 1998, CMP Trading & Marketing tendered for filing its Quarterly Report of Transactions for the periods July 1997 to September 30, 1997, and October 1, 1997 to December 31, 1997.

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 April 28, 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. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10608 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–341–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

April 16, 1998.

Take notice that on April 9, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–1046, filed in Docket No. CP98–341–000 a request pursuant to Sections 157.205, and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon approximately 2.1 miles of 6-inch pipeline and a point of delivery under Columbia's blanket certificate issued in Docket No. CP83–76–000 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.

Columbia requests authorization to abandon approximately 2.1 miles of 6-inch pipeline and a point of delivery to Columbia Gas of Ohio, Inc., all located in Monroe County, Ohio.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10610 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–152–001]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

April 16, 1998.

Take notice that on April 9, 1998, Columbia Gas Transmission Corporation (Columbia), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of April 1, 1998:

Substitute Twenty-sixth Revised Sheet No. 25
Substitute Twenty-sixth Revised Sheet No. 26
Substitute Twenty-sixth Revised Sheet No. 27
Substitute Twenty-sixth Revised Sheet No. 28
Substitute Tenth Revised Sheet No. 31

Columbia states that these revised tariff sheets are being filed in compliance with the Commission Order dated March 26, 1998.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, affected state commissions and parties on the official service list in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Waston, Jr.,

Acting Secretary.

[FR Doc. 98–10622 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–21–000]

Columbia Gas Transmission Corporation; Notice of Technical Conference

April 16, 1998.

In its order issued March 26, 1998, in the captioned proceeding, the Commission determined that the filing raises issues that should be addressed in a technical conference.

Take notice that the technical conference will be held on Thursday, May 14, 1998, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10626 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–7–23–001]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 16, 1998.

Take notice that on April 14, 1998, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, bear a proposed effective date of April 1, 1998.

As directed by the March 31, 1998, Commission Order in Docket No. TM98–7–23–000, et al. ESNG is refiling its Storage Tracker rates, previously filed on March 10, 1998. The purpose of the filing is to make a specific correction as directed by the Commission, in the SST Overrun Charge shown on Sheet No. 7 to exclude the ACA and GRI surcharges from the rate.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and

Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10627 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–8–010]

Granite State Gas Transmission, Inc.; Notice of Filing Tariff Sheets in Compliance With Commission Orders

April 16, 1998.

Take notice that on April 9, 1998, Granite State Gas Transmission, Inc. (Granite State) tendered for filing, as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets for effectiveness on May 1, 1998:

Substitute Twelfth Revised Sheet No. 21
Substitute Thirteenth Revised Sheet No. 22

According to Granite State, the foregoing tariff sheets are filed in compliance with the provisions of the settlement of Granite State's rate proceeding in Docket No. RP97–8–000 issued October 27, 1997 and an order of the Commission issued April 1, 1998 in Docket Nos. RP98–155–000 and TM98–3–4–000.

Granite State further states that it tendered revised tariff sheets on March 31, 1998 to comply with the provisions of the settlement in Docket No. RP97–8–000 reducing its Base Tariff rates, effective May 1, 1998. The March 31st filing included a Power Cost Adjustment (PCA) surcharge based on a revision in the PCA reconciliation procedure proposed by Granite State in Docket Nos. RP98–155–000 and TM98–3–4–000. On April 1, 1998, the Commission issued an order in the foregoing proceeding suspending the change in the PCA reconciliation procedure and accepted a PCA surcharge calculated under the existing PCA tariff procedures.

According to Granite State, the instant revised tariff sheets state the PCA surcharge accepted by the Commission in the April 1 order in Docket Nos. RP98–155–000, *et al.*, *supra*, and the settlement compliance Base Tariff rates.

According to Granite State copies of its filing are being served upon its firm transportation customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10618 Filed 4–21–98; 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 Technical Conference

April 16, 1998.

In its order issued March 25, 1998, in the captioned proceeding, the Commission determined that the filing raises issues that should be addressed in a technical conference.

Take notice that the technical conference will be held on Tuesday, May 5, 1998 through Thursday, May 7, 1998, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Any party that will need audio visual equipment at the conference should contact Kenneth Niehaus at (202) 208–0398 on or before April 28, 1998.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10619 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–431–004]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

April 16, 1998.

Take notice that on April 9, 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 purpose of this filing is to comply with the Commission's order issued March 26, 1998 in Docket Nos. RP97–431–002 and 003, which required Natural to submit modified pro forma tariff sheets setting out procedures for the posting, auctioning, allocating and awarding of firm capacity on Natural's system.

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 this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10620 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–145–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

April 16, 1998.

Take notice that on April 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 tariff sheets pursuant to the order of the

Commission issued herein on March 27, 1998 (March 27th Order). No effective date is proposed at this time pending Commission determination on the instant filing.

Natural states that the purpose of this filing is to comply with the March 27th Order related to a proposed new Rate Schedule PALS under which Natural would provide a fully interruptible Part and Loan Service.

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 in Docket No. RP98–145.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10621 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–185–000]

Ozark Gas Transmission System; Notice of Proposed Changes in FERC Gas Tariff

April 16, 1998.

Take notice that on April 9, 1998, Ozark Gas Transmission System (Ozark) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1:

Revised cover page
First Revised Sheet Nos. 2, 21D, 88A, 107, 114, 115, 121, 149, 154, 156 and 166
Second Revised Sheet Nos. 17, 18, 19, 28 and 112
Third Revised Sheet No. 14, 46

Ozark states that the revised tariff sheets are submitted to change the names and addresses set forth in its tariff for correspondence purposes, to correct certain typographical errors, and to eliminate certain provisions of its tariff that are no longer applicable. Ozark proposes a May 10, 1998 effective date for these sheets. Ozark states that copies of this filing have been served on its customers and interested state organizations.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10624 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR98–10–000]

Pacific Gas and Electric Company; Notice of Petition for Rate Approval

April 16, 1998.

Take notice that on March 17, 1998, Pacific Gas and Electric Company (PG&E) filed, pursuant to Section 284.123(b)(2) of the Commission's Regulations, a petition for rate approval requesting that the Commission approve, as fair and equitable, the following revised rates for certain interstate parking and lending services, as described below, performed under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (Section 311):

Parking:
Minimum Daily Rate ($/Dth): $0.00
Maximum Daily Rate ($/Dth): $0.1014
Maximum Annual Transaction Charge ($/Dth): $0.8871
Lending:
Minimum Daily Rate ($/Dth): $0.00
Maximum Daily Rate ($/Dth): $0.1014
Maximum Annual Transaction Charge ($/Dth): $0.8871

PG&E's mailing address is P.O. Box 74420, San Francisco, CA 94120.

PG&E's petition states it is a Hinshaw pipeline within the meaning of Section 1(c) of the Natural Gas Act, transporting and distributing gas throughout large portions of northern and central California to numerous residential, industrial, and agricultural gas consumers. On March 31, 1997, the Commission issued an order approving rates for new parking and lending services under Section 311 as part of PG&E's newly created Golden Gate Market Center (1997 order). Parking provides customers with temporary storage of gas on an interruptible basis. Lending provides interruptible temporary loans of gas from PG&E's system. These services are offered at the points PG&E's system interconnects with interstate pipelines, and at its Kern River Station. PG&E also provides these services on an intrastate basis under the jurisdiction of the Public Utilities Commission of the State of California (CPUC).

Ordering Paragraph (B) of the 1997 order provides that if the CPUC modifies or revises PG&E's existing intrastate parking or lending maximum annual transaction charge, PG&E is required to file a petition for rate approval with this Commission to revise or re-justify the rates for these services. On November 19, 1997, the CPUC approved, for implementation on March 1, 1998, revised rates for intrastate parking and lending. Accordingly, PG&E's petition is intended to establish revised rates for such services performed under Section 311. PG&E proposes an effective date of March 17, 1998.

Any person desiring to participate in this rate proceeding must 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 Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before April 30, 1998. The petition for the rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10615 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR98–11–000]

PanEnergy Louisiana Intrastate; Notice of Petition for Rate Approval

April 16, 1998.

Take notice that on April 1, 1998, PanEnergy Louisiana Intrastate Company filed, pursuant to Section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a rate of 24.26 cents per MMBtu for firm and interruptible transportation services performed under Section 311(a)(2) of the Natural Gas Policy Act of 1978.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the proposed rate for transportation services will be deemed to be fair and equitable. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentations of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., in accordance with Section 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions or protests must be filed on or before April 30, 1998. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10616 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–342–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

April 16, 1998.

Take notice that on April 9, 1998, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP98–342–000 a request pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for approval to abandon by removal a measurement facility at a delivery point, under Southern blanket certificate issued in Docket No. CP82–406–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern states that it constructed the delivery point facility to sell and deliver natural gas at the Texas Eastern Meter Station on Southern's fourteen-inch Logansport Line in Bienville Parish, Louisiana under an agreement between Southern and Texas Eastern Transmission Corporation (Tetco) dated February 2, 1948. Southern further states that the exchange agreement under which service was provided at the meter station was abandoned by the parties by Commission order dated July 19, 1996 in Docket No. CP96–332–000. Southern asserts that service at the meter station has not been active for over ten years. Accordingly, Southern proposes to abandon the meter station.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene 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 activities 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 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10611 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–186–000]

Southern Natural Gas Company; Notice of Refund Report

April 16, 1998.

Take notice that on April 9, 1998 Southern Natural Gas Company (Southern) tendered for filing a Refund Report.

Southern states that pursuant to Section 38.3 of the General Terms and Conditions of Southern's Tariff the Refund Report sets forth Excess Storage Usage Charges to be refunded to Rate Schedule CSS customers.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before April 23, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve the make protestants parties to the proceedings. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10625 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP96–312–010 and GT98–19–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

April 16, 1998.

Take notice that on April 8, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for filing (1) a fully executed firm Gas Transportation Agreement between Tennessee and Distrigas of Massachusetts, Inc. (the DOMAC Service Agreement) and (2) Substitute Sixth Revised Sheet No. 412 to Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1.

Tennessee states that the DOMAC Service Agreement and the revised tariff sheet are filed in compliance with the Commission's March 13, 1998 letter order (March 13 Order) in the above-referenced docket. In accordance with the March 13 Order, Tennessee requests that the tariff sheet be deemed effective on April 1, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10617 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–11–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

April 16, 1998.

Take notice that on April 8, 1998 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets to which tariff sheets are enumerated in Appendix A attached to the filing, with an effective date of April 1, 1998.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from CNG Transmission Corporation (CNG) under its Rate Schedule GSS, the costs of which are included in the rates and charges payable under Transco's Rate Schedules GSS and LSS. This tracking filing is being made pursuant to tracking provisions under Section 3 of Transco's Rate Schedule GSS and Section 4 of Transco's Rate Schedule LSS.

Transco states that included in Appendix B attached to the filing are explanations of the rate changes and details regarding the computation of the revised Rate Schedule GSS and LSS rates.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10628 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–157–001]

Trunkline Gas Company; Notice of Compliance Filing

April 16, 1998.

Take notice that on April 13, 1998, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective April 9, 1998:

Sub Original Sheet No. 59A
Sub Original Sheet No. 65A

Trunkline states that the purpose of this filing is to comply with the Commission's Order Accepting Tariff Sheets Subject to Conditions issued on April 8, 1998 in Docket No. RP98–157–001, 83 FERC ¶ 61,016. The revised tariff sheets included herewith reflect the agreed upon language for Section 2.6(C)(1) in Rate Schedules NNS–1 and NNS–2.

Trunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to this 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 as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10623 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–342]

Duke Energy Corporation; Notice of Availability of Environmental Assessment

April 16, 1998.

A environmental assessment (EA) is available for public review. The EA was prepared for an application filed by the Duke Energy Corporation, licensee for the Catawba-Wateree Hydroelectric Project. In its application, the licensee requests permission to grant an easement to Ipswitch Bay, LLC to construct a private residential marina consisting of five docks on Lake Norman near Mooresville in Iredell County, North Carolina. The proposal also involves dredging a 60,000 square foot area of the lake (amounting to 8,500 cubic yards of sediment).

Based on the environmental analyses presented in the EA, the Commission's staff has recommended allowing Duke Energy Corporation to grant the proposed easement for non-project use of project land. The EA finds that the proposed action would not constitute a major federal action significantly affecting the quality of the human environment.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be obtained by calling the Commission's public reference room at (202) 208–1371.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10613 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2354–018–GA]

Georgia Power Company; Notice of Availability of Environmental Assessment

April 16, 1998.

An environmental assessment (EA) is available for public review. The EA was

prepared for an application filed by the Georgia Power Company on January 29, 1998, requesting the Commission's authorization to permit the Clayton-Rabun County Water Authority (Authority) to increase its water withdrawal from Lake Rabun reservoir for municipal water supply from 806,000 gallons per day (gpd) currently to 2.0 million gpd.

The EA evaluates the environmental impacts that would result from permitting the Authority to increase its water withdrawal from Lake Rabun reservoir, as discussed above. Existing pumps and water treatment facilities at the site are able to accommodate this increased water withdrawal; consequently, the proposed action would not require any new construction activity.

The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. Copies also may be obtained by calling the EA coordinator, Jim Haimes, at (202) 219–2780.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10614 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 516–280]

South Carolina Electric & Gas Company; Notice of Availability of Environmental Assessment

April 16, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has prepared an environmental assessment (EA) for an application for approval of non-project use of project lands and change of land rights on Lake Murray. South Carolina Gas & Electric Company (licensee) proposes to sell to Larry Koon and James Cromer (developers) 20.5 acres of project lands for residential purposes. The licensee also proposes to allow use of the lake's 75-foot buffer strip to provide parking and vehicular access to an approved Willows End Marina. In the EA, staff concludes that approval of the licensee's proposal would not constitute a major Federal action significantly affecting the quality of the human environment. The Saluda Project is located on the Saluda River in Richland, Lexington, Saluda and Newberry Counties, near Columbia, South Carolina.

The EA was written by staff in the office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for review at the Commission's Reference and Information Center, Room 2–A, 888 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–10612 Filed 4–21–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6000–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Environmental Documentation and Associated Reporting for Environmental Impact Assessment of Nongovernmental Activities in Antarctica

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Environmental Documentation and Associated Reporting for Environmental Impact Assessment of Nongovernmental Activities in Antarctica, EPA ICR No. 1808.02, OMB Control No. 2020–0007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 22, 1998.

CONTACTS FOR FURTHER INFORMATION AND TO BE PLACED ON THE PROJECT MAILING LIST: For a copy of the ICR or for further information on this project, contact Mr. Joseph Montgomery or Ms. Katherine Biggs, Office of Federal Activities (2252A), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone (202) 564–7157 or (202) 564–7144, respectively. Information on this project, including the Supporting Statement for this ICR, is also available on the World Wide Web at: http//www.epa.gov/oeca/ofa.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are nongovernmental operators, including tour operators, conducting expeditions to Antarctica.

Title: Environmental Documentation and Associated Reporting for Environmental Impact Assessment of Nongovernmental Activities in Antarctica, EPA ICR No. 1808.02, OMB Control No. 2020–0007, expiring August 8, 1998.

Abstract: The Environmental Protection Agency (EPA) promulgated an Interim Final Rule for Environmental Impact Assessment of Nongovernmental Activities in Antarctica, 40 CFR part 8, in accordance with the Antarctic Science, Tourism, and Conservation Act of 1996 (Act), 16 U.S.C. 2401 *et seq.*, as amended, 16 U.S.C. 2403a, which implements the Protocol on Environmental Protection (Protocol) to the Antarctic Treaty of 1959 (Treaty). The Interim Final Rule provides for assessment of the environmental impacts of nongovernmental activities in Antarctica, including tourism, and for coordination of the review of information regarding environmental impact assessments received from other Parties under the Protocol. The requirements of the Interim Final Rule apply to operators of nongovernmental expeditions organized in or proceeding from the territory of the United States to Antarctica and include commercial and non-commercial expeditions. Expeditions may include ship-based tours; yacht, skiing or mountaineering expeditions; privately funded research expeditions; and other nongovernmental or nongovernmental-sponsored activities. The Interim Final Rule does not apply to individual U.S. citizens or groups of citizens planning to travel to Antarctica on an expedition for which they are not acting as an operator. (Operators, for example, typically acquire use of vessels or aircraft, hire expedition staff, plan itineraries, and undertake other organizational responsibilities.)

Environmental Documentation. Persons subject to the Interim Final Rule at 40 CFR part 8 must prepare environmental documentation, as appropriate, to support the operator's determination regarding the level of environmental impact of the proposed expedition. Environmental

documentation includes a Preliminary Environmental Review Memorandum (PERM), an Initial Environmental Evaluation (IEE), or a Comprehensive Environmental Evaluation (CEE). The environmental documentation must be submitted to the Office of Federal Activities (OFA). If the operator determines that an expedition will have: (1) Less than a minor or transitory impact, a PERM must be submitted no later than 180 days before the proposed departure to Antarctica; (2) no more than minor or transitory impacts, an IEE must be submitted no later than 90 days before the proposed departure; or (3) more than minor or transitory impacts, a CEE must be submitted. Operators who anticipate such activities are encouraged to consult with EPA as soon as possible regarding the date for submittal of the CEE.[1]

The Protocol and the Interim Final Rule also require an operator to employ procedures to assess and provide a regular and verifiable record of the actual impacts of an activity which proceeds on the basis on an IEE or CEE, including monitoring of key environmental indicators for an activity proceeding on the basis of a CEE, or, if necessary, an IEE. For activities requiring an IEE, an operator should be able to use procedures currently being voluntarily utilized by operators to provide the required information. For activities requiring a CEE, OFA will consult with the National Science Foundation and other interested federal agencies regarding the monitoring regime that is appropriate to the activity proposed, and with regard to possible utilization by the operator of relevant monitoring data collected by the U.S. Antarctic Program.

The record developed through these measures must be designed to: (a) Enable assessments to be made of the extent to which environmental impacts of nongovernmental expeditions are consistent with the Protocol; and (b) provide information useful for minimizing and mitigating those impacts and, where appropriate, on the need for suspension, cancellation, or modification of the activity.

[1] Article 3(4), of Annex I of the Protocol requires that draft CEEs be distributed to all Parties and the Committee for Environmental Protection 120 days in advance of the next Antarctic Treaty Consultative Meeting (ATCM) at which the CEE may be addressed. For example, CEEs that would have been considered at the May 1997 ATCM for expeditions during the 1997–1998 austral season would have to have been distributed by January 1997, and CEEs to be considered at the May 1998 ATCM for expeditions during the 1998–1999 austral season would have to have been distributed by January 1998.

Environmental documentation will be reviewed by the OFA, in consultation with the National Science Foundation and other interested federal agencies, and will also be made available to other Parties and the public, including tour operators and environmental groups, as required under the Protocol or otherwise requested.

Environmental documents (i.e., PERM, IEE, CEE) must be submitted to the Office of Federal Activities and may include electronic copy for ease in providing documentation to the public via the World Wide Web at: http://www.epa.gov/oeca/ofa. At the time the Interim Final Rule was promulgated, EPA anticipated a total of eight respondents annually. The EPA further anticipated that the types of nongovernmental activities currently being carried out (e.g., ship-based tours and privately funded research expeditions) would typically be unlikely to have impacts that are more than minor or transitory, thus an IEE should be the typical level of environmental documentation. At the time the Interim Final Rule was promulgated, such documentation requirements were estimated to require about 120 hours total per year per operator for preparation of the IEE and associated records of assessment and verification.

In cases of emergency relating to the safety of human life or of ships, aircraft, equipment and facilities of high value, or the protection of the environment which require an activity to be undertaken without completion of the documentation procedures set out in the Interim Final Rule, the operator must notify the Department of State within 15 days of any activities which would have otherwise required preparation of a CEE, and provide a full explanation of the activities carried out within 45 days of those activities. For the 1997–1998 austral season, there were no emergencies requiring notification by U.S. operators.

For the 1997–1998 austral season, there were, in fact, nine respondents who submitted a total of four IEEs. Paperwork reduction provisions in the Interim Final Rule that were used by the operators included:

(a) Incorporation of material into the environmental document by referring to it in the IEE;

(b) Inclusion of all proposed expeditions by one operator within one IEE; and

(c) Use of one IEE to address expeditions being carried out by more than one operator; e.g., one IEE included multiple expeditions by five operators in the Peninsular Area, and another IEE included multiple expeditions by two operators for non-Peninsular Area expeditions.

Coordination of Review of Information Received from Other Parties to the Treaty. The Interim Final Rule also provides for the coordination of review of information received from other Parties and the public availability of that information including: (1) A description of national procedures for considering the environmental impacts of proposed activities; (2) an annual list of any IEEs and any decisions taken in consequence thereof; (3) significant information obtained and any action taken in consequence thereof with regard to monitoring from IEEs and CEEs; and (4) information in a final CEE. This provision fulfills the United States' obligation to meet the requirements of Article 6 of Annex I to the Protocol. The Department of State is responsible for coordination of these reviews of drafts with interested Federal agencies, and for public availability of documents and information. This portion of the Interim Final Rule does not impose paperwork requirements on any nongovernmental person subject to U.S. regulation.

Background on ICR Burden: Persons subject to the Interim Final Rule at 40 CFR part 8 must prepare environmental documentation to support the operator's determination regarding the level of environmental impact of the proposed expedition. The Interim Final Rule provides for incorporation of material into an environmental document by referring to it in the document when the effect will be to reduce paperwork. Further, an operator may include more than one proposed expedition within one environmental document and one environmental document may also be used to address expeditions being carried out by more than one operator to further reduce burden. The operator must submit its environmental documentation, along with an electronic copy in HTML format, if available, by mail or by special delivery. In cases of emergency, the operator must notify the Department of State within 15 days of any activities which would have otherwise required preparation of a CEE, and provide a full explanation of the activities carried out within 45 days of those activities.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of EPA and other Federal agencies, including whether the information will have practical utility;

(ii) Evaluate the accuracy of EPA's estimate of the burden of the proposed

collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: For the limited time the Interim Final Rule will be in effect, EPA assumed an IEE would be the most likely environmental documentation submitted by operators, and that there would be no reporting for cases of emergency. The EPA further assumed that, for the initial year the Interim Final Rule was in effect (e.g., 1997–1998) and the subsequent three years, the most likely scenario would be:

(1) For the initial year, no PERMs or CEEs would be submitted, with four IEEs submitted on behalf of nine operators;

(2) For the subsequent three years, four revised IEEs would be submitted on behalf of nine operators;

(3) For the initial year and subsequent three years, procedures would be implemented to assess and provide a regular and verifiable record of the actual impacts of any activity which proceeds on the basis of an IEE;

(4) No PERMs, new IEEs, or CEEs would be submitted during the subsequent three years; and

(5) For the initial year, no emergencies would occur requiring emergency reporting, and none would occur during the subsequent three years.

The detailed estimate of burden and costs, which considers all three levels of environmental documentation, and includes the models and assumptions for the estimate of burden and costs for operators is presented in EPA's Supporting Statement for this ICR which is available from the Contacts or at the World Wide Website listed above. In summary, based on the most likely scenario listed above, EPA anticipates the following:

Affected Public: Commercial tour operators and all other nongovernmental entities including privately funded research expeditions.

Frequency of Reporting: Once per year.

Number of Respondents: 9.

Estimated Average Annual Time: For the initial year, no PERMs or CEEs were submitted; four IEEs were submitted on behalf of nine operators with an estimated average burden of 216 hours per IEE, or 96 hours per operator, including assessment and verification procedures. For each of the subsequent years, four IEEs are anticipated on behalf of nine operators with an estimated annual average burden of 96 hours per IEE, or 43 hours per operator, including assessment and verification procedures.

Estimated Start-up Costs: None.

Estimated O&M Costs: The O&M costs for the initial year and each of the subsequent years are estimated at $140 for an IEE including assessment and verification procedures, or $62 per operator.

Estimated Total Burden for the Initial Year and Three Subsequent Years: The total respondent burden is estimated as 2,020 hours, or 224 hours per operator; and the total respondent cost is estimated as $126,746, or $14,083 per operator.

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.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Dated: April 16, 1998.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 98–10715 Filed 4–21–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6000–9]

Draft Residual Risk Report to Congress

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability and request for comment.

SUMMARY: This Report to Congress (RTC) was prepared in response to section 112(f)(1) of the Clean Air Act (CAA) and provides the information requested in section 112(f)(1) and also presents EPA's proposed strategy for assessing any risk remaining (residual risk) due to the continued emissions of hazardous air pollutants (HAP) from any industry source category subject to the maximum achievable control technology (MACT) standards required by section 112(d) of the CAA. The CAA identified several topics to be addressed: (a) Methods of calculating the risk to public health remaining, or likely to remain, from sources subject to regulation under section 112(d); (b) the public health significance of such estimated remaining risk and the technologically and commercially available methods and costs of reducing such risk; (c) the actual health effects with respect to persons living in the vicinity of sources, any available epidemiological or other health studies, risks presented by background concentrations of hazardous air pollutants, any uncertainties in risk assessment methodology or other health assessment technique, and any negative health or environmental consequences to the community of efforts to reduce such risks; and (d) recommendations as to legislation regarding such remaining risk. Congress directed that this RTC be prepared ''after consultation with the Surgeon General and after opportunity for public comment.'' This notice of document availability is in fulfillment of the requirement to have a time for the public to comment on this RTC.

EFFECTIVE DATE: This notice announces a 60-day public comment period beginning April 22, 1998.

ADDRESSES: Copies of the draft RTC will be available from the Air and Radiation Docket and Information Center (MC–6102), Docket No. A–97–39, U.S. Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548, between the hours of 8:00 am and 4:00 pm, Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Written comments should be submitted to this address. Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION** of this notice. No Confidential Business Information (CBI) should be submitted electronically.

FOR FURTHER INFORMATION CONTACT: Dennis A. Pagano or Kelly Rimer, Office of Air Quality Planning and Standards,

Air Quality Strategies and Standards Division, Risk and Exposure Assessment Group, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–0502 or 541–2962.

SUPPLEMENTARY INFORMATION: This RTC is also available electronically by accessing the following address: http://www.epa.gov/ttn/oarpg. Comments may be made electronically by sending them to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 6.1 file or ASCII file format. All comments and data in electronic form must be identified by the Docket No. A–97–39. Electronic comments on this draft RTC may be filed online at many Federal Depository Libraries.

Background

This RTC responds to the statutory directives in section 112(f) of the CAA and also provides EPA's strategy for assessing residual risk remaining from the HAP being emitted from source categories subject to MACT standards. Chapter 2 provides a brief legislative and regulatory background on the CAA air toxics program in order to provide context for what follows. Chapter 2 also provides a short history of the development of risk-based programs and of risk assessment as the primary tool used by EPA to analyze the potential impacts of air toxics emissions on the exposed population and environment. As discussed in Section 2.3 of the RTC, the development of EPA's risk-based program for air toxics has incorporated input from the National Research Council, the Commission on Risk Assessment and Risk Management, State and local air toxics programs, and a variety of risk assessment policies and guidelines developed (and in some cases under development) by EPA. The RTC then addresses, in Chapters 3 and 4, the required statutory elements, as shown in the text box on page 1 of the RTC. Chapter 3 provides information on the methods for conducting human and ecological risk assessments for emissions of air toxics, describes the data required, and the methods for evaluating mixtures. Chapter 4 addresses the remaining statutory elements listed in CAA section 112(f)(1)(B), (C), and (D) in the order listed in the CAA. In Chapter 5, the RTC describes EPA's strategy to conduct residual risk analyses, as well as discuss other provisions in section 112(f) (2) through (6) of the CAA.

The intent of this RTC is to address the legislative requirements of section 112(f)(1) and to provide the reader with a basic understanding of how EPA will conduct its risk analyses and make decisions concerning these risk assessments. The methodology descriptions provided are not presented as strict guidance but are discussed with enough detail to inform the reader of EPA's intentions and directions in implementing the ''residual risk'' analyses. The EPA prefers to be flexible in this process so that as changes are made in the way risk assessments are done, they may be incorporated as needed.

It is important to note that this RTC does not contain the results of any residual risk analyses or information on EPA's potential actions after conducting such analyses. The EPA is currently collecting existing data on source categories for which MACT standards have been promulgated and will begin analyzing these data using the proposed strategy.

Congress also requested EPA to report on additional elements related to residual risk. This RTC describes EPA's proposals for considering these elements as they apply to residual risk assessments.

- Public Health Significance: This RTC presents EPA's plan to use the benzene NESHAP framework (54 FR 38044, September 14, 1989) which provides a 2-step decision process, as a gauge of significance for the purposes of making regulatory decisions under the residual risk program. This RTC also describes when the benzene framework will be applied. In this context, the RTC states clearly that the benzene framework does not address noncancer effects nor does it address carcinogens for which a ''margin of exposure'' type of analysis is the more appropriate method to use in determining the level of concern. For these latter two types of effects, the RTC states that EPA is in the process of developing these decision frameworks, and that they will not be developed in time to be included in this RTC.

The EPA is also mandated to address ecological effects. Currently there are no policies in place for considering them in air management decisions. The EPA is developing guidance for making these risk management decisions, but they will not be developed in time to be incorporated into this RTC.

- Technologically and Commercially Available Methods and Costs: The EPA presents a range of control options if it is determined that additional control is needed to reduce residual risks. This RTC provides an overview of these options with an emphasis on pollution prevention approaches.
- Actual Health Effects Information: The information available on actual health effects resulting from exposure to air toxics is very limited. This RTC presents a summary discussion of epidemiological data, laboratory data, and other exposure study data. It also briefly describes how EPA intends to use these data and any actual source category-specific health effects data that may become available when residual risk assessments are conducted.
- Background Concentrations: This RTC discusses general information on background levels of HAP, including EPA's cumulative risk policy which is under development, and presents a definition of background concentrations for air toxics and residual risk purposes. It describes approaches used by other EPA programs and includes examples of rules and guidance that consider the issue of background. It also presents a discussion of the difficulties in addressing background concentrations in residual risk analyses and identifies data needs to assess background. The discussion concludes by describing the EPA's options to analyze and consider background concentrations in residual risk analyses.
- Negative Health or Environmental Consequences to Communities: The EPA interprets this requirement to mean that any risk management options for reducing residual risks must consider other possible health consequences to the community resulting from those decisions. The EPA is aware that pollution control technologies targeted at a single pollutant (*e.g.*, a specific HAP) and single medium (*e.g.*, air), especially conventional end-of-the-pipe treatment technologies, can inadvertently transfer pollutants and risks to different media, different locations, and different receptors, and can unintentionally create new and different risks in the process of controlling the targeted risk. Thus, EPA intends, as it conducts its residual risk analyses and any subsequent standard-setting actions, to identify potential negative health and environmental consequences when possible and consider the risk-risk tradeoffs associated with any standards established under the residual risk program.
- Legislative Recommendations: Congress required EPA to make ''legislative recommendations regarding any identified residual risk.'' The EPA has interpreted this congressional requirement to mean that if an unacceptable residual risk were identified, and no current authority

within the CAA were determined to be adequate to reduce that risk, then EPA would propose an approach that would assure that risk reductions would occur. The EPA believes that the regulatory approach embodied in the CAA is adequate for maintaining the goal of protecting the public and environment's health, and, therefore, is not proposing any legislative changes.

The EPA is requesting comment on this draft RTC with a special emphasis on the sections discussed above, i.e., the public health significance, technologically and commercially available methods and costs, the actual health effects, the background concentration, and the negative health or environmental consequences sections.

Peer Review

The EPA is fully committed to environmental protection that is founded on sound and credible science. Objective, independent peer review of the scientific and technical bases of the Agency's actions is critical to accomplishing the Agency's mission. The Agency's commitment to credible, effective peer review is stated in the Peer Review Policy of June 7, 1994. Full implementation of that policy remains an Agency priority.

Most of the major references that form the foundation of this RTC have undergone (or are currently undergoing) external peer review. In addition, EPA intends to have this RTC peer reviewed during the public comment period because it outlines specific applications for the methods and policies contained in these references. For example, the EPA believes that it is necessary to obtain an independent evaluation of questions, such as whether the RTC identifies the most relevant and useful methods of assessing risks from stationary sources and whether it properly characterizes the types of data on which these methods rely. The results of this peer review will be incorporated into the final RTC.

Dated: April 14, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–10720 Filed 4–21–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6000–4]

Transfer of Confidential Business Information to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: EPA will transfer Confidential Business Information (CBI) to its contractor, Research Triangle Institute and its subcontractors: DPRA, Inc.; Tetra Tech, Inc. and HydroGeoLogic, Inc. that has been or will be submitted to EPA under Section 3007 of the Resource Conservation and Recovery Act (RCRA). Under RCRA, EPA is involved in activities to support, expand and implement solid and hazardous waste regulations.

DATES: Transfer of confidential data submitted to EPA will occur no sooner than May 4, 1998.

ADDRESSES: Comments should be sent to Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should be identified as ''Transfer of Confidential Data.''

FOR FURTHER INFORMATION CONTACT: Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, 703–308–7909.

SUPPLEMENTARY INFORMATION:

1. Transfer of Confidential Business Information

Under EPA Contract 68–W–98–085 Research Triangle Institute, and its subcontractors, will assist the Office of Solid Waste, Economics, Methods, and Risk Analysis Division, by providing technical and regulatory support for: Toxicological Studies; Information Gathering and Analysis; and Documentation Preparation. EPA has determined that Research Triangle Institute and its subcontractors, will need access to RCRA CBI submitted to the Office of Solid Waste to complete this work. Specifically, Research Triangle Institute and its subcontractors, need access to the CBI that EPA collects, under the authority of Section 3007 of RCRA, in Industry Studies Surveys and other studies of industries involved with waste management.

In accordance with 40 CFR 2.305(h), EPA has determined that Research Triangle Institute, and its subcontractors, require access to CBI submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is submitting this notice to inform all submitters of CBI of EPA's intent to transfer CBI to these firms on a need-to-know basis. Upon completing its review of materials submitted, Research Triangle Institute, and its subcontractors, will return all CBI to EPA.

EPA will authorize Research Triangle Institute, and its subcontractors, for access to CBI under the conditions and terms in EPA's ''Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual.'' Prior to transferring CBI to Research Triangle Institute, and its subcontractors, EPA will review and approve its security plans and Research Triangle Institute, and its subcontractors, will sign non-disclosure agreements.

Dated: March 30, 1998.

Matt Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 98–10721 Filed 4–21–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6000–3]

Transfer of Confidential Business Information to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer Confidential Business Information (CBI) to its contractor, Hazmed and its subcontractors: Eastern Research Group, Inc.; ICF, Inc.; Energetics Inc.; and Project Proformance, Corp. that has been or will be submitted to EPA under the Resource Conservation and Recovery Act (RCRA). Under RCRA, EPA is involved in activities to support, expand and implement solid and hazardous waste regulations.

DATES: Transfer of confidential data submitted to EPA will occur no sooner than May 4, 1998.

ADDRESSES: Comments should be sent to Regina Magbie, Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments should be identified as ''Transfer of Confidential Data.''

FOR FURTHER INFORMATION CONTACT: Regina Magbie, Document Control

Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 703–308–7909.

SUPPLEMENTARY INFORMATION:

1. Transfer of Confidential Business Information

Under EPA Contract 68–W7–0001 Hazmed and its subcontractors, will assist the Office of Solid Waste, Permits and State Programs Division, by providing technical and regulatory support for: Information Gathering and Analyzing data received from facilities generating mixed waste; Data Collection and Management; Analysis Support Services; Documentation Preparation; and Communications, Outreach, and Public Access. EPA has determined that Hazmed and its subcontractors, will need access to RCRA CBI submitted to the Office of Solid Waste to complete this work. For example, Hazmed and its subcontractors, need access to the CBI that EPA collects, under the authority of Section 3007 of RCRA, in Industry Studies Surveys and other studies of industries involved with waste management.

In accordance with 40 CFR 2.305(h), EPA has determined that Hazmed, and its subcontractors, require access to CBI submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is submitting this notice to inform all submitters of CBI of EPA's intent to transfer CBI to these firms on a need-to-know basis. Upon completing its review of materials submitted, Hazmed, and its subcontractors, will return all CBI to EPA.

EPA will authorize Hazmed, and its subcontractors, for access to CBI under the conditions and terms in EPA's ''Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual.'' Prior to transferring CBI to Hazmed, and its subcontractors, EPA will review and approve its security plans and Hazmed, and its subcontractors, will sign non-disclosure agreements.

Dated: April 3, 1998.

Matt Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 98–10722 Filed 4–21–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6000–8]

Clean Air Act Advisory Committee; Notice of Meeting

Summary: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific, and enforcement policy issues.

Open Meeting Notice: Pursuant to 5 U.S.C. App. 2 Section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Friday, June 12, 1998, from approximately 8:30 a.m. to 3:00 p.m. at the Tyson Corner Marriott Hotel, 8028 Leesburg Pike, Vienna, Virginia, 22182. Seating will be available on a first come, first served basis. The Energy, Clean Air and Climate Change Subcommittee will hold its meeting on Thursday, June 11, 1998, from approximately 9:30 a.m. to 2:00 p.m. The Linking Transportation, Land Use and Air Quality Concerns Subcommittee will meet from 2:30 p.m. to 6:00 p.m. The CAAAC's other two Subcommittees (the Permits/NSR/Toxics Integration Subcommittee and the Economic Incentives and Regulatory Innovations Subcommittee) will hold concurrent meetings on June 11 from approximately 5:00 p.m. to 9:00 p.m. All subcommittee meetings will be held at the same hotel as the full Committee.

Inspection of Committee Documents: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket item A–94–34 (CAAAC). The Docket office can be reached by telephoning 202–260–7548; FAX 202–260–4400.

For further information concerning this meeting of the full CAAAC, please contact Paul Rasmussen, Office of Air and Radiation, US EPA (202) 260–6877, FAX (202) 260–8509 or by mail at US EPA, Office of Air and Radiation (Mail code 6102), 401 M St. S.W. Washington, D.C. 20460. For information on the Subcommittee meetings, please contact the following individuals (1) Energy, Clean Air and Climate Change—Anna Garcia, 202–564–9492; (2) Permits/NSR/Toxics Integration—Debbie Stackhouse, 919–541–5354; (3) Economic Incentives and Regulatory Innovations—Brian Cook, 202–260–0825; and (4) Linking Transportation, Land Use and Air Quality Concerns—Gay MacGregor, 734–668–4438.

Dated: April 15, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–10716 Filed 4–21–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00533; FRL 5783–9]

Notice of Availability of Pesticide Data Submitters List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of an updated version of the Pesticide Data Submitters List which supersedes and replaces all previous versions.

FOR FURTHER INFORMATION CONTACT: By mail: John Jamula, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Rm. 226, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6426; e-mail: jamula.john@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Pesticide Data Submitters List is a compilation of names and addresses of registrants who wish to be notified and offered compensation for use of their data. It was developed to assist pesticide applicants in fulfilling their obligation as required by sections 3(c)(1)(f) and 3(c)(2)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and 40 CFR part 152 subpart E regarding ownership of data used to support registration. This notice announces the availability of an updated version of the Pesticide Data Submitters List which supersedes and replaces all previous versions.

II. Ordering Information

Microfiche copies of the document are available from the National Technical Information Service (NTIS) ATTN: Order Desk 5285 Port Royal Road Springfield, VA 22161; Telephone: (703) 487–4650. When requesting a document

from NTIS, please provide its name and NTIS Publication Number (PB). The NTIS Publication for this version of the Pesticide Data Submitters List is PB 127988.

III. Electronic Access

The Pesticide Data Submitters List is available on EPA's World Wide Web (WWW) site on the Internet. The Internet address of EPA's web site is www.epa.gov.

To Access the Data Submitters List from the EPA Home Page, select ''Databases and Software''. From the next page, select ''Media Specific''.

The Pesticide Data Submitters List may also be found by searching for the keywords ''data submitters list'' from the EPA Home Page, or may be accessed directly on the EPA web site, by going directly the address listed below. Note that this address is case sensitive. http://www.epa.gov./opppmsd1/datasubmitterslist/index.html

List of Subjects

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

Dated: April 2, 1998.

Linda A. Travers,

Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 98–10148 Filed 4–21–98; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

[BM–9–APR–98–02]

Financial Institution Rating System

AGENCY: Farm Credit Administration.

ACTION: Policy statement.

SUMMARY: The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), has adopted at its April 9, 1998, Board meeting a policy statement on its financial institution rating system. The Financial Institution Rating System (FIRS) shall be the rating system used by FCA examiners for evaluating and categorizing the safety and soundness of Farm Credit System (System) institutions on an ongoing, uniform and comprehensive basis. The FIRS will provide valuable information to the Agency for assessing risk and allocating resources based on the safety and soundness of regulated institutions.

EFFECTIVE DATE: April 9, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew D. Jacob, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444; or Wendy R. Laguarda, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444; or Gregory Yowell, Senior Financial Analyst, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4483, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The text of the Board's policy statement on the financial institution rating system is set forth below in its entirety.

Policy Statement on the Financial Institution Rating System, BM–9–APR–98–02, FCA–PS–72

Effective Date: April 9, 1998.

Effect on Previous Actions: None.

Source of Authority: Sections 5.9 and 5.17 of the Farm Credit Act of 1971, as amended.

I. Policy

The Financial Institution Rating System (FIRS) shall be the rating system used by Farm Credit Administration (FCA or Agency) examiners for evaluating and categorizing the safety and soundness of Farm Credit System (System) institutions on an ongoing, uniform and comprehensive basis.

The FIRS will provide valuable information to the Agency for assessing risk and allocating resources based on the safety and soundness of regulated institutions. Ratings assigned to regulated institutions will be adjusted periodically so that they accurately reflect the condition of institutions.

II. Standards and Implementation

Based on the conclusions reached in the ongoing examination of an institution's financial, managerial, and operational condition, FCA examiners will assign ratings to each of the six rating factor components and assign a composite rating that reflects the condition and overall safety and soundness of the System institution. These ratings shall be reported to the institution's Board of Directors and Chief Executive Officer.

Component and composite ratings are assigned on a 1 to 5 numerical scale. A 1-rating indicates the strongest performance and management practices and the least degree of supervisory and regulatory concern, while a 5-rating indicates an extremely high, immediate or near-term probability of failure and unsatisfactory management practices and, therefore, the highest degree of concern.

Although each institution has its own examination and supervisory issues and concerns, the FIRS is structured to evaluate all significant financial asset quality and management factors common to all System institutions. Examination criteria for each of the rating components is defined in the FCA Examination Manual which is available to the public. The FCA Examination Manual also incorporates the evaluative criteria under which component and composite ratings are assigned.

Composite Rating

The FIRS provides a general framework for assimilating and evaluating all significant financial, managerial and operational factors to assign a composite rating to each System institution. The composite rating is based on a qualitative and quantitative analysis of the factors comprising each of the following components, the interrelationships among components, and the overall level of concern for those risks that affect a System institution.

The composite rating does not assume a predetermined weight for each component nor does it represent an arithmetic average of assigned component ratings. The weight given to any individual component in determining composite ratings varies depending on the degree of concern associated with the component and the threat posed to the overall safety and soundness of the institution.

Component Ratings

Listed below is a brief description of the FIRS components and the more common evaluative criteria and factors considered under each component.

- *Capital*—A System institution is expected to maintain capital commensurate with the nature and extent of risks to the institution and the ability of management to identify, measure, monitor, and control these risks. The capital component is based on an evaluation of an institution's capacity to absorb losses and provide for future growth. An evaluation of capital relies on many factors such as regulatory capital requirements, trends, portfolio and institutional risk, growth, adequacy of risk funds, management capability, and other factors as appropriate.

- *Assets*—This component is based on an assessment of both the quality of the current portfolio and the quality of the associated management processes that substantially impact the quality of assets. An assessment of assets relies on

many factors such as loan portfolio management, investment portfolio management, loan portfolio trends, risk identification processes, credit administration, allowance for loan losses, and other factors that affect the quality, performance, income producing capacity, and stability of assets.

- *Management*—The management component is based on an assessment of board and management performance against all factors considered necessary to operate the institution within accepted banking practices and in a safe and sound manner in accordance with applicable laws, regulations, and guidelines.
- *Earnings*—This component is based on an evaluation of the quantity, quality, and sustainability of the institution's earning performance. An evaluation of earnings considers factors such as the level of earnings, composition and quality of net income, stability of earnings performance, relationship to portfolio risk, quality of earnings management, and other factors as deemed appropriate.
- *Liquidity*—The liquidity component is based on an evaluation of an institution's capacity to promptly meet the demand for payment of its obligations, fund its loan portfolio, and readily meet the reasonable credit needs of the territory served. An evaluation of liquidity also considers continued access to funding, the existence of secondary sources of liquidity, and other factors as deemed appropriate.
- *Sensitivity*—This component reflects the degree to which changes in interest rates may affect earnings or the market value of an institution's equity. An evaluation of this component considers such factors as the size and complexity of the institution's financial activities, the level of interest rate risk exposure relative to capital and earnings, investment and derivatives activities, management's ability to identify, measure, monitor, project, and control interest rate risk, and other factors as deemed appropriate.

III. Responsibility

It is the responsibility of the Chief Examiner to ensure that the components used to support the composite ratings are reviewed periodically to make certain they reflect the material matters that impact the safety and soundness of institutions. In this respect, the Chief Examiner shall make recommendations to the FCA Board to add or delete components as necessary. Specific evaluative criteria and factors for determining component and composite ratings shall be established by the Chief Examiner and incorporated in the FCA Examination Manual or by other means as appropriate. The Chief Examiner is responsible for ensuring that ratings assigned to institutions are commensurate with and accurately reflect the risk in the institutions.

IV. Reporting

At least quarterly, the Chief Examiner will provide the FCA Board a report of the composite rating of all FCS institutions.

V. Implementation

System institutions examined after the date this policy is adopted by the FCA Board will be assigned composite and component ratings in accordance with this Policy Statement.

Dated: April 16, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–10630 Filed 4–21–98; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

International Transportation Services, 18610 SE 24th Street, Vancouver, WA 98683, Elizabeth Wilkening, Sole Proprietor

Reliance Shipping Group, Rt. 5 Box 1018, 5353 I–35, Red Oak, TX 75154, Officers: Don McNally, Partner, Gary Childs, Partner

M.A.F.T.A. Inc. d/b/a/ Servicios Maritimos, 11811 North Freeway, Suite 210, Houston, TX 77267, Officers: Roberto L. Stanley, President; Diana M. Stanley, Vice President

Dated: April 16, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–10587 Filed 4–21–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 18, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Premier Bancshares, Inc., Atlanta, Georgia; to merge with The Bank Holding Company, Griffin, Georgia, and thereby indirectly acquire The Bank of Spaulding County, Griffin, Georgia, and First Community Bank of Henry County, McDonough, Georgia.

Board of Governors of the Federal Reserve System, April 17, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–10691 Filed 4–21–98; 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, April 27, 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. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: 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: April 17, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–10775 Filed 4–17–98; 4:51 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Policy Division, FAR Secretariat Revision and Stocking Change of SF 33, Solicitation, Offer and Award

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration/FAR Secretariat is changing the stocking requirement of SF 33, Solicitation, Offer and Award. This form is now authorized for local reproduction. You can obtain a camera copy in three ways:

On the internet. Address: http://www.gsa.gov/forms/forms.htm,

U.S. Government Management Policy CD–ROM, or; From CARM, Attn.: Barbara Williams, (202) 501–0581.

This form was also revised to reflect internal references as a result of the rewrite of Part 15 of the Federal Acquisition Regulation.

DATES: Effective April 22, 1998.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, (202) 501–2164.

Dated: April 8, 1998.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 98–10636 Filed 4–21–98; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0227]

Submission for OMB Review; Comment Request Entitled Termination Liability Schedule

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090–0227).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Termination Liability Schedule.

DATES: *Comment Due Date:* June 22, 1998.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection 3090–0200, Termination Liability Schedule. This information would permit offers on contracts for the Information technology Fund to submit a schedule of cancellation charges. Use of Termination Liability provisions, a standard industry practice, equalizes the interconnects competitive position relative to the carriers, saving money and increasing competition.

B. Annual Reporting Burden

Respondents: 60; annual responses: 60; average hours per response: 2.5; burden hours: 150.

Copy of proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division, (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: April 15, 1998.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 98–10637 Filed 4–21–98; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0197]

Submission for OMB Review; Comment Request Entitled Service Contracting

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090–0197).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Service Contracting.

DATES: Comment due date: June 22, 1998.

FOR FURTHER INFORMATION CONTACT:

Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection 3090–0197, Service Contracting. This information collection is necessary to

determine whether a prospective contractor is responsible by obtaining information regarding financial and other capabilities of the prospective contractor.

B. Annual Reporting Burden

Respondents: 2,200; annual responses: 2,200; average hours per response: 1; burden hours: 2,200.

Copy of proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: April 15, 1998.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 98–10638 Filed 4–21–98; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0200]

Submission for OMB Review; Comment Request Entitled Sealed Bidding

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090–0200).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Sealed Bidding.

DATES: Comment due date: June 22, 1998.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy, (202) 501–1224.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0200, Sealed Bidding. The information requested regarding an offeror's monthly production capability is needed to make progressive awards to ensure coverage of stock items.

B. Annual Reporting Burden

Respondents: 20; annual responses: 20; average hours per response: .10; burden hours: 3.3.

Copy of proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: April 15, 1998.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 98–10639 Filed 4–21–98; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Cynthia King, Bienville Medical Group

Based on an investigation conducted by ORI's Division of Research Investigations, ORI found that Ms. King, staff assistant, Bienville Medical Group, engaged in scientific misconduct in clinical research conducted as part of a multicenter clinical trial supported by a National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH) contract. Ms. King falsified and/or fabricated data and information collected from patients for the Antihypertensive and Lipid-Lowering Treatment to Prevent Heart Attack Trial (ALLHAT) at the clinical site in Terry, Mississippi. ORI acknowledges Ms. King's cooperation and assistance in completing its investigation.

Ms. King has accepted the ORI finding and has entered into an Agreement with ORI in which she has voluntarily agreed, for the three (3) year period beginning April 6, 1998:

(1) To exclude herself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That any institution that submits an application for PHS support for a research project on which Ms. King's participation is proposed or which uses her in any capacity on PHS supported research or that submits a report of PHS-funded research in which she is involved must concurrently submit a plan for supervision of her duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of Ms. King's research contribution. The institution also must submit a copy of the supervisory plan to ORI.

No scientific publications were required to be corrected as part of this Agreement.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 98–10660 Filed 4–21–98; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Patrina Lowe, Bienville Medical Group

Based on an investigation conducted by ORI's Division of Research Investigations, ORI found that Ms. Lowe, former staff member, Bienville Medical Group, engaged in scientific misconduct in clinical research conducted as part of a multicenter clinical trial supported by a National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH) contract. Ms. Lowe falsified and/or fabricated data and information collected from patients for the Antihypertensive and Lipid-Lowering Treatment to Prevent Heart Attack Trial (ALLHAT) at the clinical site in Terry, Mississippi. ORI acknowledges Ms.

Lowe's cooperation and assistance in completing its investigation.

Ms. Lowe has accepted the ORI finding and has entered into an Agreement with ORI in which she has voluntarily agreed, for the three (3) year period beginning April 6, 1998:

(1) To exclude herself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That any institution that submits an application for PHS support for a research project on which Ms. Lowe's participation is proposed or which uses her in any capacity on PHS supported research or that submits a report of PHS-funded research in which she is involved must concurrently submit a plan for supervision of her duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of Ms. Lowe's research contribution. The institution also must submit a copy of the supervisory plan to ORI.

No scientific publications were required to be corrected as part of this Agreement.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 98–10575 Filed 4–21–98; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–13–98]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. Provider Survey of Partner Notification and Partner Management Practices following Diagnosis of a Sexually-Transmitted Disease—New—The National Center for HIV, STD, and TB Prevention, Division of STD Prevention. CDC is proposing to conduct a national survey of physician's partner management practices following the diagnosis of a sexually-transmitted disease. Partner notification, a technique for controlling the spread of sexually-transmitted diseases, is one of the five key elements of a long-standing public health strategy to control sexually-transmitted infections in the U.S. At present, there is very little knowledge about partner notification practices outside public health settings despite the fact that most STD cases are seen in private health care settings. No descriptive data currently exists that allows the Centers for Disease Control and Prevention to characterize partner notification practices among the broad range of clinical practice settings where STDs are diagnosed, including acute or urgent care, emergency room, or primary and ambulatory care clinics. The existing literature contains descriptive studies of partner notification in public health clinics, but no baseline data exists as to the practices of different physician specialties across different practice settings.

The CDC proposes to fill that gap through a national sample survey of 7300 office managers and physicians who treat patients with STDs in a wide variety of clinical settings; a 70% completion rate is anticipated (n=5110 surveys). This survey will provide the baseline data necessary to characterize infection control practices, especially partner notification practices, for syphilis, gonorrhea, HIV, and chlamydia, and the contextual factors that influence those practices. Findings from the proposed national survey of office managers and physicians will assist CDC to better focus STD control and partner notification program efforts and to allocate program resources appropriately. Without this information, CDC will have little information about STD treatment, reporting, and partner management services provided by physicians practicing in the U.S. With changes underway in the manner in which medical care is delivered and the move toward managed care, clinical functions typically provided in the public health sector will now be required of private medical providers. At present, CDC does not have sufficient information to guide future STD control efforts in the private medical sector.

Data collection will involve a mail survey of practicing physicians. The questionnaire mailing will be followed by a reminder postcard after one week, a second mailing to non-respondents at three weeks, telephone follow-up with non-respondents at five weeks, and a final certified mailing of the survey to non-respondents at eight weeks. A study specific computerized tracking and reporting system will monitor all phases of the study. Receipt of the completed questionnaire or a refusal will be logged into this computerized control system to ensure that respondents who return the survey are not contacted with reminders. Total annual burden hours are 2,555.

Respondents	Sections	Number of respondents	Number of responses/ respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Physicians	2–4	5110	1	.083	426
Physicians	5–10	5110	1	.417	2,129

Dated: April 16, 1998.

Kathy Cahill,

Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–10640 Filed 4–21–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–12–98]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. Follow-Up Study of Children With Developmental Disabilities—New—National Center for Environmental Health—In the mid-1980's, 10-year-old children were identified as having one or more of five developmental disabilities: mental retardation, cerebral palsy, epilepsy, hearing impairment, or vision impairment. These children were identified (mainly from special education records in the public schools) in the metro-Atlanta area as part of a study to develop surveillance methods for these conditions in school-age children. A follow-up study is proposed to trace, locate, and interview these children, who are now in their early twenties, to assess their status with regard to educational attainment, employment, living arrangements, services received, functional limitations, adaptive behavior, social participation, health, and quality of life. Previous studies (published mostly in the mid-1980's) on the post-secondary school experiences of former recipients of special education services were either limited to one type of impairment (e.g., mild mental retardation) or were restricted to a narrow range of outcomes (e.g., employment and education) or did not incorporate a comparison group of persons who were not in special education. The proposed study is a one-time, in-person interview and includes a contemporaneous comparison group of persons who, at age 10 years, were in regular education classes in the same schools as were the persons with developmental disabilities. A base of 1,608 identified children and 650 comparison persons will be used to find a total of 1,600 who will be interviewed. The data generated from this study will be used to estimate the burden of secondary health conditions, limited social participation, and economic disadvantage among young adults with long-standing developmental impairments. This information will be helpful to efforts aimed at the prevention of various secondary problems in this population. Total annual burden hours are 1,312.

Activity	Number of respondents	Number of responses/ respondent	Avg. burden/re-sponses (in hrs.)	Total burden (in hrs.)
Contacting/Scheduling call	1,290	1	0.166	215
Face-to-face Interview	1,097	1	1	1,097

2. Model Performance Evaluation Program for Retroviral and AIDS-Related Testing—(0920–0274)—Revision—Public Health Practice Program Office (PHPPO). The CDC Model Performance Evaluation Program (MPEP) currently assesses the performance of laboratories that test for human immunodeficiency virus type 1 (HIV–1) antibody, human T-lymphotropic virus types I and II (HTLV–I/II) antibody, perform CD4 T-cell testing or T-lymphocyte immunophenotyping (TLI) by flow cytometry or alternate methods, perform HIV–1 ribonucleic acid (RNA) determinations (viral load), and test for HIV–1 p24 antigen through the use of mailed sample panels. The CDC MPEP is proposing to use annual data collection documents to gain updated information on the characteristics of testing laboratories and their testing practices. Two data collection instruments, or survey questionnaires, will be used. The first data collection instrument will be concerned with laboratories that perform HIV–1 antibody (Ab) testing, HTLV–I/II Ab testing, HIV–1 viral RNA determinations, and HIV–1 p24 antigen (Ag) testing. Laboratories enrolled in the MPEP will be mailed a survey questionnaire and be asked to complete the sections pertinent to their laboratory's testing. The survey instrument will collect demographic information related to laboratory type, primary purpose for testing, types of specimens tested, minimum education requirements of testing personnel, laboratory director, and laboratory supervisor, and training required of testing personnel. The demographic section will be followed by more specific sections related directly to HIV–1 Ab testing, HTLV–/II Ab testing, HIV–1 RNA, and HIV–1 p24 Ag testing. Included in the latter sections will be questions related to the types of tests performed, the algorithm of testing, how test results are interpreted, how results are reported, how specimens may be rejected for testing, if some testing is referred to other laboratories, and what quality control and quality assurance procedures are conducted by the laboratory. Similarly, the TLI survey questionnaire will also collect demographic information about each laboratory, as well as the type(s) of flow cytometer used, educational and training requirements of testing personnel, the types of monoclonal antibodies used in testing, how specimens are received, prepared, and stored, how test results are recorded and reported to the test requestor, and what quality control and quality assurance procedures are practiced. Information collected through the use of these instruments will enable CDC to determine if laboratories are conforming to published recommendations and guidelines, whether education and training requirements of testing personnel are conforming to current legislative requirements, and whether problems in testing can be identified through the collection of information. Information collected through the survey instruments will then be compared statistically with the performance evaluation results reported by the enrolled laboratories to determine if characteristics of laboratories that perform well can be distinguished from laboratories not performing as well. Upon enrolling in the MPEP, participants are assigned an

MPEP number used to report testing results and survey questionnaire responses, allowing the individual responses of each laboratory participant to be treated in confidence. When participants respond to the surveys by sending CDC completed questionnaires, the collected information is developed into aggregate reports. A copy of the completed report is provided to each participating laboratory. Total annual burden hours are 668.

Type of respondents	Number of respondents	Number of respondents/ response	Average burden/response (in hrs)	Total burden (in hrs)
Enrollments (new)	100	1	0.05	5
Retroviral Survey	1,000	1	0.5	500
TLI Survey	350	1	0.5	163

3. Evaluation of Educational Brochures on Opportunistic Infections Affecting People with HIV/AIDS—New—The National Center for HIV, STD and TB Prevention, Division of HIV/AIDS Prevention, Intervention Research and Support proposes to conduct research to assure that intended audiences (persons living with HIV/AIDS) find the brochures clear, informative and useful. Specifically, the research will examine perceptions of the appearance, quality, value, readability, and clarity of the information provided. Attention will be focused on identifying information, language and/or formatting issues which are confusing or unclear. Further, although the intended audience of the brochure series is all persons living with HIV/AIDS, we propose to use the limited resources available to target those who are lower income. This is warranted given their often more restricted access to reliable information sources, making the brochures a more valuable resource for them. In addition, the correlations between low socio-economic status (SES) and low literacy warrant attention to assuring the readability and comprehension of the materials among this group.

The information generated from this research will enable NCHSTP to tailor materials to the needs, wants and preferences of individuals living with HIV/AIDS. Additionally, the center is committed to developing a standardized process for including such audience testing in subsequent materials development projects. The proposed process will provide the foundation for establishing a standardized process for such assessment. Total annual burden hours are 275.

Form name	Number of respondents	Number of responses/ respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Form A [1]	550	1	0.5	275

[1] Estimated time includes 10–15 minutes for reading one of the 11 information brochures and 10–15 minutes to complete the survey which will be administered orally.

Dated: April 16, 1998.

Kathy Cahill,

Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–10644 Filed 4–21–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee, Subcommittee on Future Vaccines, Subcommittee on Immunization Coverage, and Subcommittee on Vaccine Safety: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

Name: National Vaccine Advisory Committee (NVAC).

Times and Dates: 9 a.m.–2 p.m., May 7, 1998. 8:30 a.m.–1:30 p.m., May 8, 1998.

Place: Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8 and 8:30 a.m. or 12:30 and 1 p.m. so they can be escorted to the meeting. Entrance to the meeting at other times during the day cannot be assured.

Purpose: This committee advises and makes recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

Matters To Be Discussed: Agenda items include updates on the National Vaccine Program Office (NVPO) activities and non-traditional sites for adult immunization: NVAC recommendations and guidelines and a presentation on a model system in San Antonio, Texas. David Satcher, M.D., Ph.D., the Assistant Secretary for Health and Surgeon General, will discuss his new role and immunization as a key component in enhancing the health of the Nation. Committee discussions on the following: initiatives in vaccine communication, strategies for promoting travel vaccines, the impact and effects of welfare reform on immunization, vaccines as a response to bioterrorism, the status of influenza pandemic preparedness, joint vaccine acquisition program—limited use vaccines; reports from the Immunization Registries Workgroup, Subcommittee on Immunization Coverage, Subcommittee on Future Vaccines, and Subcommittee on Vaccine Safety; and a review of fiscal year 98 unmet needs.

Name: Subcommittee on Immunization Coverage.

Time and Date: 2 p.m.–5 p.m., May 7, 1998.

Place: Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee identifies and proposes solutions that provide a multifaceted and holistic approach to reducing barriers that result in low immunization coverage for children.

Matters To Be Discussed: Agenda items include a review of recommendations from the document, ''Strategies to Sustain Immunization Coverage,'' and how to sustain immunization coverage rates in children.

Name: Subcommittee on Future Vaccines.

Time and Date: 2 p.m.–5 p.m., May 7, 1998.

Place: Hubert H. Humphrey Building, Room 317B, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee develops policy options and guides national activities that lead to accelerated development, licensure, and the best use of new vaccines in the simplest possible immunization schedules.

Matters To Be Discussed: Agenda items include discussions on the continued evaluation of methods to remove barriers to development, licensure, and use of safe and effective new vaccines; combination vaccines, strategic options; and defining future vaccines policy issues for travelers' vaccines.

Name: Subcommittee on Vaccine Safety.

Time and Date: 2 p.m.–5 p.m., May 7, 1998.

Place: Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee reviews issues relevant to vaccine safety and adverse reactions to vaccines.

Matters To Be Discussed: Agenda items include discussion on various vaccine causation hypotheses.

All agenda items are subject to change as priorities dictate. Due to programmatic issues that had to be resolved, this **Federal Register** notice is being published less than 15 days before the date of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Felecia D. Pearson, Committee Management Specialist, NVPO, CDC, 1600 Clifton Road, NE, M/S A11, Atlanta, Georgia 30333, telephone 404/639–4450.

Dated: April 17, 1998.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–10789 Filed 4–21–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Fernald Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Fernald Health Effects Subcommittee.

Times and Dates: 1 p.m.–9 p.m., May 6, 1998; 8:30 a.m.–5 p.m., May 7, 1998.

Place: The Plantation, 9660 Dry Fork Road, Harrison, Ohio 45020, telephone 513/367–5610.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters To Be Discussed: Agenda items include presentations from the National Center for Environmental Health (NCEH), the National Institute for Occupational Safety and Health and ATSDR on updates regarding the progress of current studies.

Agenda items are subject to change as priorities dictate.

CONTACT PERSONS FOR MORE INFORMATION: Steven A. Adams, Radiation Studies Branch, Division of Environmental Hazards and Health, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

Dated: April 15, 1998.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–10645 Filed 4–17–98; 12:59 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Services Activities and Research at DOE Sites: Savannah River Site Health Effects Subcommittee (SRS).

Times and Dates: 8:30 a.m.–5 p.m., May 13, 1998. 8:30 a.m.–12 noon, May 15, 1998.

Place: Radisson Riverfront Hotel, Two Tenth Street, Augusta, Georgia 30901, telephone 706/722–8900, fax 706/724–0044.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS has delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include: presentations from the National Center for Environmental Health (NCEH) regarding current activities and the National Institute for Occupational Safety and Health and ATSDR will provide updates on the progress of current studies.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Paul G. Renard, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341–3724, telephone 770/488–7040, fax 770/488–7044.

Dated: April 15, 1998.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–10648 Filed 4–21–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1040–N]

Medicare Program; May 7, 1998, Meeting of the Competitive Pricing Advisory Committee

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Competitive Pricing Advisory Committee. This meeting is open to the public.

DATES: The meeting is scheduled for May 7, 1998 from 10:00 a.m. until 6 p.m. E.D.S.T.

ADDRESSES: The meeting will be held in Room 5051, Wilbur J. Cohen Building (entrance on ''C'' street), 300 Independence Avenue, S.W., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Lu Zawistowich, Sc.D., Executive Director, Competitive Pricing Advisory Committee, Health Care Financing Administration, 7500 Security Boulevard S3–02–01, Baltimore, Maryland 21244–1850, (410) 786–6451.

SUPPLEMENTARY INFORMATION: Section 4011 of the Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. Section 4012 of BBA requires the Secretary to appoint a Competitive Pricing Advisory Committee (CPAC). The CPAC will meet periodically to make recommendations to the Secretary concerning the designation of areas for inclusion in the project and appropriate research design for implementing the project.

The CPAC is being assembled and will consist of individuals who are independent actuaries, experts in competitive pricing, and experts in the administration of the Federal Employees Health Benefit Program. In accordance with section 4012(a)(5) of the BBA, the CPAC shall terminate on December 31, 2004.

The CPAC will be sworn in and hold its first meeting on May 7. The agenda will include discussion of background materials relevant to competitive pricing and the goals and objectives of the demonstrations. Members will be asked to develop and prioritize a list of important demonstration design issues and the information needed to study and address the issues. The CPAC will develop a schedule for decision making on each issue that can be addressed within the mandated time frame for implementation of the project. The CPAC will decide the number of additional meetings that are needed and a tentative agenda for each.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues should contact the Executive Director (listed above in this notice under **FOR FURTHER INFORMATION CONTACT**) by 12 noon, April 28, 1998, to be scheduled. The number of oral presentations may be limited by the time available. A written copy of the oral remarks should be submitted to the Executive Director no later than 12 noon, May 4, 1998. Anyone who is not scheduled to speak may submit written comments to the Executive Director by 12:00 noon, May 4, 1998. The meeting is open to the public, but attendance is limited to the space available.

(Section 4012 of the Balanced Budget Act of 1997, Public Law 105–33 (42 U.S.C 1395w–23 note) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 20, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–10883 Filed 4–21–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Iinformation Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: *The Health Education Assistance Loan (HEAL) Program: Student Application for a Federal Health Education Assistance Loan*—Extension of OMB Clearance 0915–0038. The HEAL program provides federally-insured loans to students in schools of medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, chiropractic, or allied health, and graduate students in health administration or clinical psychology. Eligible lenders, such as

banks, State agencies, and HEAL schools make HEAL loans which are insured by the Federal Government against loss due to the borrower's death, disability, bankruptcy, and default. The basic purpose of the program is to assure the availability of funds for loans to eligible students who need to borrow money to pay for their educational costs. The Student Application is used by students to apply for HEAL loans and by schools and lenders to process the applications.

The HEAL program has been in the process of phasing out for the last three years in the absence of current legislation. An OMB clearance approval was given for this application form through October 31, 1998, to accommodate the final operational year of the program. In March 1998 the Senate introduced in Congress a bill, S. 1754, to reauthorize the Health Professions Programs including the HEAL program. Based on this reauthorization bill, and subject to passage, enactment, and appropriation of funds, an extension of OMB approval of this form will be sought. As a contingency action, it is in the best interest of the program to publish a 60-day notice at this time to accommodate a smooth transition of the program from phaseout to full operation without any time delays. To facilitate this, the Agency is inviting comments on the current form, in case OMB clearance on this form is needed.

The estimate of annual burden for the Student Application based on the amount appropriated in FY 1995, the last full year of operation, is as follows:

Type of respondent	Number of respondents	Responses per respondent	Total number of responses	Burden per response (minutes)	Total burden hours
Applicants	20,000	1	20,000	15	5,000
Schools	200	100	20,000	30	10,000
Lenders	6	3,333	20,000	30	10,000
Total	20,206	.....	60,000	.....	25,000

Send comments to Lyman Van Nostrand, HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 16, 1998.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 98–10655 Filed 4–21–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: *The Health Education Assistance Loan (HEAL) Program: Refinancing Loan Application/Promissory Note*—NEW. The HEAL program provides federally-insured loans to students in schools of allopathic medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, chiropractic, or allied health, and graduate students in health administration or clinical psychology. Eligible lenders, such as banks, State agencies, and HEAL schools make HEAL loans which are insured by the Federal Government against loss due to the borrower's death, disability, bankruptcy, and default. The basic purpose of the program is to assure the availability of funds for loans to eligible students who need to borrow money to pay for their educational costs.

In July 1993 the HEAL refinancing program was implemented. This allowed HEAL borrowers who had graduated to refinance all of their HEAL loans into one new HEAL loan, often times at better rates and provisions than their original loans.

A new combined HEAL refinancing loan application/promissory note is being developed for lenders. Previously, the standard HEAL student application form (HRSA–700) and promissory note (HRSA 500–3) were used by lenders to process the loan refinancing. The application contained items that were not needed for refinancing loans. Some lenders combined the two forms into one application/promissory note using all appropriate items from each form. Because of the successful use of the combined form developed by the lenders, and the Department's desire to make the refinancing process easier for all parties concerned, the Department has developed an official combined form. In addition, certain items that were previously required of the borrower (e.g., citizenship, date of birth, delinquent and default responses, etc.) were deleted since they are presently available to the lenders and the Department from other sources.

The estimate of burden for the new refinancing loan application/promissory note form per year is as follows:

Type of respondent	No. of respondents	Responses per respondent	Total number of responses	Burden per response (minutes)	Total burden hours
Applicants	2,800	1	2,800	12	560
Lenders	9	311	2,800	30	1,400
Total	2,809		5,600		1,960

Send comments to Lyman Van Nostrand, HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 16, 1998.

Jane Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 98–10657 Filed 4–21–98; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1998:

Name: National Advisory Council on Migrant Health.

Date and Time: Wednesday, May 13, 1998 at 9:00 am to Thursday, May 14, 1998 at 5:00 pm.

Place: Renaissance Houston Hotel, 6 Greenway Plaza East, Houston, TX 66046, 713/629–1200.

The meeting is open to the public.

Agenda: This will be a meeting of the Council. The agenda includes an overview of general Council business activities and priorities. Topics of discussion will include the State Children's Health Insurance Program, Worker Protection Standards, and the collaboration possibilities with other migrant health advocates organizations. In addition, the Council will review and discuss the 1997 NACMH Recommendations.

The Council meeting is being held in conjunction with the National Association of Community Health Centers (NACHC), 1998 National Farmworker Health Conference, May 15–18, 1998. Anyone requiring information regarding the subject Council should contact Susan Hagler, Migrant Health Program, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland 20814, Telephone 301/594–4302.

Agenda Items are subject to change as priorities indicate.

Dated: April 16, 1998.

Jane M. Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 98–10656 Filed 4–21–98; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meetings:

Name of SEP: R03 Applications Review, Teleconference
Date: April 21, 1998
Time: 10:30 a.m.–adjournment
Place: 6100 Executive Boulevard, Room 5E01, Rockville, Maryland 20852
Contact Person: Gopal M. Bhatnagar, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, Room 5E01, Rockville, MD 20852, Telephone: 301–496–1485

Name of SEP: Declining Sperm Counts: Autopsy Study, Teleconference
Date: April 22, 1998
Time: 11:00 a.m.–adjournment
Place: 6100 Executive Boulevard, Room 5E01, Rockville, Maryland 20852
Contact Person: Norman Chang, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, Room 5E01, Rockville, MD 20852, Telephone: 301–496–1485
Purpose/Agenda: To evaluate and review research grant applications

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of these applications could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institutes of Health, HHS)

Dated: April 20, 1998.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 98–10836 Filed 4–20–98; 3:10 pm]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1998 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS), Center for Substance Abuse Treatment (CSAT) and Center for Substance Abuse Prevention (CSAP) announce the availability of FY 1998 funds for cooperative agreements for the following activities. These activities are discussed in more detail under Section 4 of this notice. This notice is not a complete description of the activities; potential applicants must obtain a copy of the Guidance for Applicants (GFA) before preparing an application.

Activity	Application deadline	Estimated funds available	Estimated No. of awards	Project period
Aging, MH/SA and Primary Care	06/19/98	$3.5–4M	11	1–4 yrs.
Project: Youth Connect	06/19/98	$6.75M	11–13	3 yrs.

Note: SAMHSA also published notices of available funding opportunities for FY 1998 in the **Federal Register** on January 6, 1998, January 20, 1998, February 26, 1998, March 20, 1998, April 8, 1998, April 16, 1998, and on April 20, 1998.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are usually made for grant periods from one to three years in duration. FY 1998 funds for activities discussed in this announcement were appropriated by the Congress under Public Law 105–78. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 5/96; OMB No. 0937–0189). The application kit contains the GFA (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for each activity covered by this notice (see Section 4).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of each of the activities (i.e., the GFA) described in Section 4 are available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission: Unless otherwise stated in the GFA, applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710*

(*Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Application Deadlines: The deadlines for receipt of applications are listed in the table above. Please note that the deadlines may differ for the individual activities.

Competing applications must be received by the indicated receipt dates to be accepted for review. An application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for each activity covered by this notice (see Section 4).

Requests for information concerning business management issues should be directed to the grants management contact person identified for each activity covered by this notice (see Section 4).

SUPPLEMENTARY INFORMATION: To facilitate the use of this Notice of Funding Availability, information has been organized as outlined in the Table of Contents below. For each activity, the following information is provided:

- Application Deadline.
- Purpose.
- Priorities.
- Eligible Applicants.
- Grants/Cooperative Agreements/Amounts.
- Catalog of Federal Domestic Assistance Number.
- Contacts.
- Application Kits.

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1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

SAMHSA's FY 1998 Knowledge Development and Application (KD&A) agenda is the outcome of a process whereby providers, services researchers, consumers, National Advisory Council

members and other interested persons participated in special meetings or responded to calls for suggestions and reactions. From this input, each SAMHSA Center developed a ''menu'' of suggested topics. The topics were discussed jointly and an agency agenda of critical topics was agreed to. The selection of topics depended heavily on policy importance and on the existence of adequate research and practitioner experience on which to base studies. While SAMHSA's FY 1998 KD&A programs will sometimes involve the evaluation of some delivery of services, they are services studies and application activities, not merely evaluation, since they are aimed at answering policy-relevant questions and putting that knowledge to use.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and in its question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, preparation of special materials will be used, in addition to normal communications means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Special Concerns

SAMHSA's legislatively-mandated services programs do provide funds for mental health and/or substance abuse treatment and prevention services. However, SAMHSA's KD&A activities do not provide funds for mental health and/or substance abuse treatment and prevention services except sometimes for costs required by the particular activity's study design. Applicants are required to propose true knowledge application or knowledge development and application projects. Applications seeking funding for services projects under a KD&A activity will be considered nonresponsive.

Applications that are incomplete or nonresponsive to the GFA will be returned to the applicant without further consideration.

3. Criteria for Review and Funding

Consistent with the statutory mandate for SAMHSA to support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs, competing applications requesting funding under the specific project activities in Section 4 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures.

3.1 General Review Criteria

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126), SAMHSA's ''Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals,'' peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

3.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council (if applicable) review process.

Other funding criteria will include:

- Availability of funds.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

4. Special FY 1998 SAMHSA Activities

4.1 Cooperative Agreements

Major activities for SAMHSA cooperative agreement programs are discussed below. Substantive Federal programmatic involvement is required in cooperative agreement programs. Federal involvement will include planning, guidance, coordination, and participating in programmatic activities (e.g., participation in publication of findings and on steering committees). Periodic meetings, conferences and/or communications with the award recipients may be held to review mutually agreed-upon goals and objectives and to assess progress. Additional details on the degree of Federal programmatic involvement will be included in the application guidance materials.

4.1.1 Cooperative Agreements to Document and Evaluate Mental Health/Substance Abuse Services for Older Adults Through Primary Health Care (Short Title: Aging, MH/SA and Primary Care, SM 98–009)

- *Application Deadline:* June 19, 1998.
- *Purpose:* The Substance Abuse and Mental Health Services Administration (SAMHSA), with the participation of the Health Resources and Services Administration (HRSA), announces the availability of cooperative agreements to support a multi-site evaluation of alternative models of delivering and financing mental health and/or substance abuse (MH/SA) services for older adults through primary health care. This Program seeks to identify differences in outcomes between models using a referral approach to providing specialty MH/SA services and an integrated approach to providing such services within the primary care setting itself. SAMHSA will provide limited supplemental funds for the purpose of enhancing services to support comparison groups for the study. HRSA's Bureau of Primary Health Care (BPHC) also supports this Program by making available funds for service enhancements for their Consolidated Health Centers (CHCs) which are selected to become Study Sites.

This announcement solicits applications for two types of cooperative agreements: Study Sites and a Coordinating Center. Study Site applicants must document their relationship to a primary health care entity which has provided older adults' MH/SA services (by either the referral approach or the integrated approach, or by both) for a minimum of one (1) year prior to the date of application.

The Program will have two phases: Phase I awards (Year 01) to Study Sites will involve the identification and documentation, through the development of manual, of service models using a referral or an integrated approach to providing MH/SA services through primary health care. This documentation will include the results of a process evaluation. Phase II will be an outcome evaluation comparing service utilization and service system outcomes, clinical outcomes, and costs among the most promising models under the referral and integrated approaches. Phase II awards (Years 02–04) will be selected from among the Phase I Study Sites by peer review.

Because older adults seek and receive MH/SA services more often from their primary care providers than from specialty MH/SA providers, SAMHSA

seeks answers to the following questions: (1) What are the most effective models for delivering MH/SA services for older adults within the framework of primary health care? (2) How do the location, type of provider, and type of health care financing, affect the level of older adults' actual utilization of MH/SA services and the outcomes of their treatment?

The immediate objectives of this Program are: (1) To identify, document and compare service models and financing mechanisms for providing older adults with MH/SA services through primary health care. (2) To identify the best screening/assessment and outcome instruments and methods which can be used in primary care settings with older adults with MH/SA problems. (2) To identify the prevention, early identification, early intervention, and treatment components in these models and to recognize the impact of these components on outcomes for the referral and integrated approaches. (3) To determine if the identification of staff training needs and training actually provided has an impact on system and provider proficiencies and on client outcomes. (4) To measure the relative effectiveness of these service models and financing models on (a) older adults' utilization of MH/SA services, (b) client (functional and psychiatric) outcomes, and (c) system outcomes. (5) To disseminate useful lessons learned quickly and continuously to the field.

- *Priorities:* None.
- *Eligible Applicants:* Applications may be submitted by public organizations, such as units of State or local government, and by domestic private nonprofit and for-profit organizations, such as group practice settings, Federally Qualified Health Centers (FQHCs), community health centers, other community-based organizations, universities, colleges, hospitals, family and/or consumer operated organizations, and various types of managed health care organizations.
- *Cooperative Agreements/Amounts:* For FY 1998, it is estimated that approximately $3.5 to 4 million will be available to support up to ten (10) Study Site awards and one (1) Coordinating Center under this GFA. For Phase I in FY 1998, the average award to support each Study Site is expected to range from $250,000 to $350,000 in total costs (direct+indirect) per year, including service enhancements. The award to support the Coordinating Center is expected to be in the range of $800,000 to $900,000 in total costs (direct+indirect) per year. For Phase II in FY 1999–2001, it is estimated that approximately the same total amount, $3.5 to 4 million per year, will be available. Actual funding levels will depend upon the availability of appropriated funds.
- *Catalog of Federal Domestic Assistance Number:* 93.230.
- For programmatic or technical information regarding this program (not for application kits), contact: Paul Wohlford, Ph.D., Division of State and Community System Development, Center for Mental Health Services, SAMHSA, 5600 Fishers Lane, Room 15C–18, Rockville, MD 20857, Tel. 301–443–5850; Fax 301–594–0091, E-mail: pwohlfor@samhsa.gov.

HRSA-supported Consolidated Health Centers should contact: M. Carolyn Aoyama, C.N.M., M.P.H., Deputy Chief, Clinical Branch, Division of Community and Migrant Health, Bureau of Primary Health Care, HRSA, 4350 East West Highway, 7th Floor, Bethesda, MD 20814, Tel. 301–594–4294; Fax 301–594–4997, E-mail: caoyama@hrsa.dhhs.gov.

- For grants management assistance, contact: Stephen J. Hudak, Division of Grants Management, OPS, SAMHSA, 5600 Fishers Lane, Room 15C–05, Rockville, Maryland 20857, (301) 443–4456, E-mail: shudak@samhsa.gov.
- For application kits, contact: Knowledge Exchange Network (KEN), P.O. Box 42490, Washington, DC 20015, Voice: 800–789–2647; TTY 301–443–9006; Fax 301–984–8796.

4.1.2 Cooperative Agreements for Establishing a Mentoring/Advocacy Program for High Risk Youth and Their Families (Short Title: Project: Youth Connect, SP 98–005)

- *Application Deadline:* June 19, 1998.
- *Purpose:* The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of funds to support studies to determine the effectiveness of mentoring/advocacy models that focus on youth 9–15 years of age and their families. The primary purpose of the program is to prevent or reduce substance abuse or delay its onset by improving school bonding and academic performance; improving life management skills and improving family bonding and family functioning. The announcement solicits grant applications for 10–12 Project: Youth Connect Study Sites and a Coordinating Center. This study includes requirements for a rigorous evaluation. Community based organizations and schools wishing to apply under this announcement, are encouraged to consult with organizations or universities in their communities, who can provide evaluation expertise. The Coordinating Center's primary responsibility will be for supporting effective evaluations and conducting secondary analyses of data across the study sites.

Through this program, SAMHSA/CSAP anticipates gaining additional knowledge about the relative effectiveness of providing this mentor/advocate service to the youth (Model I) or the youth and his/her family (Model II). The study should address the following questions: (1) Is the mentoring/advocacy model effective in preventing, delaying and/or reducing youth substance abuse? (2) If the mentoring/advocacy model is effective, are better outcomes achieved working with youth only, or with youth and families? (3) Which intervention, or combination of interventions, produce outcomes that meet the program objectives?

- *Priorities:* None.
- *Eligible Applicants:* Applications for the Study Sites and the Coordinating Center may be submitted by units of State or local government and by domestic private nonprofit and for-profit organizations such as community-based organizations, universities, colleges, and hospitals. Applicants cannot apply for both a Study Site and a Coordinating Center cooperative agreement. Applicants must choose to apply for one or the other to avoid any conflict of interest issues.
- *Cooperative Agreements/Amounts:* It is estimated that approximately $6 million will be available to support approximately 10–12 Study Sites and $750,000 (including direct and indirect costs) will be available to support the Coordinating Center in FY 1998. Up to 20% of funds available for Study Sites are being set aside for applications from grantees previously funded under the Community Schools Program administered by the Administration for Children and Families that are in the top half of scored applications, as Congress has directed SAMHSA to give priority consideration to these applicants. No Study Site award can exceed $450,000, including indirect cost. Funding for the subsequent years may be at approximately the same levels.
- *Catalog of Federal Domestic Assistance Number:* 93.230.
- For programmatic or technical information regarding this grant, contact (not for application kits): Rose C. Kittrell, M.S.W., Division of Knowledge Development and Evaluation, Center for

Substance Abuse Prevention, SAMHSA, Rockwall II, Room 1075, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9104.

- For grants management assistance, contact: Peggy Jones, Division of Grants Management, OPS, SAMHSA, Rockwall II, Room 630, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3958.
- For application kits, contact: National Clearinghouse for Alcohol and Drug Information, P.O. Box 2345, Rockville, MD 20847–2345, (800) 729–6686; (800) 487–4859 TDD.

5. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 1998 activity described above is/is not subject to the Public Health System Reporting Requirements.

6. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

7. Executive Order 12372

Applications submitted in response to all FY 1998 activities listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: April 17, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–10654 Filed 4–22–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Water and Science

Notice of Intent To Negotiate an Operating Agreement Among the Central Utah Water Conservancy District, Ute Tribe—Uintah and Ouray Reservation, United States Bureau of Indian Affairs, and the Department of the Interior To Provide for the Construction, Rehabilitation, Operation, Maintenance, and Replacement of the Uintah Unit Replacement Project of the Central Utah Project

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate an agreement among the Central Utah Water Conservancy District, Ute Tribe—Uintah and Ouray Reservation, United States Bureau of Indian Affairs, and Department of the Interior to provide for the construction, rehabilitation, operation, maintenance, and replacement of the Uintah Unit Replacement Project of the Central Utah Project as provided in Section 201(c) of Pub. L. 102–575.

SUMMARY: Pub. L. 102–575, Central Utah Project Completion Act, Section 201(c), allows for the construction of the Uintah Unit Replacement Project as part of the Central Utah Project. An operating agreement will provide the terms associated with the construction, rehabilitation, operation, maintenance, and replacement of each of the features and activities associated with the Project. It will also establish the details associated with project reservoir water storage, accounting, and delivery. The agreement will establish the terms for the project operation to achieve the benefits of water development for Indians and non-Indians, protection of existing water rights, and establish a project operation to emphasize benefit to steam flows for fishery and other environmental enhancements

The purpose of the negotiation sessions will be to determine the terms of the storage, accounting, and delivery of project water for the Uintah Unit and detail the protection of existing water rights on the associated river systems. The sessions will also determine responsibilities for construction, rehabilitation, operation, maintenance, and replacement of project facilities.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION CONTACT:

Additional information on matters related to this **Federal Register** Notice can be obtained at the address and telephone number set forth below: Mr. Michael Hansen, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo, UT 84606–7317, Telephone: (801) 379–1194, E-Mail address: mhansen@uc.usbr.gov.

Dated: April 16, 1998.

Ralph G. Swanson,

Acting CUP Program Director, Department of the Interior.

[FR Doc. 98–10650 Filed 4–21–98; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Water and Science

Notice of Intent To Negotiate a Repayment Contract Between the Central Utah Water Conservancy District and the Department of the Interior for Repayment of the Reimbursable Costs of the Uintah Unit Replacement Project of the Central Utah Project

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate a repayment contract between the Central Utah Water Conservancy District and the Department of the Interior for repayment of reimbursable costs associated with the construction of the Uintah Unit Replacement Project of the Central Utah Project as provided in Section 201(c) of Pub. L. 102–575.

SUMMARY: Pub. L. 102–575, Central Utah Project Completion Act, Section 201(c), allows for the construction of the Uintah Unit Replacement Project as part of the Central Utah Project. A repayment contract will provide the terms of repayment by the Central Utah Water Conservancy District to the United States of the appropriate costs associated with the development of supplemental irrigation water by the Uintah Unit Replacement Project. The District will enter into separate subscription contracts with individual irrigators to obtain the funds to make their annual payments to the United States. The contract will address the application of the Leavitt Act for deferment of repayment by Indians for the cost of development of supplemental irrigation water for use on Indian lands.

The purpose of the negotiation sessions will be to establish the terms of repayment and funding of operation, maintenance, and replacement expenses for the Uintah Unit Replacement Project.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this **Federal Register** Notice can be obtained at the address and telephone number set forth below: Mr. Michael Hansen, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo, UT 84606–7317, Telephone: (801) 379–1194, E-Mail address: mhansen@uc.usbr.gov.

Dated: April 16, 1998.

Ralph G. Swanson,

Acting CUP Program Director, Department of the Interior.

[FR Doc. 98–10651 Filed 4–21–98; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–826077

Applicant: Wayne P. Steffans, Superior, Wisconsin.

The applicant requests an amendment to his permit for Hine's emerald dragonfly (*Somatochlora hineana*) to add the following to the scope of permitted activities: (1) add the following states: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, North Carolina, Ohio, South Carolina, Tennessee, and Wisconsin and (2) add the following take activities: salvage dead specimens, and survey for larvae and exuviae, and voucher larvae. Take activities are currently authorized throughout the Upper Peninsula of Michigan and include capture and release and take of voucher specimens of adults. The amendment is requested for the purpose of presence/absence surveys of the species and habitat monitoring for the purpose of survival and enhancement of the species in the wild.

PRT–840112

Applicant: The Nature Conservancy, Michigan Chapter, East Lansing, Michigan; Thomas M. Woiwode, Vice President.

The applicant requests a permit to take (harass through surveying and monitoring) Mitchell satyr's butterfly (*Neonympha mitchellii mitchellii*) in Cass, Jackson, and St. Joseph Counties, Michigan. Activities are proposed to document presence or absence of the species, monitor the species, survey the habitat for other species, and map the habitat for the purpose of survival and enhancement of the species in the wild.

PRT–840524

Applicant: Lynn Robbins, Department of Biology, Southwest Missouri State University, Springfield, Missouri.

The applicant requests a permit to take (capture, handle, tag, and release) gray bats (*Myotis grisescens*) and Indiana bats (*M. sodalis*) in Kansas and Missouri. Activities are proposed for the purpose of scientific research aimed at enhancement and survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5332); FAX: (612/713–5292).

Dated: April 15, 1998.

John A. Blankenship,

Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.

[FR Doc. 98–10592 Filed 4–21–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. PRT–841795

Applicant: Marc A. Baker, Chino Valley, Arizona

Applicant requests authorization to conduct presence/absence surveys for southwestern willow flycatchers (*Empidonax traillii extimus*); and remove samples from individuals of the Lee pincushion cactus [*Coryphantha sneedii* (=*Escobaria*) (=*Mammillaria*) *var. leei*], and the Sneed pincushion cactus [*Coryphantha sneedii* (=*Escobaria=Mammillaria*) *var. sneedii*] in New Mexico and Texas.

Permit No. PRT–841798

Applicant: James A. Sedgwick, U.S. Geological Survey, Ft. Collins, Colorado

Applicant request authorization to conduct presence/absence surveys for southwestern willow flycatchers (*Empidonax traillii extimus*) in Arizona and New Mexico.

Permit No. PRT–798107

Applicant: Kenneth J. Kingsley, SWCA, Inc., Tucson, Arizona

Applicant requests authorization to conduct presence/absence surveys for the following endangered species in Arizona, New Mexico, and Texas:

Mammals

Mexican long-nosed bat (*Leptonycteris nivalis*)
gray bat (*Myotis grisescens*)
Indiana bat (*Myotis sodalis*)
Ozark big-eared bat (*Corynorhinus (=Plecotus) townsendii ingens*)
Louisiana black bear (*Ursus americanus luteolus*)
jaguar (*Panthera onca*)
jaguarundi (*Felis yagouaroundi*)
ocelot (*Felis pardalis*)
Sonoran pronghorn (*Antilocapra americana sonoriensis*)
Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*)
Hualapai Mexican vole (*Microtus mexicanus hualpaiensis*)
gray wolf (*Canis lupus*)

Birds

Yuma clapper rail (*Rallus longirostris yumanensis*)
masked bobwhite (*Colinus virginianus ridgwayi*)
bald eagle (*Haliaeetus leucocephalus*)
peregrine falcon (*Falco peregrinus*)
Eskimo curlew (*Numenius borealis*)
northern aplomado falcon (*Falco femoralis septentrionalis*)
interior least tern (*Sterna antillarum*)
piping plover (*Charadrius melodus*)
brown pelican (*Pelicanus occidentalis*)
Attwater's greater prairie chicken (*Tympanuchus cupido attwateri*)
black-capped vireo (*Vireo atricapillus*)
golden-cheeked warbler (*Dendroica chrysoparia*)
whooping crane (*Grus americana*)
red-cockaded woodpecker (*Picoides borealis*)

Reptiles

New Mexico ridge-nosed rattlesnake (*Crotalus willardi obscurus*)
concho water snake (*Nerodia paucimaculata*)
Kemp's ridley sea turtle (*Lepidochelys kempii*)
desert tortoise (*Gopherus agassizii*)

Amphibians

Barton Springs salamander (*Eurycea sosorum*)
Houston toad (*Bufo houstonensis*)
San Marcos salamander (*Eurycea nana*)
Texas blind salamander (*Typhlomolge rathbuni*)
Sonoran tiger salamander (*Ambystoma tigrinum stebbinsi*)

Fish

Big Bend gambusia (*Gambusia gaigei*)
bonytail chub (*Gila elegans*)
Clear Creek gambusia (*Gambusia heterochir*)
Comanche Springs pupfish (*Cyprinodon elegans*)
desert pupfish (*Cyprinodon macularius*)
fountain darter (*Ethostoma fonticola*)
Gila topminnow (*Poeciliopsis occidentalis*)
Gila trout [Oncorhynchus (=*salmo*) gilae]
humpback chub (*Gila cypha*)
Leon Springs pupfish (*Cyprinodon bovinus*)
Pecos gambusia (*Gambusia nobilis*)
razorback sucker (*Xyrauchen texanus*)
Rio Grande silvery minnow (*Hybognathus amarus*)
San Marcos gambusia (*Gambusia georgei*)
Virgin River chub (*Gila robusta seminuda*)
woundfin (*Plagopterus argentissimus*)
Yaqui chub (*Gila purpurea*)

Invertebrates

Socorro isopod (*Thermosphaeroma thermophilus*)
Peck's Cave amphipod (*Stygobromus pecki*)
Kanab ambersnail (*Oxyloma haydeni*)
Alamosa springsnail (*Tryonia alamosae*)
Socorro springsnail (*Pyrgulopsis neomexicana*)

Clams

Ouachita rock-pocketbook (*Arkansia wheeleri*)

Insects

Comal Springs riffle beetle (*Heterelmis comalensis*)
Comal Springs dryopid beetle (*Stygoparnus comalensis*)
Coffin Cave mold beetle (*Batrisodes texanus*)
Kretschmarr Cave mold beetle (*Texamaurops reddelli*)
Tooth Cave ground beetle (*Rhadine persephone*)
American burying beetle (*Nicrophorus americanus*)

Arachnids

Bone Cave harvestman (*Texella reyesi*)
Bee Creek Cave harvestman (*Texella reddelli*)
Tooth Cave pseudoscorpion (*Tartarocreagris texana*)
Tooth Cave spider (*Neoleptoneta myopica*)

Plants

Arizona cliffrose (*Purshia subintegra*)
Arizona agave (*Agave arizonica*)
ashy dogwood (*Thymophyla tephroleuca* (=*Dyssodia t.*)
black lace cactus (*Echinocereus reichenbachii* var. *albertii* (=*E. melanocentrus*)
Brady pincushion cactus (*Pediocactus bradyi* (=*Toumeya b.*)
bunched cory cactus (*Coryphantha ramillosa*)
Canelo Hills ladies'-tresses (*Spiranthes delitescens*)
Chisos Mountain hedgehog cactus (*Echinocereus chisosensis* var. *chisosensis* (=*E. reichenbachii* var. *c.*)
Cochise pincushion cactus (*Coryphantha robbinsorum* (=*Cochiseia r., Escobaria r.*)
Davis' green pitaya (*Echinocereus viridiflorus* var. *Davisii* (=*E. Davisii)*
eastern prairie fringed orchid (*Platanthera leucophaea*)
gypsum wild-buckwheat (*Eriogonum gypsophilum*)
Hinckley's oak (*Quercus hinckleyi*)
Holy Ghost ipomopsis (*Ipomopsis sancti-spiritus*)
Huachuca water umbel (*Lilaeopsis schaffneriana ssp. recurva*)
Johnston's frankenia (*Frankenia johnstonii*)
Jones Cycadenia (*Cycadenia humilis var. jonesii*)
Kearney's blue-star (*Amsonia kearneyana*)
Knowlton cactus (*Pediocactus knowltonii*)
Kuenzler hedgehog cactus (*Echinocereus fendleri* var. *kuenzleri*)
large-fruited sand verbena (*Abronia macrocarpa*)
Lee pincushion cactus (*Coryphantha sneedii* var. *leei*) (=*Escobaria l., Mammillaria l.*)

Lloyd's mariposa cactus (*Neolloydia mariposensis* (=*Echinocactus m., Echinomastus m.*)
Lloyd's hedgehog cactus (*Echinocereus lloydii* (=*E. Roetteri* var. *l.*)
Mancos milk-vetch (*Astragalus humillimus*)
Mesa Verde cactus (*Sclerocactus mesae-verdae* (=*Coloradoa m., Echinocactus m., Pediocactus m.*)
Navajo sedge (*Carex specuicola*)
Navasota ladies'-tresses (*Spiranthes parksii*)
Nellie cory cactus (*Coryphantha minima* (=*C. Nellieae, Escobaria n., Mammillaria n.*)
Nichol's Turk's head cactus (*Echinocactus horizonthalonius* var. *nicholii*)
Peebles Navajo cactus (*Pediocactus peeblesianus* var. *peeblesianus* (=*Echinocactus p., Navajoa p., Toumeya p., Utahia p.*)
Pima pineapple cactus (*Coryphantha scheeri* var. *robustispina*)
Sacramento prickly-poppy (*Argemone pleiacantha ssp. pinnatisecta*)
Sacramento Mountains thistle (*Cirsium vinaceum*)
San Francisco Peaks groundsel (*Senecio franciscanus*)
sentry milk-vetch (*Astragalus cremnophylax* var. *cremnophylax*)
Siler pincushion cactus (*Pediocactus sileri*) (=*Echinocactus s., Utahia s.*)
slender rush-pea (*Hoffmannseggia tenella*)
Sneed pincushion cactus (*Coryphantha sneedii* var. *sneedii* (=*Escobaria s., Mammillaria s.*)
South Texas ambrosia (*Ambrosia cheiranthifolia*)
star cactus (*Astrophytum asterias*)
Terlingua Creek cat's eye (*Cryptantha crassipes*)
Texas ayenia (*Ayenia limitaris*)
Texas prairie dawn (=Texas bitterweed) (*Hymenoxys texana*)
Texas poppy-mallow (*Callirhoe scabriuscula*)
Texas trailling phlox (*Phlox nivalis ssp. texensis*)
Texas wild-rice (*Zizania texana*)
Texas snowbells (*Styrax texana*)
Tobusch fishhook cactus (*Ancistrocactus tobuschii)* (=*Echinocactus t., Mammillaria t.*)
Todsen's pennyroyal (*Hedeoma todsenii*)
Walker's manioc (*Manihot walkerae*)
Welsh's milkweed (*Asclepias welshii*)
western prairie fringed orchid (*P. praeclara*)
white bladderpod (*Lesquerella pallida*)
Zuni (=Rhizome) fleabane (*Erigeron rhizomatus*)

Permit No. PRT–841838

Applicant: Paul Price Associates, Austin, Texas

Applicant requests authorization to conduct presence/absence surveys for black-capped vireos (*Vireo atricapillus*) and golden-cheeked warblers (*Dendroica chrysoparia*) in Bell, Hays, Williamson, Hardin, Montgomery, and Walker Counties, Texas.

Permit No. PRT–841841

Applicant: Dennis D. Parker, Patagonia, Arizona

Applicant requests authorization to conduct presence/absence surveys for southwestern willow flycatchers (*Empidonax traillii extimus*) on the Gila River, Grant County, New Mexico; the Verde, Santa Cruz, San Pedro, Salt and Gila Rivers in Arizona; the Mimbres, San Francisco and Rio Grande Rivers in New Mexico; and the Hachita/Animas areas of New Mexico.

Permit No. PRT–841847

Applicant: Allen Haden, Northern Arizona University, Flagstaff, Arizona

Applicant requests authorization to conduct activities for research and recovery purposes of the bonytail chub (*Gila elegans*) at Northern Arizona University Animal Care Facility.

Permit No. PRT–826091

Applicant: Bureau of Land Management, Phoenix, Arizona

Applicant request authorization to conduct presence/absence surveys for peregrine falcon (*Falco pereginus anatum*), lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*), southwestern willow flycatcher (*Empidonax traillii extimus*), cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*), Sonoran pronghorn (*Antilocapra americana sonoriensis*) in lands administered by the Bureau of Reclamation in Phoenix, Arizona.

Permit No. PRT–835678

Applicant: Lake Mead National Recreation Area, Boulder City, Nevada

Applicant requests authorization to conduct presence/absence surveys for Southwestern willow flycatchers (*Empidonax traillii extimus*) along the shorelines of Lake Mead and Lake Mojave in Mohave County, Arizona and Clark County, Nevada.

Permit No. PRT–841873

Applicant: Cimarron Oilfield Service Co., Farmington, New Mexico

Applicant requests authorization to conduct presence/absence surveys for Mancos milk-vetch (*Astragalus humillimus*), Zuni fleabane (*Erigeron rhizomatus*), Knowlton's cactus (*Pediocactus knowltonii*), Mesa Verde cactus (*Sclerocactus mesae-verdae*), peregrine falcons (*Falco peregrinus*), bald eagles (*Haliaeetus leucocephalus*), and southwestern willow flycatchers (*Empidonax traillii extimus*) in Arizona and New Mexico.

Permit No. PRT–819528

Applicant: New Mexico Natural Heritage Program, Albuquerque, New Mexico

Applicant requests authorization to conduct presence/absence surveys for Kuenzler's hedgehog cactus (*Echinocereus fendleri var. kuenzleri*) and collect parts of the Lee's pincushion cactus (*Escobaria sneedii var. leei*) on the Lincoln National Forest, New Mexico.

Permit No. PRT–799099

Applicant: Dale W. Stahlecker, Eagle Ecological Services, Santa Fe, New Mexico

Applicant requests authorization to conduct presence/absence surveys for Northern aplomado falcon (*Falco femoralis septentrionalis*) in southern New Mexico to include White Sands Missile Range.

Permit No. PRT–841896

Applicant: Katharine Hinman, Sound Beach, New York

Applicant requests authorization to survey for lesser long-nosed bats (*Leptonycteris curasoae*) using standard techniques to evaluate various techniques for studying foraging behavior and pollination success in southeastern Arizona.

Permit No. PRT–824714

Applicant: Bureau of Land Management, Farmington District, Farmington, New Mexico

Applicant requests authorization to conduct presence/absence surveys for American peregrine falcons (*Falco peregrinus anatum*), Knowlton cactus (*Pediocactus knowltonii*), and Mancos milk-vetch (*Astragalus humillimus*) on the lands administered by the Farmington District in New Mexico.

Permit No. PRT–841898

Applicant: The Hopi Tribe, Kykotsmovi, Arizona

Applicant requests authorization to conduct presence/absence surveys for southwestern willow flycatchers (*Empidonax traillii extimus*) on the Hopi Reservation.

Permit No. PRT–841901

Applicant: The Cincinnati Zoo and Botanical Garden, Cincinnati, Ohio

Applicant requests authorization to obtain masked bobwhite quail (*Colinus virginianus ridgwayi*) from the Buenos Aires National Wildlife Refuge in Sasabe, Arizona and transport them to the Cincinnati Zoo for propagation and recovery purposes and educational display.

Permit No. PRT–841909

Applicant: Prescott National Forest, Prescott, Arizona

Applicant requests authorization to conduct presence/absence surveys and monitoring for American peregrine falcons (*Falco peregrinus anatum*), southwestern willow flycatchers (*Empidonax traillii extimus*), Hualapai Mexican voles (*Microtus mexicanus hualpaiensis*), razorback suckers (*Xyrauchen texanus*), Gila topminnow (*Poeciliopsis o. occidentalis*), Gila trout (*Oncorhynchus gilae*), Colorado squawfish (*Ptychocheilus lucius*), and Arizona cliffrose (*Purshia subintegra*) on the Prescott National Forest, Yavapai County, Arizona.

Permit No. PRT–841927

Applicant: Lincoln National Forest, Alamogordo, New Mexico

Applicant requests authorization to conduct presence/absence surveys and monitoring for southwestern willow flycatchers (*Empidonax traillii extimus*), American peregrine falcons (*Falco peregrinus anatum*), and northern aplomado falcons (*Falco femoralis septentrionalis*) on the Lincoln National Forest, New Mexico.

Permit No. PRT–822998

Applicant: Coronado National Forest, Tucson, Arizona

Applicant requests authorization to conduct presence/absence surveys for southwestern willow flycatchers (*Empidonax traillii extimus*) on the Coronado National Forest, Arizona.

DATES: Written comments on these permit applications must be received on or before May 22, 1998.

ADDRESSES: Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Ecological Services, Division of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when requesting copies of documents. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

Renne Lohoefener,

ARD-Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 98–10642 Filed 4–21–98; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Public Meeting

On June 24, 1997, the Fish and Wildlife Service (Service) published a notice in the **Federal Register** (62 FR 34074) requesting the submission of any information that may be available concerning the impacts of exports of live American alligators. In that notice, the Service announced that, if requested in writing, a public meeting concerning the issue would be held. A public meeting was requested and will be held on May 5, 1998, from 1:30 pm to 3:30 pm, at the Delta Resort Orlando, 5715 Major Boulevard, Orlando, Florida 32819–7988.

Dated: April 13, 1998.

Kenneth Stansell,

Chief, Office of Management Authority.

[FR Doc. 98–10576 Filed 4–21–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–01]

Temporary Emergency Closure of Public Land, Socorro County, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Temporary Emergency Closure.

SUMMARY: Notice is hereby given that the Las Cruces District is implementing a temporary emergency closure of public land. The following described public land will be temporarily closed to public use and entry. The closure will be in effect April 26, 1998, during the hours of 9:00 A.M. to 1:00 P.M. The temporary closure is implemented for security purposes during a visit and brief ceremony at the site of the proposed El Camino Real International Heritage Center by a delegation from Spain. The visit by the Spanish dignitaries will be part of the events planned in connection with the Spain/New Mexico Cuartocentenario commemoration.

The authority for the closure is 43 CFR 8364.1: Closure and Restriction Orders.

The legal description of the land involved in this closure is:

New Mexico Principal Meridian,

T. 8 S., R. 3 W.,
Sec. 14, lots 1–4, NE¼, S½;
Sec. 15, lots 6–20, SE¼;
Sec. 23, lots 5–18, NE¼;
Sec. 24, lots 3–7, N½, SE¼;
Sec. 25, lots 4–17, SE¼.

The area described contains 3,163.59 acres.

Exit Number 115 from Interstate 25 and the roadway located on the described land, which begins at Exit 115, will also be closed to the public during the specified time. New Mexico State Police officers and other law enforcement personnel will be stationed at Exit 115 and will monitor and inspect the area during the time of closure.

Persons that are exempt from this closure are those designated by invitation to the event, and any law enforcement officer in the performance of official duties.

DATES: Closure is in effect on April 26, 1998, during the hours of 9:00 a.m. to 1:00 p.m.

ADDRESSES: BLM, Socorro Resource Area, 198 Neel Avenue, NW, Socorro, New Mexico 87801.

FOR FURTHER INFORMATION CONTACT: Tom Gow or Jon Hertz, Socorro Resource Area Office, at the address above or by telephone at 505–835–0412.

SUPPLEMENTARY INFORMATION:

Copies of maps showing the land involved in this temporary emergency closure are available from the Socorro Resource Area Office.

Dated: April 15, 1998.

Josie Banegas,

Acting District Manager.

[FR Doc. 98–10467 Filed 4–21–98; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–08–1320–01; WYW144836]

Notice of Invitation for Coal Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.A. 201 (b), and to the regulations adopted as 43 CFR, part

34, subpart 3410, all interested parties are hereby invited to participate with Kerr-McGee Coal Corp., on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, WY:

T. 43 N., R. 70 W., 6th P.M., Wyoming
Sec. 4: Lots 17, 18;
Sec. 7: Lots 5 thru 7, 9 thru 12, 13 (N2 & SE);
Sec. 8: Lots 1 thru 16;
Sec. 9: Lots 3 thru 6;
T. 43 N., R. 71 W., 6th P.M., Wyoming
Sec. 12: Lots 1, 2.
Containing approximately 1,298.70 acres.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to obtain coal quality data to supplement data from previous adjacent coal exploration programs.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW144836): Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, Bureau of Land Management, Casper District Office, 1701 East ''E'' Street, Casper, WY 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in ''The News-Record'' of Gillette, WY, once each week for two consecutive weeks beginning the week of April 20, 1998 and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Kerr-McGee Coal Corp., no later than 30 days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Kerr-McGee Coal Corp., Attn: John W. Coleman, MT–2205, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, and the Bureau of Land Management, Wyoming State Office, Minerals and Lands Authorization Group, Attn: Mavis Love, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Mavis Love,

Acting Chief, Leasable Minerals Section.

[FR Doc. 98–9623 Filed 4–21–98; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–1040–00]

Notice of Meeting for the Gila Box Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR 1780 that a meeting of the Gila Box Riparian National Conservation Area (NCA) Advisory Committee will be held.

DATES: May 14–15, 1998, 9:00 a.m., Safford Field Office.

ADDRESSES: BLM Safford Field Office, 711 14th Avenue, Safford, Arizona.

SUPPLEMENTARY INFORMATION: The NCA Advisory Committee was established by the Arizona Desert Wilderness Act of 1990 to provide input to the Safford Field Office on management of the Gila Box Riparian National Conservation Area (NCA). The committee is continuing work on the implementation of the Final Management Plan which was completed in December, 1997 and available to the public in January, 1998.

The agenda for the meeting includes: (1) Float trip through the Gila Box; (2) Assessment of resource conditions to finalize the Report to Congress due in September, 1998.

All meetings are open to the public.

Summary minutes of the meeting will be maintained in the Safford Field Office, and will be available for public inspection (during regular business hours) within 30 days after each meeting.

FOR FURTHER INFORMATION CONTACT: Margaret L. Jensen, Program Manager for Resource Use and Protection, or Elmer Walls, Team leader, 711 14th Avenue, Safford, Arizona 85546; telephone number (520) 328–4400.

Dated: April 9, 1998.

William T. Civish,

Field Office Manager.

[FR Doc. 98–10629 Filed 4–21–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–020–1430; IDI–27741 (Amdt.)]

Notice of Realty Action, Recreation and Public Purpose (R&PP) Act Classification, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following public lands in Twin Falls County, Idaho, have been examined and found suitable for classification for lease to the Twin Falls County Parks and Recreation Department under the provisions of the Recreation and Public Purpose Act, as amended (43 U.S.C. 869 *et seq.*). The Twin Falls County Parks and Recreation Department proposes to use the land for a recreational area in association with their existing Centennial Waterfront Park.

T. 9 S., R. 17 E., Boise Meridian
Section 34: Lots 15, 16, 17

The area described contains 75.52 acres, more or less, in Twin Falls County.

A hiking trail, floating boat dock, primitive camping area with pit toilets, and a scenic overlook are proposed for the above described public land.

The above described lands are not needed for Federal purposes. The lease of these lands is consistent with the Twin Falls Management Framework Plan and the Twin Falls County Comprehensive Plan and it would be in the public interest.

The lease, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. Those rights for the Perrine Memorial Bridge granted to the Idaho Department of Transportation by right-of-way IDI–4901.

3. Those rights for a ditch for storm and run-off water granted to the City of Twin Falls by right-of-way IDI–22123.

4. A right-of-way for ditches and canals constructed by the authority of the United States.

5. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Snake River Resource Area, 15 East 200 South, Burley, Idaho.

Upon publication of this notice in the **Federal Register**, the lands will be

segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purpose Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed classification or lease of the lands to the Area Manager, Snake River Resource Area Office, 15 East 200 South, Burley, Idaho 83318.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a recreation area associated with the Twin Falls County Centennial Waterfront Park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a recreation area.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: April 13, 1998.

Tom Dyer,

Area Manager.

[FR Doc. 98–10706 Filed 4–21–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–08–1330–01; WYW145003]

Notice of Invitation for Sodium Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to Section 302(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1732(b), and to the regulations at 43 CFR, part 34, subpart 3524, members of the public are hereby invited to participate with Tg Soda Ash, Inc. on a pro rata cost sharing basis in its program for the exploration of sodium deposits owned by the United States of America in the following-described lands in Sweetwater County, Wyoming:

T. 19 N., R. 111 W., 6th P.M., Wyoming
Sec. 14: All.
Containing 640.00 acres.

All of the sodium in the above-described land consists of unleased Federal sodium within the Green River Basin Known Sodium Leasing Area. The purpose of the exploration program is to conduct off-lease exploration by drilling.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management (BLM). Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW145003): Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming; and, Bureau of Land Management, Rock Springs District Office, Highway 191 North, Rock Springs, Wyoming.

SUPPLEMENTARY INFORMATION: Any party electing to participate in this exploration program must send written notice to both the BLM and Tg Soda Ash, Inc. by the close of business May 22, 1998. The written notice should be sent to the following addresses: Tg Soda Ash, Inc., Attn: Terry Leigh, P.O. Box 100, Granger, WY 82934; and, Bureau of Land Management, Wyoming State Office, Attn: Mavis Love, P.O. Box 1828, Cheyenne, WY 82003.

Michael Madrid,

Chief, Mineral/Lands Authorization Group.

[FR Doc. 98–9622 Filed 4–21–98; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1620–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. April 13, 1998.

The plat representing the dependent resurvey of a portion of the east boundary and subdivisional lines, the subdivision of section 25, and the survey of lot 4 in section 25, T. 5 S., R. 8 E., Boise Meridian, Idaho, Group 987, was accepted April 13, 1998.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the surveys of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: April 13, 1998.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 98–10704 Filed 4–21–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1150–00]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. April 14, 1998.

The plat representing the dependent resurvey of a portion of the subdivisional lines and subdivision of section 1, and the survey of lot 6 in section 1, and the as-built centerline of Hayden Creek Road in sections 1 and 12, T. 17 N., R. 23 E., Boise Meridian, Idaho, Group 991, was accepted April 14, 1998.

This survey was executed to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the surveys of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

Dated: April 14, 1998.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 98–10705 Filed 4–21–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Minerals Management Advisory Board; Outer Continental Shelf (OCS) Scientific Committee (SC), Announcement of Plenary Session

This Notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A–63, Revised.

The Minerals Management Advisory Board OCS SC will meet in plenary session on Wednesday, May 13, and on Thursday, May 14, 1998, at the Le Meridien, 614 Canal Street, New Orleans, Louisiana 70130, telephone (504) 525–6500.

The OCS SC is an outside group of scientists which advises the Director, MMS, on the feasibility, appropriateness, and scientific merit of the MMS's OCS Environmental Studies Program as related to information needed for OCS decisionmaking.

Below is a schedule of meetings that will occur.

The Committee will meet in plenary session on Wednesday, May 13, from 8:30 a.m. to 5 p.m. Discussion will focus on:

- Environmental research for the deepwater Gulf of Mexico.
- MMS Environmental Databases.
- Report from the OCS Policy Committee.
- Presentation by Director Quarterman and Associate Director Kallaur.

The SC will meet again on Thursday, May 14, from 8:30 a.m. to noon. Discussion items will include a report on National Oceanographic Partnership Program's Year of the Ocean, National Ocean Conference, and Committee Business.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the plenary session.

A copy of the agenda may be requested from the MMS by writing Ms. Phyllis Clark at the address below. Other inquiries concerning the OCS SC meeting should be addressed to Dr. Ken Turgeon, Executive Secretary to the OCS Scientific Committee, Minerals Management Service, 381 Elden Street, Mail Stop 4040, Herndon, Virginia 20170–4817. He may be reached by telephone at (703) 787–1717, and by electronic mail at ken.turgeon@mms.gov.

Dated: April 14, 1998.

Thomas A. Readinger,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 98–10604 Filed 4–21–98; 8:45 am]

BILLING CODE 4043–MR–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice and Agenda for Meeting of the Royalty Policy Committee of the Minerals Management Advisory Board

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Secretary of the Department of the Interior (Department) has established a Royalty Policy Committee, on the Minerals Management Advisory Board, to provide advice on the Department's management of Federal and Indian minerals leases, revenues, and other minerals related policies. Committee membership includes representatives from States, Indian Tribes and allottee organizations, minerals industry associations, the general public, and Federal Departments.

At this seventh meeting, the Minerals Management Service (MMS) will be prepared to respond to questions concerning plans to implement previously approved reports.

The Committee will consider recommendations by the Net Receipts Sharing Subcommittee and progress reports by the other active subcommittees. Additionally, the Committee will hear status reports from some of the current efforts being undertaken by the Royalty Management Program.

DATES: The meeting will be held on: Tuesday, May 19, 1998, 8:30 a.m.–4:00 p.m.

ADDRESSES: The meeting will be held at the Sheraton Denver West, 360 Union Boulevard, Lakewood, Colorado 80228, telephone number (303) 987–2000.

FOR FURTHER INFORMATION CONTACT: Mr. Michael A. Miller, Chief, Program Services Office, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3060, Denver, CO 80225–0165, telephone number (303) 231–3413, fax number (303) 231–3362.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register**.

The meetings will be open to the public without advanced registration. Public attendance may be limited to the space available.

Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration.

Written statements should be submitted to Mr. Michael A. Miller, at the address listed above. Minutes of Committee meetings will be available 10 days following each meeting for public inspection and copying at the Royalty Management Program, Building No. 85, Denver Federal Center, Denver, Colorado.

These meetings are being held by the authority of the Federal Advisory Committee Act, Pub. L. No. 92–463, 5 U.S.C. Appendix 1, and Office of Management and Budget Circular No. A–63, revised.

Dated: April 16, 1998.

Lucy Querques Denett,

Associate Director for Royalty Managememt.

[FR Doc. 98–10643 Filed 4–21–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

REVISION— Notice of Inventory Completion for Native American Human Remains, Associated Funerary Objects, and Unassociated Funerary Objects in the Control of the United States Marine Corps, Department of the Navy, Honolulu, HI; and in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains, associated funerary objects, and unassociated funerary objects in the control of the United States Marine Corps, Department of the Navy, Honolulu, HI; and in the possession of the Bernice Pauahi Bishop Museum, Honolulu, HI. **This notice replaces the Notice of Inventory Completion published February 28, 1994.**

A detailed assessment of the human remains was made by United States Marine Corps and Bishop Museum professional staff in consultation with representatives of Hui Malama I Na Kupuna O Hawai'i Nei and the Office of Hawaiian Affairs.

Between 1915 and 1932, prior to Federal control of Tract 1 on Mokapu, human remains representing five individuals from the Heleloa sand dunes on the Mokapu peninsula were donated to the Bishop Museum by unknown donor(s). No known individuals were identified. No associated funerary objects are present.

During 1938-1940, prior to Federal control of Tract 3 on Mokapu, human remains representing 799 individuals were recovered from He'eia sand dunes on Mokapu, during legally authorized excavations conducted by Gordon T. Bowles of the University of Hawaii and Kenneth P. Emory of the Bishop Museum. No known individuals were identified. The 61 associated funerary objects include kupe'e, basalt flakes,

marine shells, kukui nuts, and the bones of fish, birds, pigs, dogs, and turtles.

During 1939-1940, human remains representing 184 individuals were removed from the Heleloa sand dunes, Mokapu during legally authorized excavations conducted by Gordon T. Bowles of the University of Hawaii and Kenneth P. Emory of the Bishop Museum; and donated to the Bishop Museum. No known individuals were identified. The 13 associated funerary objects include kupe'e, basalt flakes, marine shells, kukui nuts, and the bones of fish, birds, pigs, dogs, and turtles.

In 1942, human remains representing 222 individuals from Mokapu and other locations on O'ahu were donated to the Bishop Museum by unknown persons. No known individuals were identified. No associated funerary objects are present.

In 1957, human remains representing 186 individuals were recovered from the Heleloa sand dunes, Mokapu, O'ahu during legally authorized excavations conducted by Robert N. Bowen of the University of Hawaii. No known individuals were identified. The 42 associated funerary objects include a dog tooth pendant; basalt flakes; bones of fish, bird and an unidentified mammal; and a bullet casing.

In 1975, human remains representing 108 individuals were recovered during a construction project on Ulupa'u, Mokapu. No known individuals were identified. The 118 associated funerary objects include kupe'e; calcite, shell, and whale bone pendants; bone and shell buttons; a metal ring; ivory beads; bone; glass; metal nails; and metal parts of a smoking pipe.

During 1952–1993, human remains representing 78 individuals from unknown locations were donated to the Bishop Museum from unknown sources, and curated as ''isolated burials'' within the Mokapu collection. No known individuals were identified. The 21 associated funerary objects include basalt flakes; bones of fish, bird, and mammals; coral; marine shell; and a kukui nut.

A total of 30 cultural items from the Federal lands of Mokapu including six pendants, basalt flakes, fish scales, a soil sample, glass and bone beads, bone buttons, a wood smoking pipe, nails, a kupe'e, and shell and bone fragments were recovered during the 1938–1940, 1939–1940, 1957, and 1975 excavations referenced above. Although not recorded with any specific burials, these cultural items are consistent with the cultural items associated with human remains.

Based on skeletal and cranial morphology, dentition, style and type of associated funerary objects, manner of interments, and recovery locations, the human remains listed above have been determined to be Native Hawaiian. In consultation with Native Hawaiian organizations, the U.S. Marine Corps and the Bishop Museum decided that no attempt would be made to determine the age of the human remains. The various ohana, or families, listed below are Native Hawaiian organizations under 43 CFR 10.2 (a)(3)(I).

Based on the above mentioned information, officials of the U.S. Marine Corps and the Bishop Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 1,582 individuals of Native American ancestry. Officials of the U.S. Marine Corps and the Bishop Museum have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 251 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Officials of the U.S. Marine Corps and the Bishop Museum have further determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these 30 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Lastly, officials of the U.S. Marine Corps and the Bishop Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains, associated funerary objects, and unassociated funerary objects and Sam Monet/Fannie L. Moniz Ohana, Nalani Olds Ohana, Terrilee Napuna Keko'olani-Raymond Ohana, Carloa Manuel Ohana, Eric Po'ohina on his behalf and on behalf of Huna Research Institute, the Princess Nahoa Olelo o Kamehameha Society, Ka Ohana O Na Iwi o Mokapu representing Hui Malama I Na Kupuna o Hawai'i Nei, the Office of Hawaiian Affairs, Ka Lahui Hawaii, Gladys Pualoa and the Ko'olauloa Hawaiian Civic Club, Miriam (Toni) Yardley, Ella Paguyo, Ipolani Tano, and Delilah Ortiz.

This notice has been sent to Sam Monet/Fannie L. Moniz Ohana, Nalani Olds Ohana, Terrilee Napuna Keko'olani-Raymond Ohana, Carloa Manuel Ohana, Eric Po'ohina on his behalf and on behalf of Huna Research Institute, the Princess Nahoa Olelo o Kamehameha Society, Ka Ohana O Na Iwi o Mokapu representing Hui Malama I Na Kupuna o Hawai'i Nei, the Office of Hawaiian Affairs, Ka Lahui Hawaii, Gladys Pualoa and the Ko'olauloa Hawaiian Civic Club, Miriam (Toni) Yardley, Ella Paguyo, Ipolani Tano, and Delilah Ortiz. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains, associated funerary objects, and unassociated funerary objects should contact Ms. June Cleghorn, Staff Archeologist, Marine Corps Base Hawaii, Kaneohe Bay, HI 96863–3002; telephone: (808) 257–6920, ext. 230, before May 22, 1998. If no additional claimants come forward, repatriation of the human remains and associated funerary objects to Sam Monet/Fannie L. Moniz Ohana, Nalani Olds Ohana, Terrilee Napuna Keko'olani-Raymond Ohana, Carloa Manuel Ohana, Eric Po'ohina on his behalf and on behalf of Huna Research Institute, the Princess Nahoa Olelo o Kamehameha Society, Ka Ohana O Na Iwi o Mokapu representing Hui Malama I Na Kupuna o Hawai'i Nei, the Office of Hawaiian Affairs, Ka Lahui Hawaii, Gladys Pualoa and the Ko'olauloa Hawaiian Civic Club, Miriam (Toni) Yardley, Ella Paguyo, Ipolani Tano, and Delilah Ortiz may begin after that date or at such time as the requesting parties agree upon their disposition or the dispute is otherwise resolved pursuant to the provisions of NAGPRA or by a court of competent jurisdiction [25 U.S.C. 3005 (e)].

Dated: April 16, 1998.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 98–10646 Filed 4–21–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the National Park Service, Great Basin National Park, Baker, NV

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9 (e), of the completion of an inventory of human remains in the possession of the

National Park Service, Great Basin National Park, Baker, NV.

A detailed assessment of the human remains was made by National Park Service professional staff in consultation with the Confederated Tribes of the Goshute Reservation, Duckwater Shoshone Tribe of the Duckwater Reservation, Ely Shoshone Tribe of Nevada, Paiute Indian Tribe of Utah, and Skull Valley Band of Goshute Indians.

The following Indian tribes were also contacted but declined to participate in face-to-face consultation: Big Pine Band of Owens Valley Paiute Shoshone Indians, Bridgeport Paiute Indian Colony of California, Burns Paiute Tribe of the Burns Paiute Indian Colony, Chemehuevi Indian Tribe, Death Valley Timbi-Sha Shoshone Band of California, Fort Bidwell Indian Community of Paiute Indians, Fort Independence Indian Community of Paiute Indians, Fort McDermitt Paiute and Shoshone Tribes, Kaibab Band of Paiute Indians, Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Lovelock Paiute Tribe of the Lovelock Indian Community, Moapa Band of Paiute Indians, Northwestern Band of Shoshoni Nation of Utah (Washakie), Paiute-Shoshone Indians of the Bishop Community, Paiute-Shoshone Indians of the Lone Pine Community, Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Pyramid Lake Paiute Tribe, Reno-Sparks Indian Colony, San Juan Southern Paiute Tribe of Arizona, Shoshone Tribe of the Wind River Reservation, Shoshone-Bannock Tribes of the Fort Hall Reservation, Shoshone-Paiute Tribes of the Duck Valley Reservation, Summit Lake Paiute Tribe of Nevada, Susanville Indian Rancheria of Paiute, Maidu, Pit River & Washoe Indians, Te-Moak Tribe of Western Shoshone Indians (Battle Mountain, Elko, South Fork, and Wells Indian Colony Bands), Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, Walker River Paiute Tribe, Washoe Tribe of Nevada & California (Carson Colony, Dresslerville & Washoe Ranches), Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, and Yomba Shoshone Tribe.

In 1937, 1938, and 1963, a total of 110 skeletal elements were recovered from Lehman Cave, located within park boundaries, during legally authorized National Park Service or contracted excavations. The skeletal elements were found scattered in various soil levels. Non-destructive physical anthropological assessments and measurements of the skeletal elements identified a minimum of 21 individuals. Eleven of the 110 skeletal elements were identified as Native American. The skeletal elements yielded no evidence of any other biological affiliation. No known individuals were identified. No associated funerary objects were present. Charcoal from two hearths in the cave yielded radiocarbon dates between AD 1700–present. Sixteen stone and wooden artifacts collected during the excavations are consistent with items found at several Shoshonean post-AD 1100 open sites elsewhere in the park. Based on this evidence, the human remains appear to date from the middle of the precontact period to early contact period (ca. AD 1100–1930).

Stylistic continuities in pottery, projectile points, petroglyphs, and basketry indicates Shoshonean occupation of the park area from approximately AD 1100 to the present. Ethnographic documentation, as well as archeological evidence from the area around Great Basin National Park, show that Southern Paiute are found in the area no earlier than AD 1000 and have a continuing presence up to the present time. Oral histories presented by tribal representatives of the Confederated Tribes of the Goshute Reservation, Ely Shoshone Tribe, and Paiute Indian Tribe of Utah confirm the archeological inference. Published sources also document historic Goshute use of another nearby cave for burial purposes. Present-day Shoshone, Southern Paiute, and Goshute tribes include: Big Pine Band of Owens Valley Paiute Shoshone Indians, Confederated Tribes of the Goshute Reservation, Death Valley Timbi-Sha Shoshone Band of California, Duckwater Shoshone Tribe of the Duckwater Reservation, Ely Shoshone Tribe of Nevada, Fort McDermitt Paiute and Shoshone Tribes, Kaibab Band of Paiute Indians, Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Moapa Band of Paiute Indians, Northwestern Band of Shoshoni Nation of Utah (Washakie), Paiute Indian Tribe of Utah, Paiute-Shoshone Indians of the Bishop Community, Paiute-Shoshone Indians of the Lone Pine Community, Paiute-Shoshone Tribe of the Fallon Reservation and Colony, San Juan Southern Paiute Tribe of Arizona, Shoshone Tribe of the Wind River Reservation, Shoshone-Bannock Tribes of the Fort Hall Reservation, Shoshone-Paiute Tribes of the Duck Valley Reservation, Skull Valley Band of Goshute Indians, Te-Moak Tribe of Western Shoshone Indians (Battle Mountain, Elko, South Fork, and Wells Indian Colony Bands), and Yomba Shoshone Tribe.

Based on the above-mentioned information, officials of the National Park Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of at least 21 individuals of Native American ancestry. Officials of the National Park Service have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Confederated Tribes of the Goshute Reservation, Duckwater Shoshone Tribe of the Duckwater Reservation, Ely Shoshone Tribe of Nevada, Kaibab Band of Paiute Indians, Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Moapa Band of Paiute Indians, Paiute Indian Tribe of Utah, San Juan Southern Paiute Tribe of Arizona, Skull Valley Band of Goshute Indians, Big Pine Band of Owens Valley Paiute Shoshone Indians, Death Valley Timbi-Sha Shoshone Band of California, Fort McDermitt Paiute and Shoshone Tribes, Northwestern Band of Shoshoni Nation of Utah (Washakie), Paiute-Shoshone Indians of the Bishop Community, Paiute-Shoshone Indians of the Lone Pine Community, Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Shoshone Tribe of the Wind River Reservation, Shoshone-Bannock Tribes of the Fort Hall Reservation, Shoshone-Paiute Tribes of the Duck Valley Reservation, Te-Moak Tribe of Western Shoshone Indians (Battle Mountain, Elko, South Fork, and Wells Indian Colony Bands), and Yomba Shoshone Tribe.

This notice has been sent to officials of the Big Pine Band of Owens Valley Paiute Shoshone Indians, Bridgeport Paiute Indian Colony of California, Burns Paiute Tribe of the Burns Paiute Indian Colony, Chemehuevi Indian Tribe, Confederated Tribes of the Goshute Reservation, Death Valley Timbi-Sha Shoshone Band of California, Duckwater Shoshone Tribe of the Duckwater Reservation, Ely Shoshone Tribe of Nevada, Fort Bidwell Indian Community of Paiute Indians, Fort Independence Indian Community of Paiute Indians, Fort McDermitt Paiute and Shoshone Tribes, Kaibab Band of Paiute Indians, Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Lovelock Paiute Tribe of the Lovelock Indian Community, Moapa Band of Paiute Indians, Northwestern Band of Shoshoni Nation of Utah (Washakie), Paiute Indian Tribe of Utah, Paiute-Shoshone Indians of the Bishop Community, Paiute-Shoshone Indians of the Lone Pine Community, Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Pyramid Lake Paiute Tribe, Reno-Sparks Indian

Colony, San Juan Southern Paiute Tribe of Arizona, Shoshone Tribe of the Wind River Reservation, Shoshone-Bannock Tribes of the Fort Hall Reservation, Shoshone-Paiute Tribes of the Duck Valley Reservation, Skull Valley Band of Goshute Indians of Utah, Summit Lake Paiute Tribe of Nevada, Susanville Indian Rancheria of Paiute, Maidu, Pit River & Washoe Indians, Te-Moak Tribe of Western Shoshone Indians (Battle Mountain, Elko, South Fork, and Wells Indian Colony Bands), Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, Walker River Paiute Tribe, Washoe Tribe of Nevada & California (Carson Colony, Dresslerville & Washoe Ranches), Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, and Yomba Shoshone Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Rebecca Mills, Superintendent, Great Basin National Park, Baker, NV; telephone: (702) 324–7331, before May 22, 1998. Repatriation of the human remains to the Confederated Tribes of the Goshute Reservation, Duckwater Shoshone Tribe of the Duckwater Reservation, Ely Shoshone Tribe of Nevada, Kaibab Band of Paiute Indians, Las Vegas Tribe of Paiute Indians, Moapa Band of Paiute Indians, Paiute Indian Tribe of Utah, San Juan Southern Paiute Tribe of Arizona, Skull Valley Band of Goshute Indians, Big Pine Band of Owens Valley Paiute Shoshone Indians, Death Valley Timbi-Sha Shoshone Band of California, Fort McDermitt Paiute and Shoshone Tribes, Northwestern Band of Shoshoni Nation of Utah (Washakie), Paiute-Shoshone Indians of the Bishop Community, Paiute-Shoshone Indians of the Lone Pine Community, Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Shoshone Tribe of the Wind River Reservation, Shoshone-Bannock Tribes of the Fort Hall Reservation, Shoshone-Paiute Tribes of the Duck Valley Reservation, Te-Moak Tribe of Western Shoshone Indians (Battle Mountain, Elko, South Fork, and Wells Indian Colony Bands), and Yomba Shoshone Tribe may begin after that date if no additional claimants come forward.

Dated: April 16, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–10647 Filed 4–21–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions that are new, modified, discontinued, or completed since the last publication of this notice on January 27, 1998. The January 27, 1998, notice should be used as a reference point to identify changes. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Alonzo Knapp, Manager, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2889.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in *52 FR 11954,* Apr. 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in *47 FR 7763,* Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 1998. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BCP)—Boulder Canyon Project
(CAP)—Central Arizona Project
(CUP)—Central Utah Project
(CVP)—Central Valley Project
(CRSP)—Colorado River Storage Project
(D&MC)—Drainage and Minor Construction
(FR)—Federal Register
(IDD)—Irrigation and Drainage District
(ID)—Irrigation District
(M&I)—Municipal and Industrial
(O&M)—Operation and Maintenance
(P–SMBP)—Pick-Sloan Missouri Basin Program
(R&B)—Rehabilitation and Betterment
(PPR)—Present Perfected Right
(RRA)—Reclamation Reform Act
(NEPA)—National Environmental Policy Act
(SOD)—Safety of Dams
(SRPA)—Small Reclamation Projects Act
(WCUA)—Water Conservation and Utilization Act
(WD)—Water District

Pacific Northwest Region

Bureau of Reclamation, 1150 North Curtis Road, Boise, Idaho 83706–1234, telephone 208–378–5346.

Modified contract actions:

4. Pioneer Ditch Company, Boise Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Parsons Ditch Company, Poplar ID, Wearyrick Ditch Company, all in the Minidoka Project, Idaho; Juniper Flat District Improvement Company, Wapinitia Project, Oregon; Roza ID, Yakima Project, Washington: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

12. Five individual contractors, Umatilla Project, Oregon: Repayment agreements for reimbursable cost of dam safety repairs to McKay Dam.

16. Okanogan ID, Okanogan Project, Washington: SOD contract to repay district's share of cost of dam safety repairs to Salmon Lake Dam. An Early Warning System is now part of the SOD repair.

Discontinued contract actions:

17. Rogue River Valley and Medford IDs, Rogue River Basin Project, Oregon: SOD contract to repay each district's share of cost to repair Fish Lake Dam. Each district will be sent a bill, so no contract is needed.

Completed contract actions:

4. Lake Chelan Reclamation District, Chief Joseph Dam Project, Washington; Consolidated ID, Spokane Valley Project, Washington; Individual Contractors, Crooked River Project, Oregon; Lower Payette Ditch Company Ltd., Boise Project, Idaho; Tumalo ID, District, Crescent Lake Dam Project, Oregon; Monroe Creek ID, Mann Creek Project, Idaho: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

12. Twenty-one individual contractors, Umatilla Project, Oregon: Repayment agreements for reimbursable cost of dam safety repairs to McKay Dam. Agreements have been executed with 66 individual contractors.

Mid-Pacific Region

Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–979–2401.

New contract actions:

28. Langell Valley, Horsefly, and Tulelake IDs, Klamath Project, Oregon: Repayment contract for SOD work on Clear Lake Dam.

29. Widren WD, CVP, California: Assignment of Widren WD's water service contract to the City of Tracy. The assignment will require approval of conversion of Widren's CVP irrigation water to M&I water.

Lower Colorado Region

Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

New contract actions:

47. Sun City Water Co., CAP, Arizona: Assignment of 9,654 acre-feet to Citizens Utilities, Aqua Fria Division.

48. Arizona Public Service Co., BCP, Arizona: Delivery contract for up to 1,500 acre-feet of unused Arizona entitlement.

49. City of Scottsdale, CAP, Arizona: Assignment of 3,232 acre-feet of CAP water annually from Cottonwood Water Works, Inc., and Camp Verde Water System, Inc.

Modified contract actions:

37. Berneil Water Co., CAP Arizona: Subcontracts associated with partial assignment of water service to the City of Scottsdale and Cave Creek Water Company.

Completed contracts actions:

31. Community Water Company of Green Valley/New Pueblo Water Co., CAP, Arizona: Execute an assignment assigning 237 acre-feet of New Pueblo's CAP water entitlement to Community. Amend Community's CAP subcontract to increase its entitlement by 237 acre-feet. Upon execution of the assignment from New Pueblo to Community, New Pueblo's CAP water service subcontract would terminate.

37. Berneil Water Co., CAP Arizona: Subcontracts associated with partial assignment of water service to the City of Phoenix.

45. Arizona State Lands, CAP, Arizona: Assignment of 3,900 acre-feet of CAP water to the City of Scottsdale.

Upper Colorado Region

Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–4419. New contract actions:

1(e) City of Page, Arizona, Glen Canyon Unit, Colorado River Storage Project; Arizona: Long-term contract for 300 acre-feet of water for municipal purposes.

22. Carbon Water Conservancy District, Scofield Project, Utah: Amendment to SOD contract to raise contract repayment ceiling on the M&I obligation and replace estimated SOD costs with actuals.

23. Carlsbad ID, Carlsbad Project, New Mexico: Contract to allow the district to lease water to the New Mexico Interstate Stream Commission to fulfill New Mexico's water obligation to Texas under Supreme Court's Amended Decree in *Texas* v. *New Mexico* 485 U.S. 288(1988).

24. Ute Water Conservancy District, Collbran Project, Colorado: License Agreement for use of project lands and an agreement addressing charges for benefits derived from project facilities.

25. Robbins Ranches, Mancos Project, Colorado: Long-term contract for the carriage of 2.5 cfs of water for irrigation purposes under the authority of the Warren Act of 1911.

Modified contract actions:

4. Pine River ID, Pine River Project, Colorado: Contract to allow the district to convert up to 2,000 acre-feet of project irrigation water to municipal, domestic, and industrial uses.

Completed contract actions:

1(b) Lazear Domestic Water Corporation, Aspinall Unit, CRSP, Colorado: Contract for 44 acre-feet to support an augmentation plan, Case No. 95CW209, Water Division Court No. 4, State of Colorado, to provide domestic water service to up to 100 residences, lawns, gardens, and livestock watering.

6. City of El Paso, Rio Grande Project, Texas and New Mexico: Amendment to the 1941 and 1962 contracts to expand acreage owned by the city to 3,000 acres; extend terms of water rights assignments; and allow assignments outside city limits under authority of the Public Service Board.

15. Provo Reservoir Water Users Company, Wasatch Irrigation Company, Timpanogas Irrigation Company, Exchange Irrigation Company, Washington Irrigation Company, and the City of Provo; CUP, Utah: Water exchange contracts, water rights in several mountain lakes and reservoirs are being exchanged for equivalent contract water rights in Jordanelle Reservoir.

20. El Paso County Water Improvement District No. 1, Rio Grande Project, Texas and New Mexico: Supplemental contract between El Paso County Water Improvement District No. 1 and the United States to allow the conversion of project water from irrigation to M&I within the El Paso area.

Great Plains Region

Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7730.

Modified contract actions:

7. City of Rapid City, Rapid Valley Unit, P–SMBP, South Dakota: Contract renewal for up to 55,000 acre-feet of storage capacity in Pactola Reservoir.

13. P–SMBP, Kansas and Nebraska: Initiate negotiations for renewal of long-term water supply contracts with Kansas-Bostwick, Nebraska-Bostwick, Frenchman Valley, Frenchman-Cambridge, and Almena IDs.

14. Northwest Area Water Supply, North Dakota: Long-term contract for water supply from Garrison Diversion Unit facilities. Basis of negotiation is completed and awaiting regional director's signature.

15. Fort Shaw and Greenfields IDs, Sun River Project, Montana: Contract for SOD costs for repairs to Willow Creek Dam. Greenfields ID has signed a 1-year repayment contract for its share of the SOD costs. Have received the approved basis of negotiation from the Commissioner. In the process of negotiating a contract with Fort Shaw ID.

25. Lower Marias Unit, P-SMBP, Montana: Water service contract expired June 1997. Initiating renewal of existing contract for 25 years for up to 480 acre-feet of storage from Tiber Reservoir to irrigate 160 acres. Received approved basis of negotiation from the Commissioner. Currently developing the contract and consulting with the tribes regarding Water Rights Compact.

29. Belle Fourche Unit, P–SMBP, South Dakota: Negotiations have been held with the Belle Fourche ID to amend their long-term repayment contract deferring their 1997 construction payment and reducing their annual construction payment.

Dated: April 15, 1998.

Wayne O. Deason,

Deputy Director, Program Analysis Office.

[FR Doc. 98–10589 Filed 4–21–98; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Yakima River Basin Water Enhancement Project, Yakima, WA, INT–DES 98–17

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of draft programmatic environmental impact statement and notice of public hearings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Reclamation (Reclamation), has prepared a draft programmatic environmental impact statement (Draft PEIS) for implementing provisions of Phase 2 of the Yakima River Basin Water Enhancement Project (Enhancement Project). The purpose of the Enhancement Project is to meet the competing needs of the Yakima River basin through improved water conservation and management and other appropriate means. The Enhancement Project legislation also authorizes actions on the Yakima Indian Reservation which will result in improvements to their irrigation system and enhance local resources.

DATES: Written comments on the Draft PEIS must be submitted by July 22, 1998, to the address listed under the **ADDRESSES** Section. Public hearings to accept oral comments on the Draft PEIS will be held on June 2, 1998, from 1:30 to 3:30 p.m. and from 7 to 9 p.m. in Toppenish, Washington; and on June 3, 1998, from 1 to 3 p.m. and from 7 to 9 p.m. in Yakima, Washington.

ADDRESSES: The public hearings will be held at:

- Yakima Indian Nation, Eagle Seelatsee Auditorium, 401 Fort Road, Toppenish, Washington.
- DoubleTree Inn, 1507 North First Street, Yakima, Washington.

Copies of the Draft PEIS are available for inspection at the following addresses and at libraries in the project vicinity.

- Bureau of Reclamation, Upper Columbia Area Office, 1917 Marsh Road, Yakima, Washington 98907.
- Bureau of Reclamation, Pacific Northwest Regional Office, 1150 N. Curtis Road, Suite 100, Boise, Idaho 83706–1234.

Written comments on the Draft PEIS should be submitted to: Mr. Robert Black D–8580, Bureau of Reclamation, Denver Federal Center, PO Box 25007, Denver, Colorado 80225–0007.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Black, Telephone (303) 445–2704.

SUPPLEMENTARY INFORMATION: Those wishing to obtain a copy of the Draft PEIS or schedule time, in advance, to make oral comments at the hearing(s) may contact Mr. Black at the above address and telephone or call toll free to 1–800–861–5443. Speakers will be called in order of their requests. Requests to comment may also be made at each hearing, and speakers will be scheduled to follow the advance requests. Oral comments will be limited to 10 minutes per individual. All oral comments will be included in the hearing record. Written comments will be accepted into the hearing record for 14 days following the public hearing date. These comments may be submitted in addition to review comments made during the 90-day review period and should be identified as hearing comments. Special needs assistance requests should be submitted to Mr. Black by May 15, 1998.

The Draft PEIS evaluates the effects of Title XII of the Enhancement Project legislation. The provisions and measures of the Enhancement Project legislation form the parameters and the methods for achieving the protection, mitigation, and enhancement of fish and wildlife through improved water management, instream flows, water quality, the creation and enhancement of wetlands, and improved reliability of irrigation water supplies. Central to this legislation is the Yakima River Basin Water Conservation Program which attempts to balance competing demands on the basin's water supply. This voluntary program will reduce demands on the available water supply by promoting conservation measures to improve the efficiency of water delivery and use, instream flows for fish and wildlife, and the reliability of the irrigation water supply.

Specific measures that will be implemented depend upon proposals contained in the water conservation

plans, feasibility investigations of measures selected for consideration, and program criteria. Consequently, the Draft PEIS is a broad scope document to provide ''umbrella'' coverage for implementing the Enhancement Project with subsequent tiering for NEPA compliance of specific follow-on actions, as appropriate.

Six alternatives, including no action, are considered in the Draft PEIS. The no action alternative is presented as the most likely future condition that could be expected without the implementation of additional Title XII provisions beyond the currently established riverflows, which includes the new operational criteria required by the legislation. This alternative provided the basis for impact comparisons. Five action alternatives present the implementation of all elements of the Enhancement Project at different levels of implementation of project components. A preferred alternative has not been selected in the Draft PEIS. Alternative 1 includes implementation of all the Enhancement Project measures except the Basin Conservation Program. Alternative 2 consists of all the measures cited in Alternative 1 plus different levels (Alternatives 2A, 2B, and 2C) of water conservation program implementation at various locations within the Yakima basin. Alternative 2A consists of all the measures cited in Alternative 1 plus a 7.5-percent basin-wide reduction in diversion demand (except for the Wapato Irrigation Project and the Yakima-Tieton Canal). Alternative 2B consists of all the measures cited in Alternative 1 plus a 15-percent reduction in diversion demand from the Yakima River downstream from the Roza Diversion Dam (except for the Wapato Irrigation Project and the Yakima-Tieton Canal). Alternative 2C consists of all the measures cited in Alternative 1 plus a 21-percent reduction in diversion demand at diversion points between the Sunnyside and Roza Canals. Alternative 3 consists of all the measures cited in Alternative 1 except for implementation of the Kachess Reservoir augmentation and specific tributary measures.

Environmental consequences that would result from implementation of any of the alternatives should have no significant adverse impacts, such that irrigation contracts will not be modified and any minor adverse impacts identified could be mitigated to a level of insignificance by implementation of mitigation measures. Beneficial impacts are considered to be enhanced water quality, increased streamflow, and overall reinforcement of fish and wildlife habitat, as well as an increase in the reliability of irrigation water supplies.

Dated: April 13, 1998.

John W. Keys, III,

Regional Director, Pacific Northwest Region.

[FR Doc. 98–10631 Filed 4–21–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the title described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by May 22, 1998, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew its approval of the collection of information for the permanent program performance standards—underground mining activities, 30 CFR Part 817. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is listed in 30 CFR 817.10, which is 1029–0048.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on January 29, 1998 (63 FR 4472). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Permanent Program Performance Standards—Underground Mining Activities, 30 CFR Part 817.

OMB Control Number: 1029–0048.

Summary: Sections 515 and 516 of the Surface Mining Control and Reclamation Act of 1977 provide that permittees conducting surface coal mining operations with underground mining activities shall meet all applicable performance standards of the Act. The information collected is used by the regulatory authority in monitoring and inspecting surface coal mining activities to ensure that they are conducted in compliance with the requirements of the Act.

Bureau Form Number: None.

Frequency of Collection: On occasion, quarterly and annually.

Description of Respondents: 2,837 active underground coal mining operators.

Total Annual Responses: 52,690.

Total Annual Burden Hours: 183,284.

Send comments on the need for the collections of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Room 210–SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: April 15, 1998.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 98–10579 Filed 4–21–98; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received on or before June 22, 1998.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527; 202/336–8563.

SUMMARY OF FORM UNDER REVIEW:

Type of Request: Revision.

Title: Request for Registration for Political Risk Investment Insurance.

Form Number: OPIC 50.

Frequency of Use: Once per investor per project.

Type of Respondents: Business or other institutions.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. Companies investing overseas.

Reporting Hours: ½ hour per project.

Number of Responses: 850 per year.

Federal Cost: $1060 per year.

Authority for Information Collection: Sections 231 and 234(a) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): OPIC 50 is submitted by eligible investors to register their intent to make international investments, and ultimately, to seek OPIC insurance. By submitting Form 50 to OPIC prior to making an irrevocable commitment, the incentive effect of OPIC is demonstrated.

Dated: April 17, 1998.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 98–10683 Filed 4–21–98; 8:45 am]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–393]

Certain Ion Trap Mass Spectrometers and Components Thereof; Notice of Final Commission Determination of No Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has made a final determination of no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3107.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.43 of the Commission's Rules of Practice and Procedure (19 CFR 210.43).

The Commission instituted this investigation on February 20, 1997, based on a complaint by Finnigan Corporation (''Finnigan'') of San Jose, California. The complaint named three respondents—Bruker-Franzen Analytik Gmbh of Bremen, Germany; Bruker Instruments, Inc. of Billerica, Massachusetts; and Hewlett-Packard Company of Palo Alto, California. After issuance of the administrative law judge's (''ALJ's'') final initial determination (''ID''), the ALJ and the parties entered into a joint stipulation that the activities complained of were performed by Bruker Analytical Systems, Inc., rather than Bruker Instruments, Inc.

In its complaint, Finnigan alleged that respondents violated section 337 by importing into the United States, selling for importation, and/or selling in the United States after importation ion trap mass spectrometers that infringe one or more of claims 1–20 of Finnigan's U.S. Letters Patent 4,540,884 (the ''884 patent'') and claims 1, 12–19 of Finnigan's U.S. Reissue Patent No. 34,000 (the ''000 patent''). Finnigan did not pursue all of those claims at trial, however, but argued only that respondents infringed one or more of claims 1–4, 8, 12, 14, and 17 of the '884 patent and claims 1, 15, 17, 18 of the '000 patent.

The presiding ALJ held an evidentiary hearing from October 20 to October 31, 1997. On February 25, 1998, the ALJ issued his final ID, in which he concluded that there was no violation of section 337, based on the following findings: (a) Claims 1–4 and 8 of the '884 patent are invalid as anticipated by the prior art; (b) claims 12, 14, and 17 of the '884 patent are invalid as obvious over the prior art; (c) claims 1–4, 8, 12, 14, and 17 of the '884 patent are neither infringed by respondents' accused devices nor practiced by Finnigan; (d) claims 15, 17, and 18 of the '000 patent are invalid as anticipated; (e) claims 1, 15, 17, and 18 of the '000 patent are invalid as obvious; (f) the claims of the '000 patent are invalid due to the inventors' failure to disclose the best mode of practicing their invention; (g) claim 1 of the '000 patent is neither infringed by respondents' accused devices nor practiced by Finnigan; and (h) claims 15, 17, and 18 of the '000 patent, if valid, would be infringed by the accused devices and are practiced by Finnigan, which is sufficient to satisfy the domestic industry requirement of section 337.

On March 9, 1998, Finnigan filed a petition for review of the ID, arguing that the ALJ erred in his adverse findings relating to claim construction, validity, and infringement. Finnigan also filed a request for oral argument, in the event the Commission orders review of the ID. No petitions for review were filed by either respondents or the IA. Respondents and the IA filed responses in opposition to Finnigan's petition on March 16, 1998.

On March 13, 1998, the ALJ issued his Recommended Determination on Remedy and Bonding (''RD''), in the event the Commission were to conclude there is a violation of section 337. The parties filed their responses to the RD on or about March 25, 1998.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission determined to take no position on the ALJ's findings that claims 12, 14, and 17 of the '884 patent and claim 15 of the

'000 patent are invalid as obvious. The Commission determined not to review the remainder of the ID and thereby adopted the ID, with the exceptions noted herein, as its final determination. In light of these determinations, Finnigan's request for oral argument was denied as moot.

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).

Issued: April 13, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–10671 Filed 4–21–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; COPS visiting fellowship program application form.

The proposed information collection is published to obtain comments from the public and affected agencies. The COPS Office, on behalf of the Department of Justice has submitted the following information request utilizing emergency review procedures, to OMB for review and clearance accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The COPS Office has determined that it cannot reasonably comply with the normal clearance procedures under this Part of the Act because normal clearance procedures are reasonably likely to prevent or disrupt the collection of the information. Therefore, OMB emergency approval has been requested by May 11, 1998.

If granted the emergency approval is only valid for 180 days. All comments and questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Mr. Dennis Marvich, Washington, D.C. 20530. Comments regarding the emergency submission of this information collection may also be submitted to OMB via facsimile at (202) 395–7285. During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions should be directed to: Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Ms. Stacy Curtis 202–633–1297, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, D.C. 20530.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be submitted to Stacy Curtis, Social Science Analyst, Office of Community Oriented Policing Services, 1100 Vermont Avenue, N.W., Washington, D.C. 20530, or via facsimile at (202) 616–5998.

Overview of this information collection:

(1) Type of Collection: New collection.

(2) Title of the Form/Collection: COPS Visiting Fellowship Program Application Form.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: COPS 26/01. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Applicants interested in contributing to the use and enhancement of community policing to address crime and related problems in communities across the country. Applicants may include individuals, public agencies, colleges or universities, nonprofit organizations, and profit-making organizations willing to waive their fees.

The COPS Visiting Fellowship Program is intended to offer researchers, law enforcement professionals and legal experts an opportunity to undertake independent research, program development activities and policy analysis designed to (1) improve police-citizen cooperation and communication; (2) to enhance police relationships within the criminal justice system, as well as at all levels of local government; (3) to increase police and citizens' ability to innovatively solve community problems; (4) to facilitate the restructuring of agencies to allow the fullest use of departmental and community resources; (5) to promote the effective flow and use of information both within and outside an agency; and (6) to improve law enforcement responsiveness to members of the community. Visiting fellows study a topic of mutual interest to the Fellow and the COPS Office for up to 12 months. While in residence with the COPS Office, Fellows contribute to the development of community policing programs that are national in scope.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: COPS Visiting Fellowship Program Application Form: Approximately 15 respondents, at 22 hours per respondent (including record-keeping).

(6) An estimate of the total public burden (in hours) associated with the collection: Approximately 330 hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 16, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–10582 Filed 4–21–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; analysis protocol: Enhanced evaluation PSP.

The proposed information collection is published to obtain comments from the public and affected agencies. The COPS Office, on behalf of the Department of Justice has submitted the following information request utilizing emergency review procedures, to OMB for review and clearance in accordance with sections 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The COPS Office has determined that it cannot reasonably comply with the normal clearance procedures under this Part of the Act because normal clearance procedures are reasonably likely to prevent or disrupt the collection of the information. Therefore, OMB emergency approval has been requested by May 11, 1998.

If granted the emergency approval is only valid for 180 days. All comments and questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer (Mr. Dennis Marvich), Washington, D.C. 20530. Comments regarding the emergency submission of this information collection may also be submitted to OMB via facsimile at (202) 395–7285. During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions should be directed to: Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Ms. Stacy Curtis, 202–633–1297, U.S. Department of Justice, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be submitted to Stacy Curtis, Social Science Analyst, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW, Washington, D.C. 20530, or via facsimile at (202) 616–5998.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

(2) *Type of the Form/Collection:* Analysis Protocol: Enhanced Evaluation PSP.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS 24/01. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Local law enforcement agencies that received a Problem-Solving Partnerships (PSP) grant and that were selected to participate in an enhanced evaluation of their PSP grant.

The PSP grant is a one-year grant program designed to support local law enforcement agencies in entering collaborative agreements with non-profit community-based entities to fight a specific crime problem through an innovative community policing plan. Grants were awarded to 470 jurisdictions in 1997. As described by the PSP initiative, it was required that a minimum of 5% of awarded funds be used to assess the impact of the problem-solving approach on the target problem. Currently the COPS Office is entering into collaborative agreements with a sub-group of approximately 15 PSP grantees to fund the implementation of an enhanced evaluation. This enhanced evaluation will allow the COPS Office to document the process and outcomes of applying a problem-solving model to five problem types: auto-theft, loitering/disorderly conduct, residential burglary, robbery, and street-level drug dealing. The analysis protocol in consideration covers all areas necessary to document the processes and outcomes of sites' problem-solving projects.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Analysis Protocol: Enhanced Evaluation PSP: Approximately 120 respondents, at 7 hours per respondent (including record-keeping).

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 840 hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 16, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–10583 Filed 4–21–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA Number 170M4]

Task Force on Suspicious Orders Meeting

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Suspicious Orders Task Force (SOTF) will be held on May 19–20, 1998. The panel will meet from 9:00 a.m. to 5:00 p.m. both days at La Mansión del Rio, 112 College Street, San Antonio, Texas.

The purpose of this meeting is to compose the SOTF final report that will be submitted to the Attorney General.

The meeting will be open to the public on a first-come, first-seated basis. Interested persons are encouraged to attend. Members of the public may submit to the contact person, any time before or after the meeting, written statements to the Task Force. Written comments may be submitted by mail or facsimile, and should contain the writer's name, address and commercial, government, or organizational affiliation, if any.

DATES: May 19 and 20, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Leser, Program Analyst, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–4026, Facsimile (202) 307–8570.

SUPPLEMENTARY INFORMATION: If you need special accommodations due to a disability, please contact the Office of Diversion Control, Drug Enforcement Administration, 600 Army Navy Drive, Arlington, Virginia 22202, (202) 307–4026 at least seven (7) days prior to the meeting.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 98–10577 Filed 4–21–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review revision of a currently approved collection; VICAP Crime Analyst Report FD–676 (Rev. 04/01/1998).

This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until June 22, 1998. The FBI requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Program Manager, Violent Criminal Apprehension Program, National Center for the Analysis of Violent Crime, FBI Academy, Quantico, Virginia 22135, telephone number (540) 720–4901.

Overview of This Information

(1) *Type of information collection:* Revision of a currently approved collection, VICAP Crime Analysis Report, FD–676 (Rev. 04/01/1998).

(2) *The title of the form/collection:* VICAP Crime Analysis Report FD 676 (Rev. 04/01/1998).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The Department of Justice, Federal Bureau of Investigation.

(4) *Affected public who will be asked to required to respond, as well as a brief abstract:* Primary; State and local governmental law enforcement agencies charged with the responsibility for the investigation of violent crimes.

Other: None.

VICAP is a nationwide data information center which collects, collates, and analyzes crimes of violence—specifically murder. Case submissions are compared to all other cases in an attempt to identify similar cases which facilitates cooperation, communication, and coordination between law enforcement agencies and provide support to identify, track and apprehend violent serial offenders.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Of the possible 17,000 government entities that are eligible to apply it is estimated that only forty to sixty percent will actually submit responses to VICAP. The time burden of the applicants is 60 minutes per application.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hours of burden to complete the application is estimated at 10,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, D.C. 20530.

Dated: April 16, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–10584 Filed 4–21–98; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities: New Collection; Comment Request

ACTION: Notice of information collection under review; Performance measures data collection forms.

The proposed information collection is published to obtain comments from the public and affecting agencies. Comments are encouraged and will be accepted for 60 days from the date listed at the top of this page in the **Federal Register**.

Request written comments and suggestions from the pubic and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Barbara Allen-Hagen (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Barbara Allen-Hagen, (202) 307–1308, Office of Juvenile Justice and Delinquency Prevention, 810 7th Street, NW, Room 8241, Washington, DC 20531.

Overview of this information collection:

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Performance Measures Data Collection Forms.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection.* Forms: PM–1 Primary Facility Form, PM–2 Staff Interview, PM–3 Juvenile Interview, PM–4 Incident Report, PM–5 Staff Record, PM–6 Juvenile Record. Sponsoring Department: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Public and Private Juvenile Confinement Facilities. Other: None. This collection will gather information necessary to determine how juvenile confinement facilities operationalize their stated policies, deliver services, and collect and maintain data. Additionally, the collection will help identify the extent to which facilities achieve performance standards in the areas of order, safety, security, programming, health and mental health, and justice. Based on the findings expert consultants will collaborate with facility directors to develop improvement plans.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,490 respondents with an average 20 minutes per response for juveniles and staff and an average 21 hours per response for facility coordinators.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 123 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW Washington, DC 20530.

Dated: April 16, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–10585 Filed 4–21–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10524, et al.]

Proposed Exemptions; Jack Mayesh Wholesale Florist, Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Jack Mayesh Wholesale Florist, Inc., Profit Sharing Plan (the Plan), Located in Los Angeles, California

[Application No. D–10524]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain unimproved real property (the Property) to Roy Dahlson, a party in interest with respect to the Plan, provided that the following conditions are satisfied: (1) the sale is a one-time transaction for cash; (2) the Plan pays no commissions nor other

expenses relating to the sale; and (3) the Plan receives an amount which is the greater of either (a) the fair market value of the Property as of the date of the sale, as determined by a qualified, independent appraiser, or (b) the original acquisition cost of the Property to the Plan, plus lost opportunity costs attributable to the Property.

Summary of Facts and Representations

1. The Plan is a defined contribution plan sponsored by Jack Mayesh Wholesale Florist, Inc. (the Employer) and has approximately 58 participants. Mr. Dahlson is an owner of the Employer and one of the trustees of the Plan. The assets of the Plan, and of the Money Purchase Plan also sponsored by the Employer, are held in a combined trust. As of December 31, 1996, the fair market value of the assets of both plans was $1,062,124.34.

2. The Property consists of two adjoining parcels of unimproved real property located at Sunland Blvd., Los Angeles, California (mail address at 12901 Harding St., Sylmar, California). The two parcels are known as Parcel # 2544–010–002 (Lot 2) and Parcel # 2544–101–003 (Lot 3). Lot 2 consists of an area of 37,900 sq. ft., while Lot 3 consists of an area of approximately 50,530 sq. ft. The other parcels adjacent to Lot 2 and Lot 3 are owned by persons unrelated to the Plan, the Employer, and Mr. Dahlson.

3. The Property was acquired by the Plan from Shadow Hills Development Corp., an unrelated party, in March, 1993, for a total purchase price of $101,808. The purchase was paid by the Plan in four installments, as follows.

Date of payment	Amount paid
1. March 12, 1993	$25,000.00
2. August 27, 1993	6,808.38
3. March 5, 1994	20,000.00
4. September 14, 1994	50,000.00
	101,808.38

The applicant represents that all expenses relating to the Property since its acquisition by the Plan, including taxes, insurance, and fees, have been paid by Mr. Dahlson. However, the applicant states that the Property has not been leased to, nor used by, any party in interest with respect to the Plan, at any time since its acquisition by the Plan. The Property has produced no income for the Plan.[1]

4. The applicant has obtained two appraisals of the Property by qualified, independent appraisers, both certified in the State of California. The first appraiser, William G. Dyess, relying on the market approach to valuation, concluded that the fair market value of the Property (both parcels combined) was $44,000, as of June 8, 1997 (the Dyess Appraisal). The second appraiser, Terry T. Komatsu, of Suburban Appraisal Service, also relying on the market approach, estimated that the fair market value of the Property (both parcels combined) was $30,000, as of July 7, 1997 (the Komatsu Appraisal).

Each appraiser examined three recent sales of comparable properties in the local real estate area in making his determination of the fair market value of the Property. The zoning of the Property is Ra–1&K—Residential/agricultural. The Dyess Appraisal noted that Lot 2, which has street frontage on Sunland Blvd., is land that rises up sharply from the street and has value only to an adjoining lot. The Komatsu Appraisal noted that Lot 3 has no street frontage or other direct access from the street except through other parcels. Thus, by itself, it would have no apparent value unless vehicular ingress/egress easements could be obtained from adjoining parcels.

5. The applicant represents that the Plan has attempted to sell the Property on the open market for several years, without success. Mr. Dahlson therefore proposes to purchase the Property from the Plan for an amount which is the greater of either (a) the fair market value of the Property as of the date of the sale, based on an updated independent appraisal, or (b) the original acquisition cost of the Property to the Plan, plus lost opportunity costs attributable to the Property. Since the Property has declined in value, based on the conclusions of the Dyess Appraisal and the Komatsu Appraisal, Mr. Dahlson will pay the Plan the latter amount.

Specifically, Mr. Dahlson will pay the Plan a total purchase price of $145,922.64, which amount includes the Plan's original acquisition cost of $101,803.38, as well as lost opportunity costs calculated at a rate of 9%, compounded annually, or $44,114.27. As stated above, the Plan paid for the Property in four installments, and the appropriate purchase price to be paid by Mr. Dahlson was determined as follows.

Date of payment	Amount paid		Interest compounded annually at 9% through 4/30/98		
March 12, 1993	$25,000.00		$13,898.34		
August 27, 1993	6,808.38		3,378.84		
March 5, 1994	20,000.00		8,443.37		
September 14, 1994	50,000.00		18,393.72		
	101,808.38	+	44,114.27	=	$145,922.64

The Plan will pay no commissions nor other expenses relating to the sale.

The applicant represents that the exemption will be in the best interests of the Plan because Mr. Dahlson is willing to pay more than the Plan could receive for the Property on the open market based on the current fair market value of the Property. In addition, the sale will convert a non-income producing, illiquid asset that continues to decline in value into more liquid assets that will achieve a higher rate of return for the Plan. All costs relating to this exemption application are being borne by the Employer.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (1) the sale will be a one-time transaction for cash; (2) the Plan will pay no commissions nor other expenses relating to the sale; (3) the Plan will receive an amount which is the greater

[1] The Department expresses no opinion herein as to whether the acquisition and holding of the Property by the Plan violated any of the provisions of Part 4 of Title I in the Act. However, the Department notes that section 404(a) of the Act requires, among other things, that a plan fiduciary act prudently and solely in the interest of the plan and its participants and beneficiaries when making investment decisions on behalf of the plan.

of either (a) the fair market value of the Property as of the date of the sale, as determined by a qualified, independent appraiser, or (b) the original acquisition cost of the Property to the Plan, plus lost opportunity costs attributable to the Property; and (4) the sale will divest the Plan of a non-income producing, illiquid asset that continues to decline in value and will allow the Plan to reinvest the sale proceeds in assets that will achieve a higher rate of return.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

James E. Jordan, Sr. Individual Retirement Account (the IRA) Located in Phoenix, Arizona

[Application No. D–10550]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash purchase by the IRA of a certain promissory note issued by unrelated parties (the Martin Note) which is secured by a first mortgage on certain residential property (the Property) from the James E. Jordan Revocable Trust Agreement (the Trust), a disqualified person with respect to the IRA;[2] provided that the following conditions are met:

1. The purchase of the Martin Note will be a one-time cash transaction;

2. The IRA will pay no commissions or other expenses associated with the purchase;

3. The amount paid by the IRA for the Martin Note will be the lesser of (i) $63,108.97, which is the current fair market value of the Martin Note as determined by an independent, qualified appraiser, or (ii) the fair market value of the Martin Note, as determined at the time of the purchase by an independent, qualified appraiser;

4. Both the amount paid by the IRA for the Martin Note and the outstanding principal balance on such Note will involve less than 25% of the IRA's total assets;

5. Mr. Jordan, as the sole participant of the IRA, will be the only individual affected by the proposed transaction; and

6. On the date the IRA purchases the Martin Note from the Trust, the IRA will be named as loss payee under the homeowners insurance policy on the Property.

Summary of Facts and Representations

1. The IRA is a self-directed individual retirement account. The current custodian for the IRA is Fidelity National Bank located in Atlanta, Georgia. James E. Jordan, Sr. (Mr. Jordan) is the sole participant, a fiduciary and the owner of the IRA. As of January 31, 1998, the fair market value of the IRA's assets was $324,240.87. Thus, the proposed purchase of the Martin Note would involve approximately 19 percent (19%) of the IRA's assets.

Both the amount paid by the IRA for the Martin Note and the outstanding principal balance on such Note will involve less than 25% of the IRA's total assets.

2. The Trust is the Jordan Revocable Trust Agreement dated August 18, 1993.[3] The trustees of the Trust are Mr. Jordan and Sheree G. D'Amico. Mr. Jordan is also the grantor and the primary beneficial owner of the Trust. The Trust was created by Mr. Jordan as a will substitute for the purpose of implementing Mr. Jordan's estate plan. During his lifetime, Mr. Jordan is the primary beneficiary, and after his death, the beneficiaries will be Sheree G. D'Amico, Lori D. Jordan, James E. Jordan Jr. and Jay Jordan. The Trust is considered a disqualified person, as defined in section 4975(e)(2) of the Code, due to Mr. Jordan's relationship to both the IRA and the Trust.[4]

3. The Martin Note is currently between the Trust, as the original lender, and John William Martin and Andreina Martin (the Martins), as the original borrowers. The Martin Note and the accompanying mortgage were created as seller financing when Mr. Jordan sold an investment property to the Martins to be used as their primary residence. It is represented that the Martins have no other relationship to Mr. Jordan, the Trust and the IRA.

4. The Martin Note was appraised March 12, 1998, by F. Gregory Rhodes (Mr. Rhodes), an independent qualified appraiser with the Valuation Advisory Group, Inc. (the Appraisal) in Atlanta, Georgia. The Appraisal stated that the original amount of the Martin Note, dated December 28, 1994, was $66,000. The Martin Note has a fixed interest rate of 8.75% per annum until maturity. The Martin Note has a 30-year term and is scheduled to mature in December, 2024. However, the Martin Note is subject to prepayment by the Martins prior to maturity. The terms of the Martin Note call for monthly payments of principal and interest, beginning January 29, 1995, equal to $519.23, with a final payment of $268.89 at maturity.

The Martin Note is secured by a first mortgage on a residence located in Volusia County, Florida (the Property). A recent appraisal of the Property was performed by Michael F. Beckman (Mr. Beckman) of Family Realty of Central Florida, Inc., which stated that the value of the Property is between $72,000 and $74,000. In determining the fair market value of the Martin Note, Mr. Rhodes reviewed Mr. Beckman's appraisal of the Property. Mr. Rhodes states that this appraisal of the Property indicates that the outstanding principal amount of the Martin Note is adequately secured by the Property.

5. With respect to the fair market value of the Martin Note, the Appraisal considered the following factors:

(a) The Martin Note is secured by a first mortgage on the Property;

(b) appraisal of the underlying property indicates that the Martin Note is adequately secured;

(c) from the 1994 execution of the Martin Note, it appears that all payments have been made in accordance with the terms of such Note; and

(d) there is a lack of marketability for the Martin Note.

The Appraisal states that because no organized market exists for an instrument of this sort, a typical buyer of the Martin Note would demand a rate of return in excess of what would be available for fixed income securities of comparable duration in the public marketplace at the time of the transaction. Therefore, the Appraisal applies an appropriate discount rate to the remaining stream of payments of principal and interest on the Martin Note to arrive at a required yield of 8.86% per annum to account for the inherent lack of marketability of the Martin Note. Therefore, based on this analysis, the Appraisal concluded that the fair market value of the Martin Note was approximately $63,108.97 as of March 12, 1998.

[2] Pursuant to CFR 2510.3–2(d), the Department has no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[3] The Trust is not an employee benefit plan or other plan subject to the provisions of the Act or the Code.

[4] In this regard, section 4975(e)(2)(G) of the Code states, in relevant part, that a ''disqualified person'' includes a trust of which (or in which) 50 percent or more of the beneficial interest of such trust is owned, or held by, a person who is a fiduciary of a plan.

6. The applicant represents that the proposed transaction presents a desirable investment opportunity for the IRA. For reasons discussed above, the appraiser discounts (the Discount) the Martin Note. This Discount of the Note in effect produces an enhanced yield to the IRA. The transaction will be a one-time cash purchase by the IRA. The amount paid by the IRA for the Martin Note will be the lesser of (i) $63,108.97, which is the current fair market value of the Martin Note as determined by an independent, qualified appraiser, or (ii) the fair market value of the Martin Note, as determined at the time of the purchase by an independent, qualified appraiser. The IRA will not bear any commissions or expenses associated with the transaction.

In addition, the applicant represents that the acquisition of the Martin Note will be consistent with the liquidity needs and investment objectives of the IRA, which is currently heavily invested in equities. The interests of the IRA will be protected because the Note is adequately secured by the first mortgage on the Property. In a letter of February 12, 1998, Fidelity National Bank, the IRA custodian, stated that it would retain the Property as an IRA asset in the event the IRA forecloses on the Property. Furthermore, the applicant states that on the date the IRA purchases the Martin Note, the IRA will be named as the loss payee under the homeowners insurance policy on the Property. Thus, if the IRA becomes the owner of the Property, the IRA's investment interests will be protected in the event that payments are made to the loss payee on this insurance policy.

7. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because:

a. The purchase of the Martin Note will be a one-time cash transaction;

b. The IRA will pay no commissions or other expenses associated with the purchase;

c. The amount paid by the IRA for the Martin Note will be the lesser of (i) $63,108.97, which is the current fair market value of the Martin Note as determined by an independent, qualified appraiser, or (ii) the fair market value of the Martin Note, as determined at the time of the purchase by an independent, qualified appraiser;

d. Both the amount paid by the IRA for the Martin Note and the outstanding principal balance on such Note will involve less than 25% of the IRA's total assets;

e. On the date the IRA purchases the Martin Note, the IRA will be named as loss payee under the homeowners insurance policy on the Property; and

f. Mr. Jordan, as the sole participant of the IRA, will be the only individual affected by the proposed transaction.

Notice to Interested Persons

Because Mr. Jordan is the sole participant of the IRA, it has been determined that there is no need to distribute this notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

Pipefitters Local Union No. 537 Pension Fund (the Plan) Located in Boston, Massachusetts

[Application No. D–10577]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) of certain real property (the Property) to the Plan by Local Union 537 (the Union) of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) The terms and conditions of the transaction are no less favorable to the Plan than those which the Plan would receive in an arm's-length transaction with an unrelated party;

(B) The Sale is a one-time transaction for cash;

(C) The Plan incurs no expenses from the Sale;

(D) The Plan pays as consideration for the Property no more than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale; and

(E) The independent fiduciary for the Plan will undertake to monitor and enforce the terms of the proposed exemption, if granted.

Summary of Facts and Representations

1. Two employer associations represent the contributing employers to the Plan and serve as their collective bargaining agents with the Union. These two associations are the Air Conditioning and Refrigeration Contractors of Boston, Inc. (ARCA) and the New England Mechanical Contractors Association, Inc. (NEMCA). ARCA represents employers in eastern Massachusetts and surrounding areas who erect, install, and service all types of food cases, refrigeration, and air conditioning equipment. NEMCA represents employers throughout most of New England who erect, service, and install and maintain all types of heating, pipe laying, piping, refrigeration and air conditioning systems and equipment.

The Union is the sole collective bargaining agency for employees covered by applicable collective bargaining agreements who are employed by members of ARCA and NEMCA.

2. The Plan is a jointly administered Taft-Hartley trust fund established pursuant section 302(c)(5) of the Labor Management Relations Act that maintains a defined benefit plan which is intended to qualify under section 401(a) of the Code. The Plan is for employees covered by collective bargaining agreements between the participating employers and the Union, and for certain employees of the Plan and the Union.

The Plan is administered by a six member Board of Trustees (the Trustees) of whom three members are appointed by the two employers' associations, ARCA and NEMCA, and three members are appointed by the Union. The Trustees of the Plan, who have investment discretion over the assets of the Plan, are represented by the applicant to include Messrs. Leo Reed, Charles L. Grinnell, and Ron Ledoux, who were appointed by the employers associations and Messrs. Michael Benullo, President of the Union, Robert O'Toole, Business Manager of the Union, and Thomas MacKay, Business for the Union, who are appointed by the Union.

The applicant represents that, as of January 30, 1998, the Plan had approximately total assets of $237,300,000, and approximately 1990 participants.

3. The Property is a condominium unit, designated as Unit 1, consisting of 2,536 square feet of floor area located in the lower (basement) level of a two story office building, with a non-exclusive right to use parking spaces at the site location. The Property is 47.5 percent of

the total condominium area in the office building, and the remaining condominium area in the office building, designated as Unit 2, is occupied and used by the Union, the owner of the office building since December 17, 1996. The office building has approximately 6,560 square feet of gross building area situated on a 21,090 square foot parcel of land located at 35 Travis Street, Boston (Allston), Massachusetts.

The Property was appraised by Peter L. Lane, Certified Gen. R. E. Appraiser, with the Robert P. Wood & Co., Inc., located in Milton, Massachusetts, who determined that the Property had a fair market value of $151,000, as of November 28, 1997.

4. The Union proposes to sell the Property to the Plan for cash in a one-time transaction with no expenses incurred by the Plan. The applicant represents that the Union will receive, as consideration from the Sale, no more than the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser.

The Plan is prompted to take this action because of the need for an improved location and increased office space and storage facilities that will provide more and better facilities than its current location of 1,400 square feet floor area on the fourth floor of an office building located in an undesirable neighborhood. The applicant represents that the current location of the Plan's offices fails to provide parking facilities, accessibility for handicapped persons, and lacks cleanliness and security.

The applicant represents that the Trustees for the Plan have determined that the proposed acquisition of the Property will be in the best interests of the Plan and the rights of its participants and beneficiaries will be protected because the Property will provide the Plan with a desirable combination of improved and increased office and storage facilities, handicapped accessibility, on-site parking space, increased security, and a proximity to major thoroughfares and public transportation. Also, the applicant represents that the Property will provide the Plan and its participants and beneficiaries with a close proximity to the offices of the Union, and thus facilitate the processing of applications for benefits from the Plan, minimizing inconveniences to participants and beneficiaries and personnel of the Plan and enhancing administrative efficiencies. [5]

The applicant also represents that compliance with the terms and conditions of the requested exemption will be monitored and enforced by an independent fiduciary, Edward K. Wadsworth, MAI, president of The Boston Valuation Group, Inc. located in Weymouth, Massachusetts. Mr. Wadsworth represents that he has extensive experience in the field of market, financial, and real estate analysis, serving as a leader of professional organizations in these fields and serving as a qualified expert witness in a number of court proceedings. In addition, Mr. Wadsworth represents that he is on the teaching faculty of the Appraisal Institute and has instructed courses in the Standards of Professional Practice and Income Capitalization.

Mr. Wadsworth represents that the proposed Sale is in the best interests of the Plan and is protective of the rights of the participants and beneficiaries of the Plan; and that he has the power, authority, and responsibility to take the necessary action in the proposed transaction so that the Plan will not pay more than the fair market value as determined by the independent appraiser, Peter L. Lane of Robert Wood & Co., Inc., on the date of the Sale.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because (a) the Sale is a one-time transaction for cash; (b) the Plan will not incur any expenses from the transaction; (c) the Plan will pay no more than the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser; and (d) the proposed transaction will be monitored and enforced by a qualified, independent fiduciary.

For Further Information Contact: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

[5] The applicant represents that it is contemplated that the Pipefitters Local Union No. 537 Health and Welfare Fund and the Pipefitters Local Union No. 537 Deferred Income Annuity Fund will occupy a portion of the Property; and these two Funds will share space and reimburse the Plan for reasonable costs and expenses in accordance PTE 76–1 and PTE 77–10 (41 FR 12740, March 26, 1976 and 42 FR 33918, respectively). The Department expresses no opinion herein as to whether or not the occupancy of a portion of the Property by the two Funds as described satisfies the terms and conditions of PTE 76–1 and PTE 77–10.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of April 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–10692 Filed 4–21–98; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98–17; Exemption Application No. D–10412, et al.]

Grant of Individual Exemptions; Metropolitan Life Insurance Company

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Metropolitan Life Insurance Company (MetLife) Located in New York, NY

[Prohibited Transaction Exemption 98–17; Exemption Application No. D–10412]

Exemption

Section I. Covered Transactions

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective April 1, 1997, to (1) the purchase or retention by an employee benefit plan (the Plan); and (2) the sale or continuation by MetLife or an affiliate (collectively, MetLife) of a synthetic guaranteed investment contract (the MetLife Trust GIC) entered into between the Plan and MetLife under which MetLife guarantees (the Guarantee) certain amounts (the Guaranteed Value).

This exemption is conditioned upon the following requirements as set forth below in Section II.

Section II. General Conditions

(a) The decision to enter into a MetLife Trust GIC is made on behalf of a participating Plan in writing by a fiduciary of such Plan which is independent of MetLife.

(b) Only Plans with total assets having an aggregate market value of at least $25 million are permitted to purchase MetLife Trust GICs; provided however that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity has purchased a MetLife Trust GIC, the foregoing $25 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of $25 million; provided that, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $25 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $50 million, or

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity has purchased a MetLife Trust GIC, the foregoing $25 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of $25 million; provided that the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Is neither the sponsoring employer, a member of the controlled group of corporations, the employee organization, nor an affiliate,

(ii) Has full investment responsibility with respect to Plan assets invested therein, and

(iii) Has total assets under its management and control, exclusive of the $25 million threshold amount attributable to Plan investment in the commingled entity, which are in excess of $50 million.

(c) Prior to the execution of the MetLife Trust GIC, the Plan fiduciary receives a full and detailed written disclosure of all material features concerning the MetLife Trust GIC, including—

(1) A Letter of Agreement between MetLife and the Plan fiduciary which stipulates the relevant provisions of the GIC, the applicable fees and the rights and obligations of the parties;

(2) Investment Guidelines defining the manner in which an investment manager will manage a MetLife Trust GIC;

(3) A copy of the Investment Management Agreement between MetLife and the Plan fiduciary;

(4) Information explaining in a manner calculated to be understood by a Plan fiduciary that, if a MetLife affiliated manager underperforms or if adverse market conditions occur, the interest rate that is credited (the Credited Rate) to a MetLife Trust GIC account (the Account) may be as low as 0 percent;

(5) The pertinent features of a MetLife conventional GIC (the MetLife Conventional GIC) that a Plan fiduciary may obtain upon the discontinuance of a MetLife Trust GIC, including an explanation that, although a MetLife Conventional GIC will offer a guarantee of principal, it may have a credited rate

as low as 0 percent for the duration of the contract; and

(6) Copies of the proposed exemption and grant notice with respect to the exemptive relief provided herein.

(d) Upon the selection by a Plan fiduciary of a MetLife Trust GIC, a participant in a Plan that provides for participant investment selection (the Section 404(c) Plan) is given a summary of the pertinent features of the documents listed above in paragraphs (c)(1), (c)(2) and (c)(5) of this Section II, which are deemed appropriate for distribution to such participant, including a disclosure that the MetLife Trust GIC may have a Credited Rate as low as 0 percent.

(e) Subsequent to a Plan's investment in a MetLife Trust GIC, the Plan fiduciary and, if applicable, the Plan participant, upon such participant's request, receive the following ongoing disclosures regarding such investment:

(1) A monthly report consisting of a Guaranteed Value Statement, which specifies the affected Plan's MetLife Trust GIC balance for the prior month, contributions, withdrawals, transfers, interest earned, the current month's ending balance for the MetLife Trust GIC, the current interest rate and a summary of transactions;

(2) A quarterly report consisting of a Market Value Statement, which specifies the prior quarter's ending market value for a Plan's MetLife Trust GIC, contributions, withdrawals, the fees paid to MetLife, investment income, realized capital gains and/or losses from sales, changes in unrealized appreciation of assets, the current quarter's ending market value and rate of return, and a summary of transactions; and

(3) An annual portfolio listing or letter describing key events, depending upon its arrangements with a Plan fiduciary.

(f) As to each Plan, the combined total of all fees and charges imposed under a MetLife Trust GIC is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(g) Each MetLife Trust GIC specifically provides an objective method for determining the fair market value of the securities owned by the Plan pursuant to such GIC.

(h) Each MetLife Trust GIC has a predefined maturity date or dates selected by the Plan fiduciary and agreed to by MetLife. However, in no event does a MetLife Trust GIC have a maturity date exceeding five years. A Plan fiduciary may extend the maturity date for an additional year upon an affirmative written decision made annually by such fiduciary. Once a Plan fiduciary does not affirmatively extend the maturity date, no future extensions will occur.

(i) Prior to a Plan fiduciary's decision regarding the extension of a maturity date for a MetLife Trust GIC for one additional year, MetLife informs such Plan fiduciary of the new reset rate for the Credited Rate.

(j) MetLife maintains books and records of each MetLife Trust GIC transaction for a period of six years. Such books and records are subject to annual audit by independent, certified public accountants.

EFFECTIVE DATE: If granted, this exemption is effective as of April 1, 1996.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on October 20, 1997 at 62 FR 54471.

Written comments

The Department received one written comment with respect to the Notice and no requests for a public hearing. The comment, which was submitted by MetLife, suggested modifications to the operative language of the Notice and recommended certain changes to the Summary of Facts and Representations (the Summary) of the Notice. Presented below are the modifications requested by MetLife and the Department's accompanying responses. Also presented are amendments to the Notice made by the Department.

1. Operative Language Changes

a. Exemptive Language

MetLife notes that under the caption ''Proposed Exemption,'' the exemptive language of the Notice does not provide exemptive relief for any payment by MetLife to a Plan pursuant to MetLife's Guarantee. Because a Plan would be required to receive payment under a MetLife Trust GIC arrangement if certain conditions are met, MetLife assumes the Department would consider such payment as part of the exempted arrangement.

The Department agrees that the payment by MetLife to a Plan pursuant to the Guarantee is subsumed under the transactions exempted. Therefore, the Department does not believe any modification to the exemptive language is warranted.

b. Condition (b)

Condition (b) of the Notice requires a Plan investing in a MetLife Trust GIC to have assets that are in excess of $25 million.[1] MetLife states that in some situations, a Plan fiduciary may act on behalf of a trust in which a number of Plans participate. Although the trust may have assets in excess of $25 million, MetLife indicates that the individual Plans may not have total assets which would satisfy the minimum threshold amount.

Therefore, MetLife requests that the Department clarify that the scope of the Notice be expanded to include a fiduciary (e.g., an independent investment manager) acting on behalf of a trust with assets in excess of $25 million regardless of the asset totals of the individual Plans participating in the trust. In MetLife's view, such trust fiduciary would have the same level of sophistication as a fiduciary of a Plan with assets in excess of $25 million. If this change is made, MetLife also requests that various references in the Notice to Plan sponsors should be construed to include fiduciaries of trusts and references to Plans should be construed to include trusts.

In response to these comments, the Department acknowledges that the use of the term ''Plan'' in the Notice should be construed to include trusts and other commingled investment vehicles which have assets (either individually or aggregated within the investment vehicle) in excess of $25 million. Further, the term ''Plan fiduciaries'' and ''Plan sponsors'' should be construed to include fiduciaries of such trusts or commingled investment vehicles.

In addition, in recognition of the fact that individual Plans investing in a commingled entity may not be able to meet the $25 million threshold amount on their own in order to acquire a MetLife Trust GIC, the Department has decided to permit the aggregation of Plan assets within the pooled vehicle in order to satisfy the threshold amount. However, to ensure the sophistication of the fiduciary who is making the decision on behalf of Plans to invest in a MetLife Trust GIC, the Department has imposed certain additional requirements for pooled arrangements involving the assets of either related Plans (i.e., the Related Plans) or unrelated Plans (i.e., the Unrelated Plans). These additional requirements are described as follows:

(1) *Related Plans.* With respect to two or more plans, which are maintained by the same employer, controlled group of corporations or employee organization,

[1] MetLife represents that in instances of a start-up situation, a Plan might not have assets totaling $25 million. Nevertheless, MetLife explains that it would still allow the Plan to invest in a MetLife Trust GIC as long as the Plan reached the $25 million threshold within the year.

whose assets are invested in a master trust or any other form of plan asset look-through entity, which entity has purchased a MetLife Trust GIC from MetLife, the Department notes that the $25 million threshold may be satisfied by aggregating the assets of the investing Plans within the pooled vehicle. In this regard, the Department also notes that an employer may retain an independent investment manager to manage all or a portion of plan assets invested in a master trust. Under these circumstances, the fiduciary must have total assets under its management and control, exclusive of the $25 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $50 million.

(2) *Unrelated Plans.* For two or more plans which are not maintained by the same employer, controlled group of corporations or employee organization, whose assets are invested in a group trust or other plan asset look-through entity, which entity has purchased a MetLife Trust GIC, the $25 million threshold will apply to the aggregate assets of such entity so long as the fiduciary responsible for making the investment decision on behalf of the group trust or other plan asset look-through entity is not the sponsoring employer, a member of the controlled group of corporations, the employee organization, or an affiliate, and such fiduciary has full investment responsibility [2] with respect to the plan assets invested therein. Also, the fiduciary must have total assets under its management and control, exclusive of the $25 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $50 million.

Accordingly, Condition (b) of Section II has been revised to read as follows:

''(b) Only Plans with total assets having an aggregate market value of at least $25 million are permitted to purchase MetLife Trust GICs; provided however that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), which entity has purchased a MetLife Trust GIC, the foregoing $25 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of $25 million; provided that, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the $25 million threshold amount attributable to plan investment in the commingled entity, which are in excess of $50 million, or

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are ''plan assets'' under the Plan Asset Regulation, which entity has purchased a MetLife Trust GIC, the foregoing $25 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of $25 million; provided that the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Is neither the sponsoring employer, a member of the controlled group of corporations, the employee organization, nor an affiliate,

(ii) Has full investment responsibility with respect to Plan assets invested therein, and

(iii) Has total assets under its management and control, exclusive of the $25 million threshold amount attributable to Plan investment in the commingled entity, which are in excess of $50 million.''

c. Conditions (d) and (e)

MetLife believes the disclosure requirements in the Notice for participants in Section 404(c) Plans go beyond the scope of the disclosure requirements of section 404(c) of the Act and the Department's accompanying regulation (the Section 404(c) Regulation).[3] MetLife explains that funding vehicles, such as the MetLife Trust GIC, are typically part of a Plan's larger ''stable value'' or ''fixed income'' funding option. MetLife believes that to mandate disclosure for one funding vehicle within a Plan's stable value portfolio may create an administrative hardship for a Plan fiduciary as well as present a competitive barrier for MetLife.

As an alternative, MetLife suggests that the existing provisions of the Section 404(c) Regulation govern the disclosure provided or made available to a Section 404(c) Plan if a MetLife GIC Trust is included in the Plan's offerings. According to MetLife, under the Section 404(c) Regulation, participants must be provided with descriptions of each designated investment alternative but not with descriptions of separate investments forming a part of the investment alternative. The documents a participant may obtain upon request pursuant to section 2550.404c–1(b)(2)(i)(B)(2)(ii) of the Section 404(c) Regulation include financial statements and reports and any other materials relating to investment alternatives available under the Plan to the extent provided to the Plan. MetLife further explains that the Section 404(c) Regulation imposes no additional obligation on the administrator to furnish or make available materials relating to the companies in which the equity fund invests. Therefore, MetLife wishes to have the Notice amended to state that the disclosure required for participants in a Section 404(c) Plan which offers a MetLife Trust GIC as an investment option, particularly where the MetLife Trust GIC is one of a number of contracts within a designated investment alternative, is that required by the Section 404(c) Regulation and other existing regulations.

The Department notes that when an investment option, such as a MetLife Trust GIC, is offered by a fiduciary under a Section 404(c) Plan to participants as part of the Plan's stable value portfolio and a party in interest to an investing Plan is providing the investment, the acquisition of the contract by the plan fiduciary is beyond the scope of the Section 404(c) Regulation. In providing exemption relief for this type of transaction in a participant-directed plan, the Department typically requires, among other things, that the Plan fiduciary provide the participant with full and complete disclosures regarding the nature of the investment. These disclosures will ensure that the directing Plan participant has given informed consent to the investment and continues to be apprised about the ramifications of the investment.

After considering MetLife's comment, the Department has decided that a Section 404(c) Plan participant should, at a minimum, receive from the appropriate fiduciary, summaries of the pertinent features of: the Letter of Agreement between MetLife and the Plan fiduciary, particularly the disclosure that the MetLife Trust GIC may have a Credited Rate as low as 0 percent; the Investment Guidelines and the MetLife Conventional GIC. However, the Department has decided to delete paragraphs (2) and (3) of Condition (d) of the proposal relating to disclosure of the operative language of the proposed and/or final exemptions. Therefore, Condition (d), which has been redesignated herein as Section II(d), has been revised to read as follows:

[2] For purposes of this exemption, the term ''full investment responsibility'' means that the fiduciary responsible for making the investment decision has and exercises discretionary management authority over all of the assets of the group trust or other plan assets look-through entity.

[3] 29 CFR 2550.404(c)–1.

(d) Upon the selection by a Plan fiduciary of a MetLife Trust GIC, a participant in a Plan that provides for participant investment selection (the Section 404(c) Plan) is given a summary of the pertinent features of the documents listed above in paragraphs (c)(1), (c)(2) and (c)(5) of this Section II, which are deemed appropriate for distribution to such participant, including a disclosure that the MetLife Trust GIC may have a Credited Rate as low as 0 percent.[4]

Condition (e) of the Notice pertains to ongoing disclosures that will be provided to a Plan fiduciary and, if applicable, Plan participants in a Section 404(c) Plan subsequent to a Plan's investment in a MetLife Trust GIC. Such written disclosures include monthly, quarterly, or annual reports. These documents may also be made available to a Plan participant upon such participant's request.

However, after careful consideration of MetLife's comment, the Department has decided not to modify Condition (e). The Department believes that the condition, as proposed, provides flexibility to the Plan fiduciary by not requiring that mandatory disclosures automatically be provided to each participant. Rather, the participant may obtain copies of such reports at his or her request.

d. *Condition (h)*

Condition (h) of the Notice provides that each MetLife Trust GIC will have a predefined maturity date or dates selected by a Plan fiduciary and agreed to by MetLife. Upon further consideration of Condition (h), the Department believes it is appropriate to restrict the maximum number of years that a MetLife Trust GIC may remain in effect before the Plan can realize the Guaranteed Value. Therefore, MetLife has agreed to cap the maturity date for a MetLife Trust GIC at five years. This, together with the ability of a fiduciary to annually affirmatively extend the maturity date for an additional year, should ensure that the Plan will have greater investment flexibility and will enable the utilization of third-party benchmark indices having 4–6 year durations. (For a discussion of the revised procedure for extending or locking in the maturity date for a MetLife Trust GIC under Condition (h), see Part 2.c. below of this grant notice).

Thus, based upon the foregoing, the Department has revised Condition (h) of the Notice as follows:

(h) Each MetLife Trust GIC has a predefined maturity date or dates selected by the Plan fiduciary and agreed to by MetLife. However, in no event does a MetLife Trust GIC have a maturity date exceeding five years. A Plan fiduciary may extend the maturity date for an additional year upon an affirmative written decision made annually by such fiduciary. Once a Plan fiduciary does not affirmatively extend the maturity date, no future extensions will occur.

e. *Condition (i)*

Condition (i) of the Notice states that MetLife will inform a Plan fiduciary of the new reset rate for the Credited Rate prior to the fiduciary's affirmation of the maturity date. To reflect the fact that MetLife will inform a Plan fiduciary of the new reset rate for the Credited Rate prior to a Plan fiduciary's decision to extend a maturity date for a MetLife Trust GIC for one year or to decline such extension, the Department has revised Condition (i).

(i) Prior to a Plan fiduciary's decision regarding the extension of a maturity date for a MetLife Trust GIC for one additional year, MetLife informs such Plan fiduciary of the new reset rate for the Credited Rate.

2. Changes to the Summary

With the exception of MetLife's suggested change to the Credited Rate formula, which is discussed below in Part 2.b., the Department has made the following substantive modifications to the Summary.

a. Representation 7

MetLife states a possible interpretation of the language of Representation 7 would not allow for the designation of an investment manager other than MetLife or an affiliated sub-manager other than State Street Research and Management Company (State Street Research). Because MetLife wishes to be able to designate other investment managers and affiliated sub-managers by mutual agreement with the Plan sponsor, even though there is presently no affiliate to designate as a sub-manager, MetLife requests that the second sentence in Representation 7 be redrafted as follows:

However, by mutual agreement with the Plan sponsor, MetLife may designate State Street Research or another affiliated investment manager as investment manager or sub-manager with respect to some or all of the assets in an Account.

In addition, in the third sentence of Representation 7, MetLife requests that the words ''investment manager or'' be inserted before the word ''sub-manager.''

b. Representation 12

MetLife requests that certain technical changes be made to the description of the Credited Rate because it believes the references to the duration and yield-to-maturity in the text imply that the source for these two inputs is the Account rather than a third-party benchmark index. Therefore, MetLife requests that in part (a) of the second sentence of the first paragraph of Representation 12, the words ''of assets in the Account'' be deleted and the following paragraphs be inserted after part (c) of the representation:

If a Plan fiduciary has determined to extend a maturity date (as described in Representation 13), the Yield-to-Maturity component will be the yield-to-maturity of an external index (as described in Representation 8) unless specifically requested by the Plan with MetLife's consent. MetLife represents that it will not calculate the yield-to-maturity of the index. Rather, such calculation will be made by the index provider. Once a Plan fiduciary has determined not to extend a maturity date, the Yield-to-Maturity component will be the yield of a Treasury security with a comparable duration relative to the assets in the Account.

The Credited Rate will not be affected by the length of time that MetLife has managed a MetLife Trust GIC Account.

In addition, MetLife requests that the last sentence of the second paragraph of Representation 12 be deleted and replaced with the following language:

The amortization period or Duration will be no longer than the period specified in the MetLife Trust GIC. If a Plan fiduciary has determined to extend a maturity date (as described in Representation 13), it typically will be the duration of the index (as described in Representation 8) unless specifically requested by the Plan with MetLife's consent. MetLife further represents that the duration of the index will be calculated by the index provider. Once a Plan has determined not to extend a maturity date, the Duration is the period from the effective date of the Credited Rate reset until the maturity date or the average maturity date.

c. Representation 13

Representation 13 of the Summary describes the manner in which the maturity date mechanism for a MetLife Trust GIC will operate. Under the procedure set forth in Representation 13, a MetLife Trust GIC may continue indefinitely since there are no restrictions placed on the number of years the instrument may remain in effect. Also, during an annual notification period, MetLife is required to afford the Plan fiduciary an opportunity to ''affirm'' the maturity date in writing. If the Plan fiduciary does nothing, the MetLife Trust GIC will continue for another year and the notification procedure will be repeated each year. Assuming, however, the Plan fiduciary ''affirms'' the maturity date, the MetLife Trust GIC will mature

[4] Paragraphs (c)(1), (c)(2) and (c)(5) of Section II pertain to the Letter of Agreement, the Investment Guidelines and the pertinent features of the MetLife Conventional GIC.

within the prescribed time frame selected by the Plan fiduciary from the anniversary date of such MetLife Trust GIC.

In order to provide additional safeguards, the Department has decided to revise this procedure in its entirety. Specifically, the Department has proposed that the Plan fiduciary make an affirmative decision to extend the maturity date for a MetLife Trust GIC. Additionally, the Department has determined that a MetLife Trust GIC will never have a maturity date that is in excess of five years. A MetLife Trust GIC may be extended, however, on an annual basis, for only one year as long as the Plan fiduciary provides advance written notice to MetLife agreeing to the extension. If, however, the Plan fiduciary does not inform MetLife, in writing, prior to the anniversary date of the intention to extend the maturity date, the date will not be extended by one year and the MetLife Trust GIC will mature within the maximum five year time frame. As noted above, MetLife will repeat the notification procedure over successive annual periods if the Plan fiduciary determines that each such extension is appropriate. Should the Plan fiduciary decide not to extend the maturity date on an anniversary date, no further annual notifications will be required of MetLife.

Besides the foregoing changes, the Department emphasizes the fact that the Guaranteed Value for a MetLife Trust GIC will not always reflect the amount of the initial contribution but may be adjusted for contributions and withdrawals.

Therefore, Representation 13 has been revised to read as follows:

13. Although each MetLife Trust GIC will have a defined maturity date or dates selected by the Plan fiduciary and agreed to by MetLife, in no event will a MetLife Trust GIC have a maturity date exceeding five years. However, such date may be extended if specifically requested, in writing, by the Plan fiduciary. Each such extension of the maturity date will be subject to a one year limitation as described below.

One month before the anniversary date of the MetLife Trust GIC, MetLife will notify the Plan fiduciary, in writing, of the impending anniversary of such MetLife Trust GIC, as well as the new reset rate for the Credited Rate, and afford the fiduciary the opportunity to notify MetLife that it will extend the maturity date. If the Plan fiduciary does not inform MetLife, in writing, prior to the anniversary date of the intention to extend the maturity date, the date will not be extended by one year and the original maturity date will remain in effect. If, on the other hand, the Plan fiduciary informs MetLife, in writing, prior to the anniversary date of the intention to extend the maturity date, the date will be extended for one additional year only. A Plan fiduciary which elects to extend the maturity date in this manner will be given another opportunity to do so one month before the next anniversary date of the MetLife Trust GIC.

The notification procedure will be repeated, and the opportunity to extend the maturity date for one more year will be given prior to each subsequent anniversary date, provided the fiduciary has elected to extend the maturity date before the immediately preceding anniversary date. Each extension elected by the fiduciary will be for only one year beyond the maturity date, including any extensions previously in effect. Thus, at no time will a MetLife Trust GIC have a maturity date that is more than five years from the anniversary date.

Upon the maturity of a MetLife Trust GIC, MetLife represents that if the Market Value of the assets invested in the MetLife Trust GIC is less than the Guaranteed Value (as described in Representation 11), it will make up the difference.[9]

d. *Representation 20(b).* MetLife represents that although the conversion of a MetLife Trust GIC to a MetLife Conventional GIC has been discussed with the Department primarily in the context of Guaranteed Value exceeding Market Value, it wishes to clarify that the MetLife Conventional GIC may still be selected regardless of the relative levels of Guaranteed and Market Values. In some cases, MetLife notes that a Plan fiduciary holding a MetLife Trust GIC with Market Value in excess of Guaranteed Value may consider the MetLife Conventional GIC the most prudent alternative available. If this fiduciary believes that interest rates are about to decline, such fiduciary may decide to lock in the gain by selecting this investment option. Because ''any market value loss or gain * * * will be amortized over the period ending with the final maturity date of the MetLife Conventional GIC,'' MetLife explains that the Plan fiduciary will have secured an above market rate of return guaranteed for an extended fixed period.

Therefore, to cover the full range of situations in which a MetLife Conventional GIC will be offered, MetLife requests that the words ''at a time when there are losses and'' be deleted in the first sentence of Representation 20(b). Similarly, and for clarification, MetLife requests that the following sentence be substituted for the first sentence of Footnote 16:

The Department notes that the decision by a Plan fiduciary to convert a MetLife Trust GIC into a MetLife Conventional GIC is subject to the provisions of section 404 of the Act, as are all Plan investment decisions.

[9] MetLife notes that the procedures governing the maturity date of a MetLife Trust GIC will not affect the ability of a Plan fiduciary to discontinue such investment as described in Representation 19.''

Finally, the Department notes that MetLife's comments with respect to the Notice also contained certain minor clarifications to information included in the Summary. Rather than restate these modifications in this grant notice, the Department wishes to acknowledge all of the technical clarifications made by MetLife to the information in question.

For further information regarding MetLife's comment letter or other matters discussed herein, interested persons are encouraged to obtain copies of the two exemption application files (Exemption Application No. D–10241 and Exemption Application No. D–10412) the Department is maintaining in this case. The complete application files, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, after consideration of the entire record, including MetLife's comment letter, the Department has determined to grant the exemption as modified herein.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Consolidated Associations of Railroad Employees Health Care Plan (the Plan) Located in Topeka, Kansas

[Prohibited Transaction Exemption 98–18; Exemption Application No. L–10527]

Exemption

The restrictions of section 406(a) of the Act shall not apply, effective June 10, 1997 to: (1) the current leasing (the Lease) of certain real property (the Property) by the Plan to Century Health Solutions, Inc. (Century), a party in interest with respect to the Plan; (2) the proposed new leasing of substantially the same Property by the Plan to Century (or its successor in name) effective April 1, 1998 (the New Lease); and (3) the possible future sale of the Property by the Plan to Century (or its successor in name) pursuant to a right of first refusal under the terms of the Lease, provided the following conditions are satisfied: (a) the Property represents no more than 25% of the value of the Plan's assets; (b) the terms of the Lease are, and will remain, at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (c) the fair market rental value is

determined on an annual basis by a qualified, independent appraiser; (d) the Plan's independent fiduciary has determined that the transaction is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; (e) the Plan's independent fiduciary will continue to monitor the transaction and the conditions of the exemption and take whatever action is necessary to enforce the Plan's rights under the Lease; and (f) the Plan's independent fiduciary acts to ensure that any sale of the Property by the Plan to Century is properly effected under the terms of the Lease, pursuant to Century's right of first refusal in the event the Plan receives a bona fide offer from a third party to purchase the Property, and Century is not in default on any of its obligations under the Lease.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 26, 1998 at 63 FR 9867.

Written Comments

The only written comments received by the Department with respect to the proposed exemption were submitted by the applicant, which sought clarification with respect to two points. First, the applicant represented that the New Lease would likely be for fewer square feet of the Property than under the Lease, and sought clarification that the exemption as proposed would still apply to the New Lease. With respect to the New Lease, the Department notes that the exemption would apply to a lease of fewer square feet in the same Property provided all conditions of the exemption are satisfied. Secondly, the applicant requested clarification that the exemption would still apply if Century reorganized as a for-profit corporation, or changed its name, or both. The applicant represented that this change in name will never occur in connection with a sale of the underlying assets of Century to an unrelated third party. The applicant requested that the operative language of the exemption be modified to extend relief to Century or its successor in name. The operative language of the exemption has been amended accordingly to reflect the possible name change.

The Department has considered the entire record, including the comment submitted by the applicant, and has determined to grant the exemption as proposed, with the one change as described above.

EFFECTIVE DATE: This exemption is effective June 10, 1997.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Thornton, Hegg, Reif, Johnston & Dolan Profit Sharing Plan and Trust (the Plan) Located in Alexandria, Minnesota

[Prohibited Transaction Exemption No. 98–19; Application No. D–10563]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) by the Plan of certain real property (the Property) to Robert M. Hegg, (Mr. Hegg), a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) The terms and conditions of the transaction are no less favorable to the Plan than those which the Plan would receive in an arm's-length transaction with an unrelated party;

(B) The Sale is a one-time transaction for cash;

(C) The Plan incurs no expenses from the Sale; and

(D) The Plan receives as consideration from the Sale the greater of either the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale, or an amount equal to the funds expended by the Plan in acquiring and maintaining the Property, less any income produced by the Property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on February 26, 1998, at 63 FR 9868.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 17th day of April, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–10693 Filed 4–21–98; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Notice of Availability of 1999 Competitive Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Solicitation for Proposals for the Provision of Civil Legal Services.

SUMMARY: The Legal Services Corporation (LSC or Corporation) is the national organization charged with administering federal funds provided for civil legal services to the poor.

The Corporation hereby announces the availability of competitive grant funds and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to eligible clients in the states and territories by service area(s) identified below. The exact amount of congressionally appropriated funds and the date, terms and conditions of their availability for calendar year 1999 have not been determined.

DATES: Request for Proposals (RFP) will be available after May 15, 1998. Notice of Intent to Compete is due July 1, 1998. Grant proposals must be received at LSC offices by 5:00 p.m. EDT, July 22, 1998.

ADDRESSES: Legal Services Corporation—Competitive Grants, 750

First Street N.E., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Office of Program Operations, Competitive Grants—Service Desk, (202) 336–8900; FAX (202) 336–7272; URL http://www.lsc.gov;HANDSNET: HN 3555.

SUPPLEMENTARY INFORMATION: LSC is seeking proposals from: (1) non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients; (2) private attorneys; (3) groups of private attorneys or law firms; (4) State or local governments; and (5) substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

The solicitation package, containing the grant application, guidelines, proposal content requirements and specific selection criteria, is available by contacting the Corporation by letter, phone or FAX. LSC will not FAX the solicitation package to interested parties; however, solicitation packages may be requested by FAX.

State	Service area(s)
Arizona	AZ–1,AZ–2,AZ–3,AZ–4,NAZ–1,NAZ–2,NAZ–3,NAZ–4,NAZ–5,MAZ.
California	CA–1,CA–2,CA–4,CA–5,CA–6,CA–7,CA–8,CA–9,CA–10,CA–11,CA–12,CA–13,CA–14,CA–15,CA–16,CA–17,CA–18,CA–19,CA–23,CA–25,CA–26,NCA–1,MCA.
Colorado	CO–2,NCO–1,MCO.
Indiana	IN–1,IN–2,IN–3,IN–4,MIN.
Kentucky	KY–2,KY–3,KY–5,KY–6,KY–7,KY–8,MKY.
Massachusetts	MA–1,MA–2,MA–3,MA–4,MA–5,MA–10,MMA.
Michigan	MI–1,MI–2,MI–3,MI–4,MI–5,MI–6,MI–7,MI–8,MI–9,MI–10,MI–11,NMI–1,MMI.
Missouri	MO–1,MO–2,MO–3,MO–4,MO–5,MO–6,MMO.
Nebraska	NE–1,NE–2,NE–3,NNE–1,MNE.
New Jersey	NJ–5,NJ–10,NJ–14.
New York	NY–9.
New Mexico	NM–1,NM–2,NM–3,NM–4,NNM–1,NNM–2,NNM–3,MNM.
North Carolina	NC–1,NC–2,NC–3,NC–4,NNC–1,MNC.
Ohio	OH–1,OH–2,OH–3,OH–4,OH–5,OH–7,OH–8,OH–9,OH–10,OH–12,OH–13,OH–14,OH–15,OH–16,OH–17,MOH.
Oregon	NOR–1.
Pennsylvania	PA–3,PA–5,PA–9,PA–13,PA–17,PA–20,MPA.
Virginia	VA–2.
West Virginia	WV–1,WV–2,WV–3,MWV.
Wisconsin	WI–1,WI–2,WI–3,WI–4,NWI–1,MWI.
Wyoming	WY–4,NWY–1,MWY.

Issue Date: April 17, 1998.

Karen J. Sarjeant,

Managing Program Counsel, Office of Program Operations.

[FR Doc. 98–10733 Filed 4–21–98; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA will be submitting the following currently approved rule requiring information collection to the Office of Management and Budget (OMB) for extension under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C.

Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until June 22, 1998.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen, (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer James L. Baylen or sending e-mail to the address provided above.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0125.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: 12 C.F.R. Part 722—Appraisals

Description: Congress has mandated that NCUA adopt standards for the performance of real estate appraisals in connection with federally related transactions (Title XI of the Financial Institutions, Reform, Recovery, and Enforcement Act of 1989 [FIRREA]). Credit unions use the information gathered to determine if loans can be granted. NCUA uses the information gathered to ensure safety and soundness.

Respondents: All federally insured credit unions making individual real estate loans of $100,000 or more.

Estimated No. of Respondents/ Recordkeepers: 5,000.

Estimated Burden Hours Per Response: .25 hours.

Frequency of Response: Other. Information collection/record keeping is required on an on-going basis.

Estimated Total Annual Burden Hours: 137,500.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on April 16, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–10599 Filed 4–21–98; 8:45 am]

BILLING CODE 7535–01–U

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 34—Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations.

2. Current OMB approval number: 3150–0007.

3. How often the collection is required: Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every 10 years. Reports are submitted as events occur.

4. Who is required or asked to report: Applicants for and holders of specific licenses authorizing the use of licensed radioactive material for radiography.

5. The number of annual responses: 73 from NRC licensees and 146 from Agreement State licensees.

6. The number of hours needed annually to complete the requirement or request: Licensee reporting of 106.5 hours and 213 hours for Agreement States (approximately 1.46 hours per response), for a total reporting burden of 319.5 hours. Licensee recordkeeping of 60,178.8 hours and 120,570 hours for Agreement States (approximately 380 hours per licensee), for a total recordkeeping burden of 180,748.8 hours. The industry total burden is 60,285.3 hours annually for NRC licensees and 120,783 hours annually for Agreement State licensees.

7. Abstract: NRC regulations in 10 CFR Part 34 establish radiation safety requirements for the use of radioactive material in industrial radiography. The information in the applications, reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of source and byproduct material is in compliance with license and regulatory requirements.

Submit, by June 22, 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 15th day of April 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–10666 Filed 4–21–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Dockets 70–7001 and 70–7002]

Notice of Receipt of Amendment Application to Certificates of Compliance GDP–1 and GDP–2 for the U.S. Enrichment Corporation, Paducah and Portsmouth Gaseous Diffusion Plants, Paducah, KY and Portsmouth, OH; Notice of Comment Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received two amendment applications from the United States Enrichment Corporation (USEC) that may be significant pursuant to 10 CFR 76.45. Any interested party may submit written comments on the applications for amendment for consideration by the staff. To be certain of consideration, comments must be received by the NRC within thirty (30) days of appearance of this notice in the **Federal Register**. Comments received after that will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before the due date.

Written comments on the amendment applications should be mailed to the Chief, Rules Review and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or may be hand delivered to 11545 Rockville Pike, Rockville, MD 20852 between 7:45 am and 4:15 pm on Federal workdays. Comments should be legible and reproducible, and include the name, affiliation (if any), and address of the commenter. All comments received by the Commission will be made available for public inspection at the Commission's Public Document Room and the Local Public Document Rooms. In accordance with 10 CFR 76.62 and 76.64, a member of the public must submit written comments to petition the Commission requesting review of the Director's Decision on the amendment requests. For further details with respect to the action see the applications for amendment. The applications 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.

Date of amendment requests: October 31, 1997.

Brief description of amendments: On October 31, 1997, USEC submitted amendment requests transmitting the Safety Analysis Report updates (SARUPs) required by Issue 2 of DOE/ORO–2026, ''Plan for Achieving Compliance with NRC Regulations at the Paducah Gaseous Diffusion Plant'' and Issue 2 of DOE/ORO–2027, ''Plan for Achieving Compliance with NRC Regulations at the Portsmouth Gaseous Diffusion Plant'' (the Compliance Plans). The SARUPs provide updates for the two plants on commitments to various industry codes and standards, updated site specific information on geography, demography, meteorology, hydrology, geology and seismology, natural phenomena events, and external man-made events, and a new accident analysis based upon a hazard analysis methodology including new source term, in-building transport, and atmospheric transport methodology with resulting changes in the Technical Safety Requirements and the identification of important to safety structures, systems, and components.

Certificates of Compliance Nos. GDP–1 and GDP–2: Amendments will revise the Safety Analysis Reports based upon the SARUP revisions.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003 and Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 13th day of April 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–10667 Filed 4–21–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413 and 50–414]

Duke Energy Corporation, et al.; Catawba Nuclear Station, Units 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–35 and NPF–52, issued to Duke Energy Corporation, et al. (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed action would amend the Facility Operating Licenses (FOLs) for Units 1 and 2 and to delete license conditions that have been fulfilled, delete exemptions that are no longer needed, correct errors, and make other administrative and editorial changes.

The proposed action is in response to the licensee's application dated December 18, 1997, and revised by letter dated January 26, 1998.

The Need for the Proposed Action

When the FOLs, NPF–35 and NPF–52, were issued to the licensee, the NRC staff deemed certain issues essential to safety and/or essential to meeting certain regulatory interests. These issues were imposed as license conditions in the FOLs, with deadlines for their implementation. Since the units were licensed to operate in the 1980s, most of these license conditions have been fulfilled. For the license conditions that have been fulfilled, the licensee proposed to have them deleted from the FOLs.

The FOLs also included a number of exemptions from NRC regulations. The licensee stated that these exemptions have either expired, or are no longer needed since the units are in full compliance with the respective regulations. The licensee proposed to delete these exemptions from the FOLs.

The licensee also proposed to make changes to correct administrative errors such as words inadvertently omitted, documents erroneously cited, etc.

The proposed amendments involve administrative changes to the FOLs only. No actual plant equipment, regulatory requirements, operating practices, or analyses are affected by these proposed amendments.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the amendments are granted. No changes will be made to the design and licensing bases, and applicable procedures at the two units at Catawba Nuclear Station will remain the same. Other than the administrative changes, no other changes will be made to the FOLs, including the Technical Specifications.

The changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the Catawba Nuclear Station.

Agencies and Persons Contacted

In accordance with its stated policy, on April 1, 1998, the staff consulted with the South Carolina State official, Virgil Autrey of the Bureau of Radiological Health, South Carolina Department of Health and Environmental Control, regarding the environmental impact of the proposed amendments. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed amendments will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendments.

For further details with respect to the proposed action, see the licensee's request for the amendments dated December 18, 1997, and revised by letter dated January 26, 1998, which 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 room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina.

Dated at Rockville, Maryland, this 15th day of April 1998.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–10668 Filed 4–21–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic and Severe-Accident Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic and Severe-Accident Phenomena will hold a meeting on May 11 and 12, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting will be closed to public attendance to discuss

Westinghouse Electric Company proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Monday, May 11, 1998—8:30 a.m. until the conclusion of business.

Tuesday, May 12, 1998—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the results of the Westinghouse Test and Analysis Program supporting the AP600 design certification. Specifically, the Subcommittee will review issues pertaining to the AP600 Reactor Coolant System, including the resolution of issues identified in the February 19, 1998 ACRS letter. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Westinghouse Electric Company, the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: April 16, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98–10663 Filed 4–21–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Advanced Reactor Designs; Notice of Meeting

The ACRS Subcommittee on Advanced Reactor Designs will hold a meeting on May 13–15, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 13, 1998—8:30 a.m. until the conclusion of business.

Thursday, May 14, 1998—8:30 a.m. until the conclusion of business.

Friday, May 15, 1998—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the Westinghouse AP600 design. Specifically, the Subcommittee will review Chapters 3, 6, 9A, 14, 16, and 17 of the AP600 Standard Safety Analysis Report, the probabilistic risk assessment (PRA), regulatory treatment of non-safety systems (RTNSS), and the associated NRC staff's draft Final Safety Evaluation Report. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, Westinghouse Electric Company, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: April 16, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98–10664 Filed 4–21–98; 8:45 am]

BILLING CODE 7590–01–P

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 March 30, 1998, through April 10, 1998. The last biweekly notice was published on April 8, 1998 (63 FR 17219).

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 May 22, 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.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: March 14, 1997.

Description of amendment request: The proposed amendment would delete license conditions which have been satisfied, revise others to delete parts which are no longer applicable or to revise references, and make editorial changes.

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 changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The initial conditions and methodologies used in the accident analyses remain unchanged. The proposed changes do not change or alter the design assumptions for the systems or components used to mitigate the consequences of an accident. Therefore, accident analyses results are not impacted.

The license conditions were one-time commitments that have been satisfied. There are no physical changes to the facility, and all operating procedures, limiting conditions for operation, limiting safety system settings, and safety limits are unchanged. Removal of these license conditions is appropriate and safe.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Many of the proposed changes delete references to items that have been completed. The NRC required these items as a condition of granting the license. Since they have been satisfied as intended, deleting them is administrative.

None of the proposed changes affect the design or operation of any system, structure, or component in the plant. The safety functions of the related structures, systems, or components are not changed in any manner, nor is the reliability of any structure, system, or component reduced by the revised surveillance or testing requirements. The changes do not affect the manner by which the facility is operated and do not change any facility design feature, structure, system, or component. No new or different type of equipment will be installed. Since there is no change to the facility or operating procedures, and the safety functions and reliability of structures, systems or components are not affected, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The remaining changes are editorial in nature and have no impact on plant operation or design.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes to the Operating License are generally administrative in nature and have no impact on the margin of safety of any Technical Specification. There is no impact on safety limits or limiting safety system settings. The changes do not affect any plant safety parameters or setpoints. The operating license conditions have been satisfied, as required. There are no changes to the conditions themselves. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Therefore, based on the above evaluation, Commonwealth Edison has concluded that these changes do not involve significant hazards considerations.

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: Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Stuart A. Richards.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: October 16, 1997.

Description of amendment request: The proposed amendment would add an exemption from 10 CFR 70.24(a) to the Unit 1 license consistent with the Unit 2 license.

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 change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The initial conditions and methodologies used in the accident analyses remain unchanged. The proposed change does not change or alter the design assumptions for the systems or components used to mitigate the consequences of an accident. Therefore, accidents analysis results are not impacted.

There are no physical changes to the facility, and all operating procedures, limiting conditions for operation, limiting safety system settings, and safety limits are unchanged.

The specific requirements for granting an exemption from 10 CFR 70.24(a) have been met. The request is authorized by law, will not endanger life or property or the common defense and security, and is in the public interest.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. 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 affect the design or operation of any system, structure, or component in the plant. The safety functions of structures, systems, or components are not changed in any manner, nor is the reliability of any structure, system, or component reduced by the revised surveillance or testing requirements. The change does not affect the manner by which the facility is operated and does not change any facility design feature, structure, system, or component. No new or different type of equipment will be installed. Since there is no change to the facility or operating procedures, and the safety functions and reliability of structures, systems, or components are not affected, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

C. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change to the Operating License has no impact on the margin of safety of any Technical Specification. There is not

impact on safety limits or limiting safety system settings. The change does not affect any plant safety parameters or setpoints. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, based on the above evaluation, Commonwealth Edison has concluded that the proposed change does not involve significant hazards considerations.

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: Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Stuart A. Richards.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: March 13, 1998, as supplemented March 30, 1998.

Description of amendment request: The proposed amendment would revise the technical specifications (TS) to allow any two auxiliary feedwater (AFW) flow control valves to be inoperable concurrently for up to 72 hours, provided the corresponding redundant flow control valves and a pump in the other AFW train are operable.

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:

Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change would only alter the allowance for specific AFW flow control valves to be inoperable. It would not affect any operating limits, any plant operating conditions, or the physical capability of any plant equipment. Therefore, it would not affect the probability of any accident previously evaluated.

The proposed change would not reduce the AFW flow capability to the steam generators during operation under the affected Action Statement. It would allow more operational flexibility in plant operation when two AFW flow control valves in the same train were concurrently inoperable. The specified AOT [allowed outage time] of 72 hours would remain unchanged. Current TS allow continued operation for 72 hours with one of the three AFW pumps inoperable, or with one flow control valve in each train inoperable (provided the corresponding redundant flow control valve and a pump in the other pipe train are operable), but do not allow continued operation with both valves in the same train inoperable. The proposed change would allow any two valves to be inoperable, with the same provision that the corresponding redundant flow control valve and a pump in the other pipe train are operable.

Since, with the proposed change there would be no reduction in the ability to provide AFW flow to either steam generator, operation of the Facility in accordance with the proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

The changes do not alter the plant configuration (no new or different type of equipment will be installed) or make changes in the methods governing normal plant operation. The changes do allow different sets of AFW flow control valves to be inoperable, however, these changes retain a consistent level of AFW capability during operation under the Action Statement. Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, operation of the Facility in accordance with the proposed TS change would not create the possibility of a new or different kind of accident from any previously evaluated.

Do the proposed changes involve a significant reduction in a margin of safety?

The proposed change would not reduce the AFW flow capability to the steam generators during operation under the affected Action Statement. It would allow more operational flexibility in plant operation when two AFW flow control valves were concurrently inoperable. The specified AOT of 72 hours would remain unchanged.

Therefore, operation of the Facility in accordance with the proposed TS change 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 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: Van Wylen Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Cynthia A. Carpenter.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: March 27, 1998 (NRC–98–0033).

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.5.2, ''ECCS—Shutdown,'' and TS 3.5.3, ''Suppression Chamber,'' raising the minimum water level required in the condensate storage tank (CST) to support the core spray system (CSS) when the suppression pool (the normal supply for CSS) is unavailable. The amendment would also eliminate incorrect information concerning CST inventory reserved for the high pressure coolant injection (HPCI) and reactor core isolation cooling (RCIC) systems. The associated Bases are also revised.

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 changes will not affect the performance or reliability of the Condensate Storage System which could lead to an accident because the Condensate Storage Tank (CST) is not involved as an initiator of any accident previously evaluated. The proposed change meets the design standards of the Condensate Storage System by providing assurance that sufficient water volume is available for the Core Spray System. This change also removes [an] erroneous discussion of water inventory for HPCI/RCIC Systems while in Operating [Operational] Conditions 4 and 5. The removal of information is acceptable since HPCI/RCIC Systems are not operable in these modes and will therefore not increase the probability of an accident. The increase in volume provides for vortex/air entrainment avoidance in the Core Spray System and will not increase consequences. Furthermore, the elimination of HPCI/RCIC information will not increase consequences of an accident previously evaluated because these systems are not credited for accident mitigation in Operating [Operational] Conditions 4 and 5.

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 add or modify any equipment or components related to the Condensate Storage System and will therefore not create any new failure modes or common failure modes. This proposed change raises the water level within the CST to ensure sufficient water volume is maintained and updates the TS by removing descriptive information with respect to CST water inventory for HPCI/RCIC Systems

while in Operating [Operational] Conditions 4 and 5. The Condensate Storage System will continue to operate as intended and as designed. This change will therefore not create the possibility of a new or different kind of accident.

3. The change does not involve a significant reduction in the margin of safety.

The proposed change increases the required CST water level to provide at least 150,000 gallons of water available for the Core Spray System while maintaining adequate submergence of the Core Spray standpipe for avoiding vortex and air entrainment. As such, the proposed change involves no reduction on any margin of safety. Revision to TS Bases concerning discussion of reserve volume in CST for HPCI and RCIC, does not alter the requirement for Core Spray or Suppression Pool operability and does not involve a reduction in any 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: March 27, 1998 (NRC–98–0034).

Description of amendment request: The proposed amendment would clarify a footnote in Technical Specification (TS) 3.5.1, ''ECCS—Operating,'' and 3.5.2, ''ECCS—Shutdown,'' to indicate that a low pressure coolant injection system loop may be considered operable during alignment and operation for decay heat removal if it is capable of being manually realigned and is not otherwise inoperable. The associated Bases would also be revised.

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 changes involve actions required to realign the Low Pressure Coolant Injection (LPCI) system for LPCI injection if LPCI is required when operating in the Shutdown Cooling (SDC) mode. The additional actions described involve resetting isolations and trips which could occur prior to LPCI initiation. Resetting these logics does not initiate any valve operation or pump start; the LPCI initiation signals and interlocks remain in control of valve and pump logic.

The equipment interlocks that provide the isolation signal for the LPCI injection valves were designed to prevent drain down of the Reactor Pressure Vessel (RPV) when in SDC. The injection valve closure is the most conservative action in response to an RPV drain event. The current TS acknowledges that operator action to realign the suction path is necessary. The proposed change acknowledges that operator action to reset injection valve logic and pump trips is necessary. The time required to realign LPCI is not significantly different than the existing actions to realign the suction path.

No changes in either system design or operating strategies will be made as a result of these changes, thus no opportunity exists to increase the probability or consequences of a previously analyzed accident. Therefore, the proposed change does not involve a significant increase in the probability or 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.

The manual realignment of the LPCI system from SDC following an isolation signal does not affect the accident analysis described in Chapter 15 of the UFSAR [updated final safety analysis report]. No new limiting single failure has been identified as a result of the proposed changes. The possibility of a new or different kind of accident from those previously analyzed will not be created by the change to the TS footnote or Bases, because the proposed change merely clarifies the actions necessary to realign the LPCI system. The time required to realign the system is not significantly different than the time necessary to realign the suction path. 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 plant's ability to enter Operational Conditions 3, 4, and 5, and to achieve and maintain COLD SHUTDOWN conditions when shutting down the plant. The proposed change in combination with existing restrictions within the TS provide assurance that there is no credible mechanism to inhibit running the LPCI system. The minor additional operator action required to realign LPCI from SDC requires minimum time and effort considering controls for each division are located on their respective control panel. As a result of this change, there will be no changes in either system design or operating strategies because the proposed changes merely clarify existing TS requirements and actions necessary to meet TS requirements. 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: April 2, 1998 (NRC–98–0057).

Description of amendment request: The proposed amendment would permit entering Operational Conditions 1 and 2 prior to completion of Surveillance Requirements for the primary containment hydrogen and oxygen monitors in order to establish the conditions necessary (inerted containment) to properly perform the calibrations. The amendment would also increase the frequency of the calibration for the oxygen monitors from every 18 months to quarterly in accordance with vendor recommendations and correct the nomenclature for the hydrogen and oxygen monitors in tables 3.3.7.5–1 and 4.3.7.5–1.

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 change will permit delaying the performance of calibrations of the hydrogen and oxygen monitors until after the containment is inerted following a plant startup. The proposed change will also increase the calibration frequency for the oxygen monitors from once per 18 months to once per quarter, and change the nomenclature for the hydrogen and oxygen monitors.

The primary containment hydrogen and oxygen monitors are passive instruments that provide indication to control room operators of hydrogen and oxygen concentration in the primary containment. Because they perform only a passive monitoring function, the

hydrogen and oxygen monitors are not associated with the initiation of any previously evaluated accident. The indication provided by the monitors is used by the control room operators to ensure oxygen concentration remains below limits and to make decisions regarding the use of the Combustible Gas Control System, if necessary. The allowance to permit entry into applicable operational conditions before calibration ensures that the conditions (nitrogen environment) are appropriate for accurate calibration of the instrument. Delaying the calibration does not cause the instrument to cease to function. Calibrations verify and adjust, as necessary, the accuracy of the instrument to compensate for drift that may occur since the last calibration. Thus, even with a delayed calibration, the instruments still would provide valuable information to the operators. Consequently, this change will not involve a significant increase in the consequences of a previously evaluated accident because the monitors will still function and provide meaningful information until the calibration is completed.

The change to reduce the interval for calibration of the oxygen monitors from once per 18 months to once per quarter provides increased assurance of monitor accuracy and is consistent with the manufacturer's recommendations. Therefore, because this instrument is not associated with the initiation of an accident and the change improves the functionality of the instrument, the probability and consequences of previously evaluated accidents are not significantly affected.

The change in nomenclature is editorial, and, as such does not affect the probability or consequences of a previously evaluated accident.

2. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, the hydrogen and oxygen monitors are passive, indication-only instruments which provide information to control room operators. The proposed changes do not introduce a new mode of operation or involve a physical modification to the plant. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The changes do not involve a significant reduction in the margin of safety.

The proposed changes involve the containment hydrogen and oxygen monitors which do not affect any parameters or assumptions used in the calculation of any safety margin with regard to Technical Specification Safety Limits, Limiting Safety System Settings, Limiting Control Settings or Limiting Conditions for Operation, or other previously defined margins for any structure, system, or component. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: 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 Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, (BVPS–1 and BVPS–2), Shippingport, Pennsylvania

Date of amendment request: March 16, 1998.

Description of amendment request: The proposed amendment would revise technical specification (TS) Table 4.3–1 to add footnote 6 to the channel calibration requirement for all instrument channels that are provided with an input from neutron flux detectors. Footnote 6 provides that neutron detectors may be excluded from channel calibrations. Additional changes are proposed for BVPS–1 to provide consistency between BVPS–1 and BVPS–2. These additional changes would add channel calibration requirements to BVPS–1 TS Table 4.3–1 items 2.b. (Power Range, Neutron Flux, Low Setpoint), 5. (Intermediate Range, Neutron Flux), 6. (Source Range, Neutron Flux (Below P–10), and 23. (Reactor Trip System Interlocks P–6, P–8, P–9, and P–10). Furthermore, changes would be made to correct page numbers in the BVPS–2 Index and to add corresponding changes to the bases for both units.

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?

Overall protection system performance will remain within the bounds of the previously performed accident analyses since no hardware changes are proposed. The protection systems will continue to function in a manner consistent with the plant design basis. The proposed changes will not affect any of the analysis assumptions for any of the accidents previously evaluated. The proposed changes will not affect the probability of any event initiators nor will the proposed changes affect the ability of any safety-related equipment to perform its intended function. There will be no degradation in the performance of nor an increase in the challenges imposed on safety-related equipment assumed to function during an accident. There will be no change to normal plant operating parameters or accident mitigation capabilities. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

There are no hardware changes associated with this license amendment nor are there any changes in the method by which any safety-related plant system performs its safety function. The normal manner of plant operation is unchanged.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not affect the acceptance criteria for any analyzed event nor is there a change to any Safety Analysis Limit (SAL). Maintaining the SAL preserves the margin of safety.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: 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: Robert A. Capra.

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 amendment request: March 17, 1998.

Description of amendment request: The proposed amendment would revise Action 34 of technical specification (TS)

Table 3.3–3, ''Engineered Safety Feature Actuation System Instrumentation.'' Action 34 applies to Functional Units 6.b., ''Grid Degraded Voltage (4.16 kV Bus),'' and 6.c. ''Grid Degraded Voltage (480 v Bus).'' The proposed revision would require that with one channel inoperable, the inoperable channel be placed in the tripped condition within one hour; otherwise, the applicable action statement(s) for the associated emergency diesel generator made inoperable by the degraded voltage start instrumentation be entered immediately. The proposed revision would also require that with two channels inoperable, at least one of the two channels be restored to operable status and the other channel be placed in the tripped condition within one hour; otherwise, the associated emergency diesel generator shall be declared inoperable and its applicable action statement(s) shall be entered. In addition, corresponding changes would be made to the bases for TS 3/4.3.2 and the BVPS–2 Index would be revised to reflect changed page numbers.

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?

Engineered Safety Feature Actuation System (ESFAS) will continue to function in a manner consistent with the plant design basis. The proposed change will not affect any of the analysis assumptions for any of the accidents previously evaluated. The proposed changes will not affect the probability of any event initiators. There will be no change to normal plant operating parameters. The emergency bus degraded voltage protection system is utilized for accident mitigation and is not considered to be the source of accidents previously evaluated.

Implementation of the proposed changes will now provide viable corrective actions which do not significantly increase the probability of failure of safety related equipment to perform its intended function. The proposed Action 34 permits a one hour time frame before the affected diesel generator(s) is required to be declared inoperable. This one hour period allows for repairs of most failures and takes into account the low probability of an event which would require the degraded voltage protection system to function. If adequate protection is not restored within this one hour period, the diesel generator(s) allowable outage time is invoked. The diesel generator(s) allowable outage time has been previously evaluated and determined to be an acceptable period of time during which plant operation may continue without an emergency backup power source. The loss of emergency bus degraded voltage protection is similar to the loss of the ability of an emergency diesel generator to provide electrical power to the safety related loads on the emergency buses. In both situations, a loss of offsite power, due to a total loss or a degraded condition, will result in the safety related loads not being capable of mitigating a design basis accident. The proposed changes to the Index page are administrative in nature and do not affect plant safety.

Therefore, the proposed changes do not result in a significant increase in probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The emergency bus degraded voltage protection system is utilized for accident mitigation. The proposed changes will now provide viable corrective actions which do not result in a change in the manner in which the emergency bus loads are protected from a degraded voltage condition. These changes do not alter the function of the degraded voltage protection system. The proposed changes will continue to require that at least one of the two redundant 4160 volt or 480 volt emergency buses is protected from a degraded voltage condition assuming a single active failure of the opposite emergency bus degraded voltage protection system. This action will ensure that at least one train of engineered safety feature (ESF) equipment is not damaged due to a sustained bus undervoltage condition. The proposed addition of the requirement to enter the action statement for the inoperable diesel generator, if the one hour requirements of Action 34 cannot be met, will ensure that adequate compensatory actions to assure plant safety are taken. These requirements include the demonstration of the operability of the A.C. offsite sources by performing a specific surveillance within one hour and at least once per eight hours thereafter. If both diesel generators are inoperable, at least one diesel generator must be restored to operable status within two hours or the plant must be placed in cold shutdown within the following 36 hours.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes.

Therefore, the proposed changes do 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 margin of safety is not significantly reduced because the A.C. electrical power sources will continue to provide sufficient capability, redundancy, and reliability to ensure availability of necessary power to ESF systems. The ESF systems will continue to function, as assumed in the safety analyses, to ensure that fuel, reactor coolant system and containment design limits are not exceeded. The proposed revisions to Action 34 will continue to require that at least one of the two redundant 4160 volt or 480 volt emergency buses is protected from a degraded voltage condition assuming a single active failure of the opposite emergency bus degraded voltage protection system. This action will ensure that at least one train of ESF equipment is not damaged due to a sustained bus undervoltage condition. The emergency loads, which are powered from that train of emergency buses, will continue to be available to perform their safety related functions. If the one hour requirements of Action 34 cannot be met, the affected emergency diesel generator will be declared inoperable. This will ensure that adequate compensatory actions to ensure plant safety are taken. The loss of emergency bus protection from a degraded voltage condition is similar to the loss of the ability of an emergency diesel generator to provide electrical power to the safety related loads on the emergency buses. In both situations, a loss of the offsite power, due to a total loss or a degraded condition, will result in the safety related loads not being capable of mitigating a design basis accident.

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: 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: Robert A. Capra.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: March 23, 1998.

Description of amendment request: The proposed amendment modifies Section 3.1.2 of the Technical Specifications (TS) to incorporate new pressure/temperature limits regarding reactor vessel pressurization heatup, cooldown, and inservice leak and hydrostatic leak test limitations in accordance with 10 CFR 50, Appendix G. These new limits would be applicable through the period of 17.7 effective full power years (EFPY) of operation.

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. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The design basis event related to this change is nonductile failure of the reactor coolant pressure boundary. The updated pressure/temperature limits have been established in accordance with the requirements of 10 CFR 50, Appendix G. Revision of these curves for an applicability period of 17.7 EFPY is based on maintaining the required design margin. Operation of the facility in accordance with the proposed amendment provides assurance of protection against nonductile failure of the reactor coolant pressure boundary for operation through 17.7 EFPY. Therefore, operation in accordance with the proposed amendment does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The design basis event related to the change is nonductile failure of the reactor coolant boundary. The proposed amendment provides assurance of protection against nonductile failure of the reactor coolant boundary for operation through 17.7 EFPY and is unrelated to the possibility of creating a new or different kind of accident.

3. Operation of the facility in accordance with the proposed amendment would not involve any reduction in a margin of safety since the design methodology has maintained the existing margins.

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: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cecil O. Thomas.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 27, 1997.

Description of amendment request: The proposed amendment, included as part of the proposed conversion from the current Technical Specifications (TS) to improved TS, would revise the Limiting Conditions for Operation in the event that one 250 V DC electrical power subsystem is inoperable.

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 DC electrical power sources are used to support mitigation of the consequences of an accident; however, they are not considered the initiator of any previously analyzed accident. The proposed change merely provides direction to the operator to declare equipment associated with a 250 V DC electrical power subsystem inoperable if the subsystem becomes inoperable. This provides assurance that all affected features are immediately recognized as incapable of performing their safety functions, and requires immediate actions equivalent to those determined appropriate in the Technical Specifications for the affected features. Therefore, the proposed change does not involve an increase in the probability or consequences of any accident previously evaluated.

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 introduce a new mode of plant operation and does not involve physical modification to the plant. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does this change involve a significant reduction in a margin of safety?

This change does not involve a significant reduction in a margin of safety, since the proposed change results in establishing the level of safety for the loss of a 250 V DC electrical power subsystem equivalent to the level of safety that exists in the Technical Specifications for components and systems that are supplied by the 250 V DC electrical power system.

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: Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Project Director: John N. Hannon.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: March 2, 1998.

Description of amendment request: The proposed changes would revise the frequency for the performance of specific surveillances associated with the emergency diesel generators (EDGs) and delete the requirements contained in the current Technical Specifications for accelerated testing whenever the number of valid test failures associated with the EDGs is met or exceeded. In addition, the special requirements for reporting valid or invalid EDG failures would be deleted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect accident initiators or precursors and do not alter the design assumptions affecting the ability of the EDGs to mitigate the consequences of an accident.

Industry experience has indicated that excessive testing requirements have proven to be a contributor to increased EDG unavailability and equipment degradation. Removing inappropriate testing requirements increases EDG reliability and enhances the ability of EDGs to mitigate the consequences of an accident. Implementing the maintenance rule in accordance with 10 CFR 50.65, Regulatory Guide 1.160, and NUMARC 93–01 for the EDGs provides additional assurance that high EDG performance and availability will be maintained.

Deleting the special reporting requirements from the Technical Specifications is an administrative change that does not affect the ability of the EDGs to perform their specified safety function. North Atlantic will continue to notify the NRC of significant EDG failures in accordance with the provisions of 10 CFR 50.72 and 50.73.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes do not alter the ability of the EDGs to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes have no impact on component or system interactions, or the plant design basis. Instrumentation setpoints, starting,

sequencing and loading functions associated with the EDGs are not affected by the proposed changes. Furthermore, combining the implementation of the maintenance rule program with the proposed amendment will enhance both the availability and the performance of the EDGs.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed changes do not involve a significant reduction in a margin of safety.

There is no impact on equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The proposed changes do not affect the EDG's ability to ensure that sufficient power is available to supply the safety related equipment required for: 1) the safe shutdown of the facility, and 2) the mitigation and control of accident conditions within the facility. In addition, the proposed changes do not affect the EDG's ability to ensure that: 1) the facility can be maintained in a shutdown or refueling condition for extended periods of time, and 2) sufficient instrumentation and control capability is available for monitoring and maintaining the unit status.

EDG reliability and availability are expected to be improved by the proposed changes. Eliminating excessive testing requirements can improve safety by reducing challenges to plant systems and reducing equipment wear and degradation. While the proposed changes affect surveillance intervals there are no changes to the methods used to perform the surveillances. The surveillances will continue to demonstrate the ability of the EDGs to perform their intended function of providing electrical power to the emergency safety systems needed to mitigate design basis transients and accidents. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 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: Exeter Public Library, Founders Park, Exeter, NH 03833.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Project Director: Cecil O. Thomas.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: March 5, 1998.

Description of amendment request: The proposed changes would revise the Seabrook Station Radiological Effluent Technical Specifications (TS) and Administrative Controls section of the Technical Specifications, as authorized by NRC Generic Letter (GL) 89–01, ''Implementation Of Programmatic Controls For Radiological Effluent Technical Specifications (RETS) In The Administrative Controls Section Of The Technical Specifications And The Relocation Of Procedural Details of RETS To The Offsite Dose Calculation Manual Or To The Process Control Program.'' The proposed amendment would incorporate programmatic controls in the TSs for radioactive effluents and for environmental monitoring conforming to the applicable regulatory requirements and would relocate the existing procedural details of the current RETS to the Offsite Dose Calculation Manual (ODCM). Procedural details associated with solid radioactive wastes would be relocated to the Process Control Program (PCP).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect accident initiators or precursors and do not alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. The proposed changes do not alter or prevent the ability of structures, systems, or components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details relative to radiological effluents.

Incorporation of programmatic controls for RETS in TSs will assure that the applicable regulatory requirements pertaining to the control of radioactive effluents will continue to be maintained. Since there are no changes to previous accident analyses, the radiological consequences associated with these analyses remain unchanged, therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes do not alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. The proposed changes have no impact on component or system interactions. The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details relative to radiological effluents. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed changes do not involve a significant reduction in a margin of safety.

There is no impact on equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The proposed changes are administrative in nature and do not change the level of programmatic controls and procedural details relative to radiological effluents. A comparable level of administrative control will continue to be applied to those design conditions and associated surveillances being relocated to the ODCM or PCP. Therefore, the proposed changes do not involve a significant reduction in any 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: Exeter Public Library, Founders Park, Exeter, NH 03833.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Project Director: Cecil O. Thomas.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: March 23, 1998.

Description of amendment request: The proposed change would revise the Seabrook Station Technical Specifications (TSs) to add a new TS 3.0.5 that would provide an exception to TSs 3.0.1 and 3.0.2 to allow the performance of required testing to demonstrate the operability of the equipment being returned to service or the operability of other equipment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The design basis accidents are not affected by the proposed administrative changes.

Specification 3.0.5 provides the administrative controls to ensure the time the equipment is returned to service in conflict with the requirements of the ACTIONS is limited to the time absolutely necessary to perform the allowed required testing. Specification 3.0.5 was incorporated in NUREG–1431, ''Standard Technical Specifications—Westinghouse Plants,'' (as modified by approved Technical Specification Task Force (TSTF) generic change Traveler TSTF–165), to address these, and other similar situations, that conflict with the requirements with the ACTIONS when equipment is returned to service. Specification 3.0.5 does not provide time to perform other preventative or corrective maintenance.

Inclusion of Specification 3.0.5 into the Seabrook Station Technical Specifications will provide operational flexibility with the restrictive compliance requirements of the other Applicability Specifications (3.0.1 and 3.0.2) and allow the performance of post-maintenance/surveillance activities to facilitate returning equipment to service or to allow other equipment to be tested. Therefore, inclusion of Specification 3.0.5 into the Seabrook Station Technical Specifications enhances plant safety by minimizing the potential for plant trip and/or transients. A qualitative risk assessment concerning returning components to service for post-maintenance testing was performed and concluded that the configurations allowed by Specification 3.0.5 have a negligible effect on the Seabrook Station risk profile. The components involved will have either completed calibration or maintenance, and can reasonably be expected to be able to perform their required safety function when returned to service for testing purposes. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes do not introduce new features or modify plant structures, systems and components or procedures that could possibly affect station operations under normal or abnormal conditions, thus, the potential for an unanalyzed accident is not created. The proposed administrative changes have no adverse affect on the safety limits or design basis accidents. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed changes do not involve a significant reduction in a margin of safety.

There are no changes being made to the Technical Specification safety limits or safety system settings that would adversely affect plant safety. The changes do not affect the operation of structures, systems or components (SSCs) nor do they introduce administrative changes to plant procedures that could affect operator response during normal, abnormal or emergency situations. Inclusion of Specification 3.0.5 into the Seabrook Station Technical Specifications enhances plant safety by minimizing the potential for plant trip and/or transients by allowing equipment to be returned to service. A qualitative risk assessment concerning the return of components to service for post-maintenance testing was performed and concluded that the configurations allowed by Specification 3.0.5 have a negligible effect on the Seabrook Station risk profile. The components involved will have either completed calibration or maintenance, and can reasonably be expected to be able to perform their required safety function when returned to service for testing purposes. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 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: Exeter Public Library, Founders Park, Exeter, NH 03833.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Project Director: Cecil O. Thomas.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: March 27, 1998.

Description of amendment request: The proposed change would revise Technical Specification (TS) 3.7.6, ''Control Room Emergency Makeup Air and Filtration (CREMAFS).'' The proposed change would modify the existing required action when both trains of CREMAFS are inoperable in Modes 5 and 6 by eliminating the restriction of suspending positive reactivity changes.

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 have no impact on the probability or consequences of an accident previously evaluated in the UFSAR. The control room ventilation systems are support systems which have a role in the detection and mitigation of accidents but do not contribute to the initiation of any accident previously evaluated. The removal of the positive reactivity addition restriction in Mode 5 and 6 has no impact on the course of any accidents previously evaluated. There are no presently evaluated positive reactivity or boron dilution accidents that credit the CREMAFS to mitigate its consequences or provide radiological protection. The positive reactivity restriction is overly restrictive in that it does not allow cooldown below 200° F when Mode 5 is entered as a result of both trains of CREMAFS being inoperable nor does it allow Reactor Coolant System temperature to vary.

The restriction is also redundant to Technical Specification 3.1.1.2 ''Reactivity Control Systems Shutdown Margin-T_{avg} less than or equal to 200° F'' in Mode 5 and Technical Specification 3.9.1 ''Refueling Operations Boron Concentration'' in Mode 6. Technical Specification 3.1.1.2 action, with shutdown margin less than the limit specified in the Core Operating Limits Report or with the Reactor Coolant System boron concentration less than 2000 ppm boron, requires immediate and continued boration until the restoration of the required shutdown margin or boron concentration. Similarly, Technical Specification 3.9.1 actions require suspension of core alterations or positive reactivity changes in addition to immediate and continued boration until the restoration of the required shutdown margin (K_{eff}) or boron concentration while in Mode 6. Sufficient shutdown margin ensures that (1) the reactor can be made subcritical from all operating conditions, (2) the reactivity transients associated with the postulated accident conditions are controllable within acceptable limits and (3) the reactor will be maintained sufficiently subcritical to preclude inadvertent criticality in the shutdown condition. The above referenced reactivity control system specifications provide the necessary protection for postulated reactivity addition accident conditions. Therefore, modifying the Technical Specification action that requires the suspension of positive reactivity changes and core alterations with both trains of the CREMAFS inoperable does not involve a significant increase in the 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 previously analyzed.

The proposed change that removes the positive reactivity addition restriction in Mode 5 and 6 does not create the possibility of a new accident nor does it create the possibility of a different kind of accident previously evaluated. There are no presently evaluated positive reactivity or boron dilution accidents that credit the CREMAFS to mitigate its consequences or provide radiological protection. The addition of positive reactivity during the above described situation is overly restrictive and furthermore redundant to Technical Specification 3.1.1.2 ''Reactivity Control Systems Shutdown Margin-T_{avg} less than or equal to 200° F'' in Mode 5 and Technical Specification 3.9.1 ''Refueling Operations Boron Concentration'' in Mode 6. The above referenced reactivity control system specifications provide the necessary protection for postulated reactivity addition accident conditions. Therefore, modifying the Technical Specification action that requires the suspension of positive

reactivity changes and core alterations with both trains of the CREMAFS inoperable does not create the possibility of a new or different accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The changes being proposed do not revise equipment design or operation nor do they make changes to Technical Specification required safety limits or safety system settings. In addition, they do not alter the environmental conditions which are to be maintained in the control room during normal operation and following an accident and they do not revise the accident analyses. 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 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: Exeter Public Library, Founders Park, Exeter, NH 03833.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Project Director: Cecil O. Thomas.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: April 3, 1998.

Description of amendment request: The proposed change would revise the Seabrook Station Technical Specifications (TSs) with administrative changes to support phased implementation of 24-month fuel cycle surveillance interval extensions. Specifically, the proposed change would: (1) provide wording changes in the Bases Section of TS 4.0.2 necessary to support 24-month surveillance interval extensions, (2) revise TS 4.0.5.b to provide revised terminology for inservice inspection and testing activities and their associated frequencies, (3) revise TS Table 1.1 to clarify current and future refueling intervals and their associated surveillance requirements and frequencies, and (4) delete the ''during shutdown'' restriction from the performance requirements of certain surveillance requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The design basis accidents are not affected by the proposed editorial and administrative changes. The proposed changes do not change the level of programmatic controls or the procedural details currently in place. Furthermore, these changes have no adverse affect to the safe operation of the station. Performance of certain maintenance and testing activities during conditions or modes other than shutdown will be evaluated by North Atlantic to ensure proper regard to their effect on safe operation of the plant is given prior to conduct of a particular surveillance, or portion thereof. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes do not introduce new features or modify plant structures, systems and components or procedures that could possibly affect station operations under normal or abnormal conditions, thus, the potential for an unanalyzed accident is not created. Performance of maintenance and testing activities on-line, as well as shutdown, are controlled by North Atlantic's procedures and policies to perform reviews and assessments of these activities to determine the affect on safe operation of the facility. The proposed editorial and administrative changes have no adverse affect on the safety limits or design basis accidents. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. The proposed changes do not involve a significant reduction in a margin of safety.

There are no changes being made to the Technical Specification safety limits or safety system settings that would adversely affect plant safety. The changes do not affect the operation of structures, systems or components nor do they introduce administrative changes to plant procedures that could affect operator response during normal, abnormal or emergency situations. Performance of certain maintenance and testing activities during conditions or modes other than shutdown will be evaluated by North Atlantic to ensure proper regard to their effect on safe operation of the plant is given prior to conduct of a particular surveillance, or portion thereof. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 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: Exeter Public Library, Founders Park, Exeter, NH 03833.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Project Director: Cecil O. Thomas.

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: April 1, 1998.

Description of amendment request: The proposed revision to the Millstone Unit 3 licensing basis would add a new sump pump subsystem to address groundwater inleakage through the containment basemat.

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 10 CFR 50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The bases for this conclusion is that the three criteria of 10 CFR 50.92(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 consequences of an accident previously evaluated.

The current FSAR [Final Safety Analysis Report] credits the waterproof membrane for assuring that groundwater inleakage is not significant and would have no impact on safety related structures and components. However, degradation of the waterproof membrane has been detected, and it is now concluded that groundwater inleakage can be significant in that it could affect the operability of the RSS [recirculation spray system] pumps. The original plant design had only nonsafety-related RSS sump pumps available for pumping the groundwater from the RSS sumps. These pumps are not powered from the emergency busses and would not be accessible during a design basis LOCA [loss-of-coolant accident].

Thus, it is assumed that they would not be available to mitigate a design basis accident. Two independent safety-related air-driven sump pumps have been installed to eliminate the potential for groundwater inleakage that would affect the RSS pumps.

Air-driven sump pumps have been installed with the air supply line routed to a connection outside the ESF [engineered safety features] building. This allows the installation of an air compressor in an area that is accessible during a design basis accident such as a LOCA. Two air compressors have been staged in designated locations, and will be maintained and

periodically tested to ensure their availability. Periodic testing of the sump pumps will also be performed. The surveillance requirements have been incorporated into the Technical Requirements Manual.

EOP [Emergency Operating Procedure] 35–ES1.3 has been modified to add a step to install the compressors and start the sump pumps. It is estimated that these sump pumps would be needed approximately ten hours after a design basis accident. Thus, there is sufficient time for the operators to perform this action. Since sufficient time is available, the action has been incorporated into procedures and the environmental conditions allow access to the area, it is concluded that credit for operator action can be taken.

Thus, the new system is single failure proof and meets the requirements of Standard Review Plan 3.4.1 which stated the following:

''If safety-related structures are protected from below-grade groundwater seepage by means of a permanent dewatering system, then the system should be designed as a safety-related system and meet the single failure proof criterion.''

This provides assurance that the RSS pumps and other safety-related structures and components will perform the required safety function as assumed in the accident analysis.

The current nonsafety-related RSS sump pump system will continue to provide protection from groundwater inleakage during normal operation. Thus, there is no impact on the probability of occurrence of a transient because of equipment or structural failure due to groundwater inleakage. In addition, the new safety-related RSS sump pump system provides additional assurance that groundwater inleakage would not affect structures or equipment during an extended loss of offsite power or a design basis accident. Thus, it is concluded that there is no impact on the probability of occurrence of any previously evaluated accident.

The change results in the use of the new air-driven sump pumps to remove groundwater in-leakage from the RSS cubicles. To preclude the possibility for radiological contamination of the groundwater, all sources of liquid radiological contamination to the sumps have been eliminated. The RSS cubicle floor drains leading to Sumps 7A/7B have been plugged. Drains from equipment determined *not* to be a potential source of radiological contamination continue to drain to Sumps 7A/7B (sources include CCP [component cooling water] and Service Water relief valves) and are covered with splash guards to prevent the entrance of contaminated spray. The Hydrogen Recombiner area floor drains and the drain from the PASS [post accident sampling system] sample sink, all of which are nonsafety-related, have been isolated from the indirect waste receptor which drains to Sump 7B. Sumps 7A and 7B have been cleaned and the existing nonsafety-related sump pumps replaced to remove any existing residual contamination. The nonsafety-related pumps (3DAS–P8A/B) discharge to ESF Building sump 3DAS–SUMP 10. To preclude any potential siphoning from the potentially contaminated Sump 10 back to Sumps 7A/7B, the lines of the existing nonsafety-related pumps have been shortened to discharge above the water level in Sump 10.

The walls of Sumps 7A/7B have been extended to protect from a Limited Passive Failure and Pipe Break in the RSS cubicles. The expected flooding height is 6.6 inches [ ]. The sump cubicle height was extended to 3 ft. above the cubicle floor, well above this height. The sumps are covered with a vented hood to protect from pipe break spray and miscellaneous overhead leaks to further assure the sumps remain isolated from potentially contaminated RSS system fluids.

The existing SLCRS [supplementary leak collection and release system] boundary has been extended to the isolation valves located outside of the ESF building. Additionally, when the sump level is reduced while using the air driven pump, the pumps are designed to prevent air from being discharged through the pump discharge outside of the ESF building.

Thus, use of the new sump pumps would not affect the offsite doses following a design basis accident.

Therefore, the proposed revision 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 current nonsafety-related RSS sump pump system will continue to provide protection from groundwater inleakage during normal operation. This will continue to provide assurance there is no potential for a transient because of equipment or structural failure due to groundwater inleakage. In addition, the new safety-related RSS sump pump system provides additional assurance that groundwater inleakage would not affect structures or equipment during an extended loss of offsite power or a design basis accident.

Therefore, the proposed revision 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.

The current FSAR credits the waterproof membrane for assuring that groundwater inleakage is not significant and would have no impact on safety related structures and components. However, degradation of the waterproof membrane has been detected and it is now concluded that groundwater inleakage can be significant in that it could affect the operability of the RSS pumps. Original design had only nonsafety-related RSS sump pumps available for pumping the groundwater from the RSS sumps. These pumps are not powered from the emergency busses and would not be accessible during a design basis LOCA. Thus, it is assumed that they would not be available to mitigate a design basis accident. Two independent safety-related air-driven sump pumps have been installed to eliminate the potential for groundwater inleakage that would affect the RSS pumps. The new system is single failure proof and meets the requirements of Standard Review Plan 3.4.1.

Use of the new system requires operator action to install pre-staged air compressors to provide power for the new air-driven sump pumps. It is estimated that these sump pumps would be needed approximately ten hours after a design basis accident. Thus, there is sufficient time for the operators to perform this action. Since sufficient time is available, the action has been incorporated into procedures and the environmental conditions allow access to the area, it is concluded that credit for operator action can be taken.

With credit for the new single failure proof air-driven sump pumps and operator action to install pre-staged compressors to provide power for the pumps, the new subsystem provides the required assurance that the RSS pumps will not be affected by groundwater inleakage. Thus, it is concluded that the RSS pumps would be operable for long term accident mitigation and there is no impact on the margin of safety as defined in the basis of the Emergency Core Cooling Technical Specifications or any other Technical Specification.

Therefore, the proposed revision does not involve a significant reduction in a 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.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: December 23, 1997.

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant, Unit Nos. 1 and 2 to revise Technical Specification (TS) 3/

4.7.11, Table 3.7–1, ''Maximum Allowable Power Range Neutron Flux High Setpoint With Inoperable Steam Line Safety Valves.'' The power range (PR) neutron flux high setpoints would be changed based on revised calculational methodologies for 1, 2, or 3 inoperable MSSVs per steam generator (SG). The proposed TS change would lower the PR neutron flux high setpoints when 2 or 3 MSSVs are inoperable per loop such that the maximum power level allowed would be within the heat removing capability of the remaining operable MSSVs. Although the method for calculating the maximum power level allowed when one MSSV per loop is inoperable has been revised, the results have not and the limit remains the same. The associated Bases would also be revised.

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 reduction in the power range (PR) neutron flux high setpoint Technical Specification (TS) values does not initiate an accident. Technician adjustments to lower the PR neutron flux high setpoints could cause a reactor trip (RT). However, this action is already a TS requirement. Thus, reducing the TS setpoint values from their current values will not change the requirement for a technician to adjust the setpoints downward when main steam safety valves (MSSVs) become inoperable, and therefore, will not increase the probability of a RT.

The reduction of the setpoints assures that the consequences of an accident when the MSSVs are inoperable are not affected by assuring that the MSSVs will continue to prevent overpressure of the main steam leads and steam generators (SGs) and remove adequate heat for the reactor coolant system.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Reduction of the PR neutron flux high setpoints does not change the method by which any safety-related system performs the function.

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 reduction in the PR neutron flux high setpoints for inoperable MSSVs, the MSSVs will still prevent SG pressure from exceeding 110 percent of SG design pressure in accordance with the ASME code. The change is conservative. The conclusions for the Final Safety Analysis Report Update accident analyses are unaffected by the change, remain valid, and provide margin.

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 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room Location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorney for Licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: William H. Bateman.

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: February 6, 1998.

Description of amendment request: The proposed changes would revise the Reactor Protection System (RPS) Normal Supply Electrical Protection Assembly (EPA) Undervoltage Trip setpoint to reflect a reanalysis of the most limiting applied load minimum voltage requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed setpoint change evaluated in Section III does not involve any physical changes to the plant, does not alter the way these systems function, and will not degrade the performance of the plant safety systems. The proposed instrument setpoint changes ensures that plant safety limits are not exceeded for the most limiting voltage requirements. The type of testing and the corrective actions required if the subject surveillances fail remains the same. The proposed changes do not adversely affect the reliability of these systems or affect the ability of the systems to meet their design objectives. A historical review of surveillance test results supports these conclusions.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed setpoint change evaluated in Section III does not modify the design or operation of the plant, therefore, no new failure modes are introduced. The proposed instrument setpoint change ensures that plant safety limits are not exceeded for the most limiting voltage requirements. No changes are proposed to the type and method of testing performed. A historical review of surveillance test results supports these conclusions.

3. Involve a significant reduction in a margin of safety.

The proposed setpoint change evaluated in Section III results in minimal impact on system reliability in the interval between surveillance tests. This is based on the redundant design of the evaluated systems. A review of past surveillance history has shown no evidence of failures which would significantly impact the reliability of these systems. Operation of the plant remains unchanged by this proposed setpoint change. The assumptions in the Plant Licensing Basis are not adversely impacted. Therefore, the proposed changes do not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: 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, Director.

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: February 6, 1998.

Description of amendment request: The proposed changes would allow reactor coolant system pressure tests to be conducted in Cold Shutdown Mode. Primary containment integrity is not required in this mode, facilitating containment access for inspections. The proposed changes also allow some outage activities on other systems to continue during the pressure testing. The licensee claims the proposed changes are consistent with the Boiling Water Reactor Standard Technical Specifications given in NUREG–1433, Revision 1.

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. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of a leak in the reactor coolant pressure boundary during reactor coolant system pressure testing is not increased by considering the reactor to be in Cold Shutdown. Since the pressure tests are performed nearly water solid, at low decay heat values, and near Cold Shutdown conditions, the stored energy in the reactor core will be low. Under these conditions, the potential for failed fuel and a subsequent increase in coolant activity is minimized. In addition, Special Operations LCO [Limiting Condition for Operation] 3.12.A requires supporting LCOs for ECCS [emergency core cooling system]-Cold Condition, Standby Gas Treatment, Secondary Containment isolation and Standby Gas Treatment initiation instrumentation, and Auxiliary Electrical Systems to be met to ensure secondary containment integrity is maintained and capable of handling any airborne radioactivity or steam leaks that could occur during the performance of hydrostatic or leak testing. A listing of secondary containment isolation valves required to maintain Secondary Containment Integrity is included in plant controlled procedures. The required pressure testing conditions provide adequate assurance that the consequences of a steam leak will be conservatively bounded by the consequences of the postulated main steam line break outside of primary containment. In the event of a large primary system leak, the reactor vessel would rapidly depressurize, allowing the low pressure core cooling systems to operate. The capability of these systems would be adequate to keep the core flooded under this low decay heat load condition. Small system leaks would be detected by leakage inspections before significant inventory loss occurred. Therefore, the consequences of an accident previously evaluated are not significantly increased.

2. Create the possibility of a new or different kind of accident from those previously evaluated.

The proposed changes do not introduce any new accident initiators or failure mechanisms since the changes do not involve any changes to structures, systems, or components, do not involve any change to the operation of systems, and alter procedures only to the extent that the 212° F limit may be exceeded during reactor coolant system pressure testing with certain systems inoperable. There are no alterations to plant systems designed to mitigate the consequences of accidents. The only difference is that a different subset of plant systems would be utilized for accident mitigation than those utilized during the Hot Shutdown Mode. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from those previously evaluated.

3. Involve a significant reduction in the margin of safety.

Since pressure tests are performed nearly water solid, at low decay heat values, and near Cold Shutdown conditions, the stored energy in the reactor core will be low. Under these conditions, the potential for failed fuel and a subsequent increase in coolant activity is minimized. Since secondary containment integrity will be maintained, in accordance with the Special Operations LCO, the secondary containment will be capable of handling any airborne radioactivity or steam leaks that could occur during the performance of hydrostatic or leak testing. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: 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, Director.

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: February 26, 1998.

Description of amendment request: The proposed changes would change the allowed containment leakage rate to 1.5 percent per day, changes the assumed standby gas treatment system (SBGT) filter efficiency, and revises reactor coolant sampling requirements for low Iodine-131 concentrations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Authority [the licensee] has evaluated the proposed TS [technical specification] Amendment and determined that it does not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92, operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed changes do not involve a change to the design or operation of the plant. The systems affected by this proposed TS change are not assumed in any safety analyses to initiate any accident sequence. Therefore, the probability of any accident previously evaluated is not increased by this proposed TS change. The change in the allowable containment leakage rate (L_a) is consistent with the accident analyses. The assumption of only 90% SBGT filter efficiency is conservative with actual system performance and is consistent with Regulatory Guide 1.52. There is no significant change to the consequences of an accident previously evaluated because maintaining containment leakage within limits assumed in the accident analyses ensures that the dose consequences resulting from an accident are not increased. The calculated doses with the decreased SBGT system charcoal efficiency for design basis accidents are marginally increased but still meet, and are well below, the dose acceptance criteria of 10 CFR 100, the SRP [Standard Review Plan, NUREG–0800], and GDC [General Design Criterion] 19 of Appendix A to 10 CFR 50. The proposed TS changes maintain an equivalent level of reliability and availability for all affected systems. The ability of the affected systems associated with maintaining leak rate integrity to perform their intended function is unaffected by the proposed TS changes. Implementation of these changes will provide continued assurance that specified parameters associated with containment integrity will remain within acceptance limits, and as such, will not significantly increase the consequences of a previously evaluated accident. The change in the value of .007 [microcurie]/ml to .002 [microcurie]/ml in section of 4.6.C. ''Coolant Chemistry'' is a minor editorial change, is more conservative, and will correct the inconsistency between the technical specification and its basis and as such, will not significantly increase the consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed amendment changes the allowed containment leakage rate to 1.5%, changes the assumed value for SBGT system charcoal filter efficiency, and changes a specification in section of 4.6.C. ''Coolant Chemistry'' from the value of .007 [microcurie]/ml to .002 [microcurie]/ml. No new accident modes are created by clarifying the numerical value of the allowable containment leakage rate (L_a) or changing the assumed value for the SBGT system charcoal filter efficiency. No safety-related equipment or safety functions are altered, or adversely affected, as a result of these changes. The proposed changes will not introduce failure mechanisms beyond those already considered in the current plant safety analyses. Changing the allowable leakage rate, the assumed value for the efficiency of the SBGT system charcoal filter, and the specification in the bases section of 4.6.C. ''Coolant Chemistry'' does not contribute to the possibility of a new or different kind of accident or malfunction from those previously analyzed.

(3) Involve a significant reduction in the margin of safety because:

The proposed amendment changes the allowed containment leakage rate to 1.5%, changes the assumed value for SBGT system charcoal filter efficiency, and changes a specification in section of 4.6.C. ''Coolant Chemistry'' from the value of .007 [microcurie]/ml to .002 [microcurie]/ml. The design of the FitzPatrick plant is not changed. The methodology for test performance is unchanged and Type A, B and C tests will continue to be performed at [greater than or equal to] P_a. The value of L_a specified in proposed specification 6.20 is consistent with the accident analyses, therefore, the dose consequences of any analyzed accidents are not increased as a result of this change. The calculated doses as a result of the decrease in the assumed efficiency of the SBGT system charcoal filters for design basis accidents are marginally increased but still meet, and are well below, the dose acceptance criteria of 10 CFR 100, the SRP, and GDC 19 of Appendix A to 10 CFR 50. The change in the specification in section 4.6.C. ''Coolant Chemistry'' from .007 [microcurie]/ml to .002 [microcurie]/ml is a minor editorial change, is more conservative, and will correct the inconsistency between the technical specification and its basis. Therefore, the proposed changes provide continued assurance of the leak tightness of the containment and conservatively assume SBGT system charcoal filter efficiency for the purpose of dose calculations for design basis accidents without adversely affecting the public health and safety and, as such, will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: 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, Director.

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: March 30, 1998.

Description of amendment request: The proposed changes would change the interval of selected Logic System Functional Tests (LSFT) from semiannually to once per 24 months. The definition of LSFT is also revised to be consistent with the Boiling Water Reactor Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The only significant change proposed by this application involves the extension of the surveillance test interval for the LSFTs required by the TS. The other changes involve editorial, format, and clarification changes, which by their nature are of no safety significance.

Extending the LSFT interval from semiannually to once per 24 months does not involve plant physical changes, change any TS setpoints, or introduce any new mode of plant operation. Therefore, the change does not degrade the performance of any safety system assumed to function in the accident analysis, and therefore, will not increase the consequences of an accident.

Extending the LSFT interval from semiannually to 24 months results in no significant change in the logic system unavailability due to equipment failure. The reliability of safety systems subject to the LSFT are dominated by that of the mechanical components, and the logic system circuit relay coils which are subject to the more frequent functional test requirements. These factors are confirmed by the availability record of the affected safety system based on the past surveillance test history. Furthermore, the longer test intervals reduce the unavailability due to testing for the applicable safety system while the plant is operating. For these reasons, there is not a significant increase in the probability of an accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not introduce any new accident initiators or failure mechanisms since the changes do not introduce any new modes of plant operation, make any physical changes, or change any TS setpoints. The changes reduce the probability of accidents initiated by test-induced plant transients by reducing the number of times the tests must be performed.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. In several aspects, the proposed changes may actually enhance the margin of safety by reducing the potential for test-induced plant transients, reducing the unavailability due to test of the applicable safety system, and reducing any potential incremental logic system component wear. For these reasons, the 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 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, Director.

Public Service Electric & Gas Company, Docket No. 50–272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of amendment request: March 26, 1998.

Description of amendment request: The proposed amendment would revise Technical Specification 3.1.3.3, ''Rod Drop Time,'' to change the applicability from Mode 3 (hot shutdown) to Modes 1 and 2 (startup and power operation).

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 to the Technical Specification Mode applicability provides consistency between the testing requirements as stated in the surveillance requirement of the Technical Specifications and intended by the initial conditions specified in the limiting condition for operations. The proposed change does not introduce any physical changes to the plant or equipment already in place in the plant, the proposed change ensures that testing of the rod drop times is performed in a manner that is consistent with the Technical Specifications and the assumptions made in the Salem accident analysis.

Therefore, the proposed amendment does not increase the probability or consequences of any 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 introduce a new component or changes the manner in which the facility is operated, maintained or tested. Thus no new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed change to the facility.

Therefore the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes does not involve a significant reduction in a margin of safety.

As stated in question number 2, the proposed change does not introduce a new component or changes the manner in which the facility is operated. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety. The Technical Specifications remain the same, as the input, or initial conditions, of the safety analysis have not changed. Therefore, there is no reduction in the margin to 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: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: Robert A. Capra.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2, and 3, Limestone County, Alabama

Date of amendment request: March 3, 1998.

Description of amendment request: The proposed amendment would change the Browns Ferry Nuclear Plant Unit 2 and Unit 3 Technical Specification Figure 3.6–1 which contains the reactor vessel pressure-temperature (PT) limits. The change would extend the validity of the curves to 32 effective full-power years (EFPY). The current PT curves are effective up to 12 EFPY. In addition to revised PT curves, several changes to the notes applicable to the curves are also proposed to be consistent with the supporting analysis.

The proposed PT curves also would support a planned 5% power increase for each unit. Approval of the proposed power increase is pending and is the subject of a separate action before the Commission.

The Tennessee Valley Authority has submitted the proposed change in current technical specification (CTS) format and in the improved standard technical specification (ISTS) format. Conversion to the ISTS format is pending.

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. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes merely adjust the reference temperature for the limiting reactor vessel beltline material to account for accumulated and projected irradiation effects. The adjusted reference temperature analyses were performed in accordance with the requirements of Appendix G of 10 CFR part 50 and the guidance contained in Regulatory Guide 1.99, Revision 2. The changes do not otherwise affect the manner by which the facility is operated and do not change any facility design feature or equipment. Since the protection previously provided will continue to be provided and there is no change to the facility or operating procedures, there is no effect upon the probability or consequences of any accident previously analyzed.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because no new failure modes are introduced. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the function of any facility structure, system or component, or affect the manner by which the facility is operated.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes assure that the reactor vessel PT limits will be valid for operation up to 32 EFPY and that the safety margins specified in Appendix G of 10 CFR part 50 will be maintained.

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: Athens Public Library, 405 E. South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, ET 10H 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: February 13, 1998 (TS 97–03).

Brief description of amendments: The proposed amendments would change the Sequoyah (SQN) Technical Specification (TS) by adding a new limiting condition for operation (LCO) that addresses requirements for the main feedwater isolation, regulating, and bypass valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has concluded that operation of SQN Units 1 and 2 in accordance with the proposed change to the TSs [or operating license(s)], does not involve a significant hazards consideration. TVA's conclusion is based on its evaluation, in accordance with 10 CFR 50.91(a)(1), of the three standards set forth in 10 CFR 50.92(c).

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

TVA will not change plant components, functions, or operating practices by implementing a change that adds a TS requirement for the main feedwater isolation, regulating, and bypass valves. TVA will maintain and verify operability of these valves through the proposed surveillance and actions to ensure the accident mitigation functions are available when applicable. These valves are not considered to be the source of an accident and the conservative addition of a requirement to maintain their safety function will not increase the probability of an accident. TVA will not increase the consequences of an accident by implementing this change because this addition ensures that the isolation of main feedwater is available to mitigate the consequences of an accident.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

TVA will not alter plant equipment or operating activities in the implementation of the proposed TS change. The valves used for the isolation of main feedwater are not a potential source for accidents and are designed for accident mitigation purposes. Therefore, TVA will not create the possibility of an accident of a different kind.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

TVA maintains and ensures the availability of the isolation function for the main feedwater system as assumed in the SQN accident analysis. TVA proposes this TS change to further assure this capability and to meet the requirements of 10 CFR 50.36. TVA will not change the methods of operating the plant or setpoints associated with safety-related equipment in the implementation of this request. Therefore, TVA will not reduce the margin of safety by implementing a TS LCO for the isolation functions of the main feedwater system.

The NRC 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: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: February 13, 1998 (TS 97–07).

Brief description of amendments: The proposed amendments would change the Sequoyah (SQN) Technical Specification (TS) requirements for main steam isolation valves (MSIVs) to incorporate MSIV requirements consistent with the Westinghouse Standard TS (NUREG–1431) and would add testing requirements for the MSIVs that ensure the valves close on an actual or simulated automatic actuation signal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has concluded that operation of SQN Units 1 and 2, in accordance with the proposed change to the TSs, does not involve a significant hazards consideration. TVA's conclusion is based on its evaluation, in accordance with 10 CFR 50.91(a)(1), of the three standards set forth in 10 CFR 50.92(c).

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes provide enhancements and clarifications of the requirements for inoperable MSIVs and periodic testing provisions. These changes do not alter the safety functions of the MSIVs or the operating practices that govern their application to plant conditions. The actions for Modes 2 and 3 are revised such that a longer time could occur before an inoperable MSIV is closed or the unit is placed in a mode that does not apply. However, this increase will not significantly impact the ability of the valves to mitigate an accident or affect the accident generation possibility. This is based on the low probability of an accident occurring that would require closure of the MSIVs and reasonable time intervals to transition to lower modes based on operating experience to reach the required modes in an orderly manner without challenging unit systems.

The MSIVs provide accident mitigation functions but do not contribute to accident generation. The MSIV functions have not been altered by the proposed changes. Therefore, the proposed changes will not increase the probability of a previously evaluated accident. Based on the above discussions, the proposed changes will not significantly increase the consequences of an accident and in some instances they will enhance the safety functions.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The primary function of the MSIVs is to support accident mitigation and are not a significant contributor to events that could generate accidents. The main impact that could result from an inoperable MSIV is an inadvertent closure that results in a unit trip. This event is bounded by the accidents that are currently evaluated for SQN. Since the proposed change does not alter MSIV functions and the new surveillance will be performed in modes that will not challenge unit systems, the possibility of a new or different kind of accident is not created.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed changes clarify and enhance the current SQN requirements for the MSIVs with one exception. This exception is the completion time added to the Modes 2 and 3 action that could be a negative impact to the margin of safety. This change could allow the MSIV safety function to be inoperable for a longer period of time. The overall effect of the proposed changes considering the additional end-device testing, periodic verification of inoperable MSIV closure, and removal of the action to allow MSIV closure in Mode 1, is considered a positive impact to the margin of safety. Therefore, there is not a significant reduction in the margin of safety.

The NRC 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: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: March 25, 1998.

Brief description of amendments: The amendments revise the Technical Specifications (TS) Sections 6.1.1; 6.2.1.b; 6.5.1.1; 6.5.1.6. a, d, h, and m; 6.5.1.7.c; 6.5.1.8; 6.14.1.2; 6.15.b; 6.2.3.5; 6.5.1.2; 6.5.1.7.a for Unit 1 and 6.1.1; 6.2.1.b; 6.5.1.1; 6.5.1.6. a, d, h, and m; 6.5.1.7.c; 6.5.1.8; 6.13.b; 6.14.b; 6.2.3.5; 6.5.1.2; and 6.5.1.7.a for Unit 2, changing the title of Station Manager to Site Vice President, and the titles of the Assistant Station Managers to Manager-Station Operation and Maintenance and Manager-Station Safety and Licensing.

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:

Virginia Electric and Power Company has reviewed the proposed Technical Specifications changes against the criteria of 10 CFR 50.92 and has concluded that the changes do not pose a significant hazards consideration. Specifically, station operations in accordance with the proposed Technical Specifications changes will not:

a. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature. The overall responsibility for safe operation and review of plant operations is not being changed. There are no changes to the operation of any plant system or its design as a result of these changes. Therefore, neither the probability of occurrence nor the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report are increased.

b. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature. The overall responsibility for safe operation and review of plant operations is not being changed. There are no changes to the operation of any plant system or its design that could create any new modes of operation or accident precursors. Therefore, it is concluded that no new or different kind of accident or malfunction from any previously evaluated has been created.

c. The proposed changes do not result in a significant reduction in margin of safety as defined in the basis for any Technical Specifications.

The proposed changes are administrative in nature. The overall responsibility for safe operation and review is not being changed. There are no changes to the operation of any plant system or its design as a result of these changes. Safety systems are maintained operable as required by Technical Specifications. Therefore, the margin of safety is not changed.

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: The Alderman Library, Special

Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: P. T. Kuo, Acting Project Director.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: November 5, 1997.

Description of amendment request: The proposed Operating License change and changes to the technical specifications (TS) would permit the use of a temporary alternate supply line (jumper) to provide service water (SW) to the component cooling heat exchangers. The temporary jumper will permit maintenance to be performed on the existing supply line.

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:

Virginia Electric and Power Company has reviewed the proposed changes against the criteria of 10 CFR 50.92 and has concluded that the changes do not pose a significant safety hazards consideration as defined therein. The proposed Operating License and Technical Specifications and Bases changes are necessary to allow the use of a temporary, seismic, non-missile protected jumper to provide service water (SW) to the Component Cooling Heat Exchangers (CCHXs) while maintenance work is performed on the existing SW supply line to the CCHXs. Since there is only one SW supply line to the CCHXs, an alternate SW supply must be provided whenever the line is removed from service. The temporary jumper provides this function.

The use of the temporary jumper has been thoroughly evaluated, and appropriate constraints and compensatory measures (including a Contingency Action Plan) have been developed to ensure that the temporary jumper is reliable, safe, and suitable for its intended purpose. A complete and immediate loss of SW supply to the operating CCHXs is not considered credible, given the project constraints and the unlikely probability of a generated missile. Existing station abnormal procedures already address a loss of component cooling, and the use of alternate cooling for a loss of decay heat removal, in the unlikely event that they are required. Furthermore, appropriate mitigative measures have been identified to address potential flooding concerns. The minor administrative changes merely correct a table format inconsistency and update Basis section references.

Consequently, the operation of Surry Power Station with the proposed amendment and license condition will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The SW and CC Systems will function as designed under the Unit operating constraints specified by this project (i.e., Unit 2 in operation and Unit 1 in a refueling outage), and the potential for a loss of component cooling is already addressed by Station Abnormal Procedures. Therefore, there is no increase in the probability of an accident previously evaluated. The possibility of flooding due to failure of the temporary SW supply jumper in the Turbine Building basement has been evaluated and dispositioned by the implementation of appropriate precautions and compensatory measures to preclude damage to the temporary jumper and to respond to a postulated flooding event. A flood watch will be present around-the-clock with authority and procedural guidance to isolate the jumper, if required. Furthermore, the CCHXs serve no design basis accident mitigating function. Therefore, the consequences of an accident previously evaluated are not increased.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The SW and CC Systems' design functions and basic configurations are not being altered as a result of using a temporary SW supply jumper. The temporary jumper is designed to be safety-related and seismic with all of the design attributes of the normal SW supply line, except for the automatic isolation function and complete missile protection. The design functions of the SW and CC systems are unchanged as a result of the proposed changes due to (1) required plant conditions, (2) compensatory measures, (3) a Contingency Action Plan for restoration of the normal SW supply if required, and (4) strict administrative control of the temporary SW valve to preclude flooding or to isolate non-essential SW within the design basis assumed time limits. Unit 1 will be in a plant condition which will provide adequate time to restore the normal SW supply, if required. Therefore, since the SW and CC systems will basically function as designed and will be operated in their basic configuration, the possibility of a new or different type of accident than previously evaluated in the UFSAR [Updated Final Safety Analysis Report] is not created.

3. Involve a significant reduction in a margin of safety.

The margin of safety as defined in the Technical Specifications is not reduced since an operable SW flowpath to the required number of CCHXs is provided, and Unit operating constraints, compensatory measures and contingencies will be implemented as required to ensure the integrity and the capability of the SW flowpath. The use of the temporary jumper will be limited to the time period when missile producing weather is not expected, and Unit 1 meets specified unit conditions. Therefore, the temporary SW jumper, under the imposed project constraints and compensatory measures, provides the same reliability as the normal SW supply line. Furthermore, the Probabilistic Safety Assessment for Surry Power Station has been reviewed relative to potential flooding when the temporary SW jumper is in use. It has been determined that due to the SW restoration project's compensatory and contingency measures, as well as the constraints imposed by the Maintenance Rule online risk matrix, the impact on core damage frequency due to flooding is negligible.

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: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: P. T. Kuo, Acting.

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 Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: March 6, 1998.

Description of amendment request: The proposed amendment would (1) update the Technical Specification heatup and cooldown rate curves and extend their reactor fluence limit from the current 20 effective full power years (EFPY) to a new value of 35 EFPY, (2) incorporate into Technical Specifications the use of a Pressure and Temperature Limits Report (PTLR), and (3) change the power-operated relief valves (PORVs) temperature requirement for operability.

Date of individual notice in the Federal Register: March 27, 1998 (63 FR 14972).

Expiration date of individual notice: April 27, 1998.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

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.

Commonwealth Edison Company, Docket No. 50–237, Dresden Nuclear Power Station, Unit 2, Grundy County, Illinois

Date of application for amendment: March 19, 1998, as supplemented by letters dated March 28, 1998, and April 3, 1998.

Brief description of amendment: The amendment changes the Technical Specifications (TS) by revising the Dresden, Unit 2, Minimum Critical Power Ratio (MCPR) in TS Section 2.1.B and footnotes in TS Section 5.3.A, to allow the use of Siemens Power Corporation ATRIUM–9B fuel for all operating Modes at Dresden, Unit 2, Cycle 16.

Date of issuance: April 10, 1998.

Effective date: Immediately, to be implemented within 30 days.

Amendment No.: 168.

Facility Operating License No. DPR–19: The amendment revised the TS.

Public comments requested as to proposed no significant hazards consideration: Yes (63 FR 14735 dated March 26, 1998). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by April 27, 1998, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The March 28, 1998, and April 3, 1998, letters provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1998.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

Local Public Document Room location: Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant Middlesex County, Connecticut

Date of application for amendment: Two applications, both dated May 30, 1997.

Brief description of amendment: Changes Administrative Controls Section of the Technical Specifications to implement new Certified Fuel Handler position and to implement revised management responsibilities and titles that reflect the permanently shut down status of the plant. In addition, minor typographical errors were corrected.

Date of issuance: March 27, 1998.

Effective date: Date of issuance, but to be implemented within 60 days of issuance.

Amendment No.: 192.

Operating License No. DPR–61: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 16, 1997 (62 FR 38132 and 62 FR 38133). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 27, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, CT 06457.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: March 26, 1997.

Brief description of amendment: The amendment revises the Containment Systems technical specifications (TS) to incorporate a note to allow opening an operable airlock door to perform repairs on inoperable airlock components when the other airlock door is inoperable. This amendment is in partial response to Consumers Energy's March 26, 1997, application. The Consumers Energy request also proposed revising the requirements contained in TS sections 3.6 and 4.5 to closely emulate the format and content of NUREG–1432, ''Standard Technical Specifications, Combustion Engineering Plants,'' (STS). That portion of the Consumers Energy request remains under staff review and will be addressed in a separate evaluation.

Date of issuance: April 8, 1998.

Effective date: April 8, 1998.

Amendment No.: 179.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 17, 1997 (62 FR 66136).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 8, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: January 28, 1998 (NRC–98–0008), as supplemented on March 10, 1998 (NRC–98–0036).

Brief description of amendment: The amendment revises 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.

Date of issuance: March 31, 1998.

Effective date: March 31, 1998, with full implementation within 90 days.

Amendment No.: 116.

Facility Operating License No. NPF–43. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: February 25, 1998 (63 FR 9599) The March 10, 1998, supplement requested a change in the implementation period and was not outside the scope of the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Energy Corporation (DEC), Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: December 17, 1997.

Brief description of amendments: The amendments revise Technical Specification Section 6.9.1.9 to reference updated or recently approved topical reports, which contain methodologies used to calculate cycle-specific limits contained in the Core Operating Limits Report. For several reports DEC indicated staff approval, but neglected to provide an ''A'' designation for the report number. Upon agreement by DEC, the staff has made these appropriate editorial corrections. These topical reports have all been previously approved by the staff under licensing actions separate from the current amendment request.

Date of issuance: April 8, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1—178; Unit 2—160.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 28, 1998 (63 FR 4311).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 8, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: February 9, 1998.

Brief description of amendment: The amendment approves the use of the repair roll technology (reroll) for the upper tubesheet region of the ANO–1 steam generators. The reroll technology is an alternative to the either sleeving or plugging steam generator tubes found during inservice inspections to have defects that exceed the stated repair criteria. The reroll methodology works by creating a new mechanical tube to tubesheet structural joint below the tube defect indication.

Date of issuance: April 10, 1998.

Effective date: April 10, 1998.

Amendment No.: 190.

Facility Operating License No. DPR–51: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 24, 1998 (63 FR 9268).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: April 1, 1998, as supplemented by letter dated April 8, 1998.

Brief description of amendment: The amendment allows approximately 440 steam generator tubes with confirmed volumetric indications within the upper tube sheet to remain in service during Cycle 15. The amendment revises TS 4.18.5.b to incorporate five criteria which need to be satisfied to allow steam generator tubes to remain in service during Cycle 15 with indications of outer diameter intergranular attack (ODIGA) in the upper tube sheet region of the steam generators.

Date of issuance: April 10, 1998.

Effective date: April 10, 1998.

Amendment No.: 191.

Facility Operating License No. DPR–51: The amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances and final determination of no significant hazards consideration are contained in a Safety Evaluation dated April 10, 1998.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 18, 1996, as supplemented by letter dated January 21, 1998.

Brief description of amendment: The amendment changes Technical Specification (TS) Surveillance Requirement 4.4.8.3.1.b to test the Shutdown Cooling System suction line relief valves in accordance with TS 4.0.5. Editorial changes to 4.4.8.3.1 and 4.4.8.3.1.a have also been made.

Date of issuance: April 1, 1998.

Effective date: April 1, 1998.

Amendment No.: 140.

Facility Operating License No. NPF–38: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 11, 1998 (63 FR 6985).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans

Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 24, 1997, as supplemented by letter dated January 21, 1998.

Brief description of amendment: The amendment modifies Technical Specifications (TS) 3.1.1.1, 3.1.1.2, 3.10.1 and Figure 3.1–1 by removing cycle dependent boron concentration and boration flow rate from the Action Statements and removing the ''RWSP at 1720 ppm'' curve from the figure. A change to TS Bases 3/4.1.1.1 and 3/4.1.1.2 has been included to support this change.

Date of issuance: April 8, 1998.

Effective date: April 8, 1998, to be implemented within 60 days.

Amendment No.: 141.

Facility Operating License No. NPF–38: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 18, 1997 (62 FR 33123).

The January 21, 1998, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 8, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

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: October 28, 1997, as supplemented by letter dated January 9, 1998.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to implement the containment leak rate testing provisions of 10 CFR Part 50, Appendix J, Option B.

Date of issuance: April 6, 1998.

Effective date: April 6, 1998.

Amendment No: 135.

Facility Operating License No. NPF–29: Amendment revises the TSs.

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 April 6, 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.

IES Utilities Inc, Central Iowa Power Cooperative, and Corn Belt Power Cooperative, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: February 3, 1998.

Brief description of amendment: The amendment changes the operability requirement for the Standby Liquid Control system to Run/Power Operations and Startup.

Date of issuance: March 31, 1998.

Effective date: March 31, 1998.

Amendment No.: 221.

Facility Operating License No. DPR–49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 26, 1998 (63 FR 9874).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

IES Utilities Inc, Central Iowa Power Cooperative, and Corn Belt Power Cooperative, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: October 3, 1997 as supplemented on December 10, 1997.

Brief description of amendment: The amendment revises the Operating License to allow the start of core offload as soon as 60 hours after shutdown.

Date of issuance: April 2, 1998.

Effective date: April 2, 1998.

Amendment No.: 222.

Facility Operating License No. DPR–49: Amendment revised the Operating License.

Date of initial notice in **Federal Register:** January 28, 1998 (63 FR 4314).

The December 10, 1997 submittal provided clarifying information that did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 2, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: October 20, 1997, as supplemented February 10, and March 10, 1998.

Brief description of amendment: The amendment replaces in their entirety the existing Technical Specifications incorporated in Facility Operating License No. DPR–36 as Appendix A. Maine Yankee developed the revised Technical Specifications, titled Permanently Defueled Technical Specifications, to reflect the permanently shutdown and defueled status of the plant. Changes were made to the definitions, limiting conditions for operation, surveillance, and administrative control sections.

Date of issuance: March 30, 1998.

Effective date: March 30, 1998.

Amendment No.: 161.

Facility Operating License No. DPR–36: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 3, 1997 (62 FR 63978). The February 10, and March 10, 1998, submittals added additional programs to the Section 5.5 Procedures and Section 5.6 Programs and Manuals did not change the proposed no significant hazards determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 30, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: October 31, 1997, as supplemented by letter dated February 3, 1998.

Brief description of amendment: This amendment changes Technical Specifications to support design changes to upgrade the analog-based average power range monitor system with General Electric's Nuclear Measurement Analysis and Control Power Range Neutron Monitor System, including an Oscillation Power Range Monitor function.

Date of issuance: March 31, 1998.

Effective date: As of the date of issuance to be implemented upon

completion and acceptance of design modifications resulting from the installation of the Nuclear Measurement Analysis and Control Power Range Neutron Monitor System.

Amendment No.: 80.

Facility Operating License No. NPF–69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: December 31, 1997 (62 FR 68310).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: September 26, 1997, as supplemented by letter dated March 12, 1998.

Description of amendment request: The amendment revises Technical Specification 3.7.6, ''Control Room Emergency Makeup Air and Filtration,'' and its associated Bases to separate the requirements for the control room air conditioning subsystem from the requirements for control room makeup air and filtration subsystem based on system function. The amendment also increases the allowed outage time for the Control Room Air Conditioning Subsystem.

Date of issuance: April 9, 1998.

Effective date: As of the date of issuance, with full implementation within 60 days.

Amendment No.: 56.

Facility Operating License No. NPF–86: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 22, 1997 (62 FR 54874). The March 12, 1998, supplemental letter did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 9, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: December 1, 1997.

Brief description of amendment: The amendment changes the Technical Specifications (TSs) by adding a 2.0 second plus or minus 0.1 second time delay to the 4.16 kV Emergency Bus Undervoltage Loss of Power, Level One, trip setpoint and allowable values in TS Table 3.3–4.

Date of issuance: April 1, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 214.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 14,1998 (63 FR 2280).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room locations: 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.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: November 11, 1997.

Brief description of amendment: The amendment allows NNECO to credit soluble boron for maintaining k-effective at less than or equal to 0.95 within the spent fuel pool rack matrix following a seismic event of a magnitude greater than or equal to an operating basis earthquake.

Date of issuance: April 9, 1998.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 158.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 3, 1997 (62 FR 63980).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 9, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room locations: 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.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of application for amendment: December 9, 1996, as supplemented on June 12, 1997, and March 13, 1998.

Brief description of amendment: This amendment revised the Technical Specification to incorporate the requirements of appendix I of 10 CFR Part 50, into the Radiological Effluent Technical Specification (RETS) and to relocate the controls and limitations on RETS and radiological environmental monitoring (Currently in the Technical Specifications) to the Offsite Dose Calculation Manual and the Process Control Program. The amendment also revised the Technical Specifications to implement Generic Letter 89–10 (GL 89–10) and to incorporate the requirements of the revised 10 CFR Part 20.

Date of issuance: April 8, 1998.

Effective date: As of the date of issuance and shall be implemented no later than 30 days from the date of issuance.

Amendment No.: 32.

Facility Operating License No. DPR–7: Amendment revised the TS.

Date of initial notice in **Federal Register:** April 24, 1996 (61 FR 18174).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 8, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Humboldt County Library, 131 3rd Street, Eureka, California 95501.

Pennsylvania Power and Light Company, Docket No. 50–387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: August 26, 1997, as supplemented by letters dated December 4, 1997, February 2, March 19, and April 2, 1998.

Brief description of amendment: This amendment changes the Susquehanna Unit 1 Technical Specifications to support the use of the Siemens Power Corporation ATRIUM–10 fuel design in the upcoming Cycle 11 refueling outage.

Date of issuance: April 6, 1998.

Effective date: As of date of issuance, to be implemented within 30 days.

Amendment No.: 174.

Facility Operating License No. NPF–14: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 31, 1997 (62 FR 68314).

The December 4, 1997, February 2, March 19, and April 2, 1998, submittals provided clarifying information that did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 6, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: September 2, 1997.

Brief description of amendment: These amendments revise LGS, Units 1 and 2, TS Section 4.0.5, and Bases Sections B 4.0.5 and B 3/4.4.8 regarding the surveillance requirements associated with Inservice Testing and Inservice Inspection Programs of the American Society of Mechanical Engineers Code Class 1, 2, and 3 components.

Date of issuance: March 31, 1998.

Effective date: March 31, 1998.

Amendment Nos.: 125 and 89.

Facility Operating License No. NPF–39: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 11, 1998 (63 FR 6990).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

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: July 23, 1997, as supplemented by letters dated September 30, October 27, and December 18, 1997, and February 12, 1998.

Brief Description of amendments: The amendments revise the Pressure-Temperature Limit Heatup, Cooldown, and Hydrostatic Testing curves for Farley Units 1 and 2 and relocate the curves from the Technical Specifications to a Pressure and Temperature Limits Report for each unit.

Date of issuance: April 9, 1998.

Effective date: As of the date of issuance to be implemented for Unit 1 prior to entering Mode 4 for Cycle 16 refueling outage (fall 1998); for Unit 2 prior to entering Mode 4 for Cycle 13 refueling outage (spring 1998).

Amendment Nos.: Unit 1–136; Unit 2–128.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: September 10, 1997 (62 FR 47699); January 14, 1998 (63 FR 2281); February 23, 1998 (63 FR 9020).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 9, 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.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: October 24, 1997 (TXX–97228).

Brief description of amendments: The amendments revise core safety limit curves and Overtemperature N–16 reactor trip setpoints based on analyses of the core configuration and expected operation for CPSES Unit 1, Cycle 7. The changes apply equally to CPSES Units 1 and 2 licenses since the Technical Specifications are combined.

Date of issuance: March 27, 1998.

Effective date: March 27, 1998, to be implemented within 30 days.

Amendment Nos.: Unit 1—Amendment No. 57; Unit 2—Amendment No. 43.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications/operating licenses.

Date of initial notice in **Federal Register**: November 19, 1997 (62 FR 61847).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 27, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: August 8, 1997, as supplemented by letter dated January 16, 1998.

Brief description of amendment: The amendment revises the Callaway Plant, Unit 1 Technical Specification Table 3.3–3 Functional Units 4.b.2 and 5.a.2 to make the number of main steam and feedwater isolation system (MSFIS) channels consistent with the solid state protection system, adds a clarifying note and changes Table 4.3–2 Functional Units 4.b.2 and 5.a.2 slave relay quarterly test to a monthly staggered actuation logic test.

Date of issuance: March 25, 1998.

Effective date: March 25, 1998, to be implemented within 30 days from the date of issuance.

Amendment No.: 123.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 17, 1997 (62 FR 66143) The January 16, 1998, supplemental letter provided additional clarifying information that did not change the staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 25, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Missouri-Columbia, Elmer Ellis Library, Columbia, Missouri 65201–5149.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: October 17, 1997, as supplemented by letters dated March 3, 1998, and March 17, 1998.

Brief description of amendment: The amendment revises the technical specifications to modify the heatup and cooldown curves and the maximum allowable power operated relief valve setpoint curves for cold overpressure protection.

Date of issuance: April 2, 1998.

Effective date: April 2, 1998, to be implemented within 30 days from the date of issuance.

Amendment No.: 124.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 14, 1998 (63 FR 2282).

The March 3, 1998, and March 17, 1998, supplemental letters provided

additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 2, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Missouri-Columbia, Elmer Ellis Library, Columbia, Missouri 65201–5149.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: October 11, 1996.

Brief description of amendment: The amendment revises the Technical Specifications regarding the amount of foam concentrate required to support operability of the reactor recirculation motor generator set foam fire suppression system.

Date of Issuance: March 31, 1998.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 156.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 22, 1997 (62 FR 54877).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 31, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: June 9, 1997.

Brief description of amendment: The amendment revises Technical Specification Section 6.0 to add and revise reference to NRC-approved methodologies which will be used to validate or generate the cycle-specific thermal hydraulic stability based operating limits in the Vermont Yankee Core Operating Limits Report.

Date of Issuance: April 7, 1998.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 157.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 13, 1997 (62 FR 43377).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 7, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: August 22, 1996.

Brief description of amendment: The amendment revises the Technical Specifications to change the action statement for the high range stack noble gas monitor based on the guidance of Generic Letter 83–36, NUREG–0737 Technical Specifications.

Date of Issuance: April 8, 1998.

Effective date: April 8, 1998, to be implemented within 30 days.

Amendment No.: 158.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 4, 1997 (62 FR 30647).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 8, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: January 28, 1998.

Brief description of amendment: The amendment revises Technical Specification §§ 6.3 and 6.12 to reflect a merger for the positions of Superintendent Radiation Protection and Superintendent Chemistry into one new position, Manager Chemistry/ Radiation Protection.

Date of issuance: March 30, 1998.

Effective date: March 30, 1998.

Amendment No.: 115.

Facility Operating License No. NPF–42: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 25, 1998 (63 FR 9614).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 30, 1998.

No significant hazards consideration comments received: No.

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.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

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 for the amendment 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.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an

opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective 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 application for amendment, (2) the amendment to Facility Operating License, 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 room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By May 22, 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. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

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 the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: April 2, 1998 (NRC–98–0062).

Description of amendment request: The amendment revised the action specified in Technical Specification Table 3.3.7.5–1 if one channel of drywell oxygen monitoring is inoperable.

Date of issuance: April 3, 1998.

Effective date: April 3, 1998, with full implementation by April 6, 1998.

Amendment No.: 117.

Facility Operating License No. NPF–43: Amendment revises the License and the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated April 3, 1998.

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.

Dated at Rockville, Maryland, this 15th day of April 1998.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–10470 Filed 4–21–98; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Employer Service and Compensation Reports; OMB 3220–0070 Section 2(c) of the Railroad Unemployment Insurance Act (RUIA) specifies the maximum normal unemployment and sickness benefits that may be paid in a benefit year. Section 2(c) further provides for extended benefits for certain employees and for beginning a benefit year early for other employees. The conditions for these actions are prescribed in 20 CFR 302.

All information about creditable railroad service and compensation needed by the RRB to administer Section 2(c) is not always available from annual reports filed by railroad employers with the RRB (OMB 3220–0008). When this occurs, the RRB must obtain supplemental information about service and compensation.

The RRB utilizes Form UI–41, Supplemental Report of Service and Compensation, and Form UI–41a, Supplemental Report of Compensation, to obtain the additional information about service and compensation from railroad employers. Completion of the forms is mandatory. One response is required of each respondent. The RRB proposes to revise Form UI–41 and UI–41a to add language required by the Paperwork Reduction Act of 1995. Minor editorial changes are also proposed. The completion time for Form UI–41 and UI–41a is estimated at 8 minutes per response.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received on or before June 22, 1998.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–10586 Filed 4–21–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26857]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

April 16, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 12, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 12, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc. and *Central and South West Corporation* (70–9169).

Notice of Proposal to Amend Certificate of Incorporation to Increase Number of Authorized Shares of Common Stock; Order Authorizing Solicitation of Proxies.

American Electric Power Company, Inc. (''AEP''), 1 Riverside Plaza, Columbus, Ohio 43215, and Central and South West Corporation (''CSW''), 1616 Woodall Rodgers Freeway, Dallas, Texas 75266, each a registered holding company, have filed a joint declaration with this Commission under sections 6(a)(2), 7 and 12(e) of the Public Utility Holding Company Act of 1935, as amended (''Act''), and rules 62 and 65 under the Act.

AEP and CSW have entered into an Agreement and Plan of Merger, dated as of December 21, 1997 (''Merger Agreement''). Under the Merger

Agreement, Augusta Acquisition Corporation, a wholly owned subsidiary of AEP, intend to merge with and into CSW (''Merger'') on the closing date. Under the Merger Agreement, among other things, AEP and CSW have each agreed to hold meetings of their shareholders to obtain the shareholder approvals required to effect the Merger.

AEP proposes to solicit proxies from its common shareholders to approve various matters in connection with the Merger at the annual AEP shareholders meeting, scheduled in late May 1998. The AEP shareholders will be asked to consider and approve a proposed amendment (''Proposed Amendment'') to AEP's restated certificate of incorporation to increase the number of authorized shares of AEP common stock, provided that the total votes cast on the proposal represent a majority of the outstanding shares of AEP common stock, and the issuance of shares of AEP common stock. The Proposed Amendment will be effected, if approved by AEP's shareholders, regardless of whether the Merger is consummated. AEP states that the additional authorized shares of AEP common stock will enable it to respond to future business needs and opportunities. Specifically, shares of AEP common stock would be available for issuances in connection with possible investment opportunities, acquisitions of assets and other companies, or for other corporate purposes. Accordingly, AEP requests that an order authorizing the solicitation of proxies be issued as soon as practicable under rule 62(d).

CSW proposes to solicit proxies to approve the Merger by the affirmative vote of the holders of a majority of the outstanding shares of CSW common stock at the annual CSW shareholders meeting, scheduled in late May 1998. Accordingly, CSW requests that an order authorizing the solicitation of proxies be issued as soon as practicable under rule 62(d).

At a later date, AEP and CSW plan to file an application-declaration with this Commission requesting authority to consummate the Merger and related transactions including, but not limited to, the issuance of AEP common stock.

It appears to the Commission that AEP and CSW's joint declaration regarding the proposed solicitation of proxies should be permitted to become effective immediately.

It is ordered, under rule 62 under the Act, that the joint declaration regarding the proposed solicitation of proxies can become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10653 Filed 4–21–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39874; File No. SR–CHX–98–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Examination Requirements for Securities Traders

April 14, 1998.

I. Introduction

On February 18, 1998, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposal to require certain off-floor CHX members to successfully complete the Series 7 examination.[3] The proposed rule change and Amendment No. 1[4] to the proposal were published for comment in the **Federal Register** on March 11, 1998.[5] No comments were received regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

CHX Rule 3, ''Training and Examination of Registrants,'' of Article VI, ''Restrictions and Requirements,'' currently authorizes the CHX to establish examination requirements in connection with the registration of partners, officers, options principals, branch office managers, and registered representatives of members. Pursuant to CHX Article VI, Rule 3, the CHX has adopted examination requirements for various persons on the CHX floor, including floor brokers, market makers, and co-specialists.[6] However, the CHX has no examination requirement for persons who conduct trading activities off the CHX floor. The CHX proposes to add examination requirements for off-floor securities traders and certain other associated persons of members who are not covered by the CHX's current examination requirements.

Specifically, the CHX proposes to adopt Interpretation and Policy .02 to CHX Article VI, Rule 3, which will require associated persons of members for which the CHX is the Designated Examining Authority (''DEA'') who execute, make trading decisions with respect to, or otherwise engage in proprietary or agency trading of equities, preferred securities or convertible debt securities to successfully complete the Series 7 Examination.[7] Interpretation and Policy .02 will not apply to any associated person who is subject to the examination requirements of Interpretation and Policy .01 because he or she is physically located on the CHX floor.

The CHX's proposal also revises the text of CHX Article VI, Rule 3, to provide that the CHX may require that associated persons of members must successfully complete a training course or examination, or both, in connection with registration.

According to the CHX, the proposal will bring the CHX's examination requirements in line with those of the major securities exchanges and enhance the consistency of examination requirements across the exchanges.

The CHX will phase in the new examination requirement over a six-month period. Specifically, the CHX will require associated persons who currently are covered by Interpretation and Policy .02 to register to take the Series 7 examination within 30 days of the Exchange's publication in a Notice to Members of the order approving the effectiveness of the new examination requirement.[8] Persons covered by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Series 7 examination is a qualification examination for persons seeking registration as general securities representatives.

[4] *See* Letter from Joseph M. Klauke, Foley & Lardner, to Yvonne Fraticelli, Division of Market Regulation (''Division''), Commission, dated March 3, 1993 (''Amendment No. 1''). In Amendment No. 1, the CHX corrected a legal reference in the CHX's discussion of the statutory basis for the proposed rule change. Specifically, Amendment No. 1 replaces a reference to Section 6(c)(3)(8) of the Act with a reference to Section 6(c)(3)(B) of the Act.

[5] *See* Securities Exchange Act Release No. 39721 (March 4, 1998).

[6] *See* CHX Article VI, Rule 3, Interpretation and Policy .01.

[7] The proposal is limited to associated persons of members for which the CHX is the DEA because associated persons of members with a DEA other than the CHX already are subject to the examination requirements of the self-regulatory organization (''SRO'') which is the DEA for the member firm. Telephone conversation between Patricia Levy, General Counsel, CHX, and Yvonne Fraticelli, Attorney, Office of Market Supervision (''OMS''), Division, Commission, on February 25, 1998.

[8] Associated persons covered by Interpretation and Policy .02 who fail to register to take the Series 7 examination within 30 days of the CHX's Notice to Members must cease doing business. Telephone conversation between Patricia Levy, General Counsel, CHX, and Yvonne Fraticelli, Attorney, OMS, Division, Commission, on April 14, 1998.

Interpretation and Policy .02, who must promptly notify the Exchange that they have registered to take the Series 7 examination, will have six months from the date of the CHX's Notice to Members to pass the Series 7 examination. Persons covered by Interpretation and Policy .02 who become associated with members after the CHX publishes notice of the examination requirement in a Notice to Members must successfully complete the Series 7 examination before conducting securities trading activities for which an examination is required under the Interpretation and Policy .02.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with the requirements of Sections 15(b)(7), 6(b)(5), and 6(c)(3)(B) of the Act.[9] Section 15(b)(7) states that a registered broker or dealer may not effect any transaction in, or induce the purchase or sale of, any security unless the broker or dealer meets certain standards of operational capability and all those associated with the broker or dealer meet certain standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[10] Section 6(c)(3)(B) provides that a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange, and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

Interpretation and Policy .02 will require off-floor associated persons of members for which the CHX is the DEA who execute, make trading decisions with respect to, or otherwise engage in proprietary or agency trading of equities, preferred securities, or convertible debt securities to successfully complete the Series 7 examination. The CHX's rules currently contain no examination requirement for persons covered by Interpretation and Policy .02. Interpretation and Policy .02 is designed to eliminate this gap in examination requirements and to make the CHX's examination requirements more consistent with the examination requirements of the other SROs.

The Commission believes that it is appropriate for the CHX to establish an examination requirement for associated persons covered by Interpretation and Policy .02. Specifically, the Commission believes that the CHX's proposal will help to ensure that only those associated persons covered by Interpretation and Policy .02 who have an understanding of the Act, will be able to solicit, purchase or sell securities for the accounts of customers. The Commission recognizes the importance to investors of efforts by the SROs to ensure that associated persons have appropriate levels of knowledge and expertise regarding applicable laws and regulations. By helping to establish this level of knowledge, the Commission believes that the CHX's proposal will help associated persons covered by Interpretation and Policy .02 carry out their responsibilities under the federal securities laws.

In addition, the Commission believes that it is reasonable and consistent with Section 6(c)(3)(B) of the Act for the CHX to amend CHX Article VI, Rule 3 to state that the CHX may establish examination requirements for members and associated persons.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–CHX–98–04), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10606 Filed 4–21–98; 8:45 am]

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[9] 15 U.S.C. 78o(b)(7), 78f(b)(5), and 78f(c)(3)(B) (1988).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39872; File Nos. SR–MCC–98–01 and SR–MSTC–98–01]

Self-Regulatory Organizations; the Midwest Clearing Corporation; the Midwest Securities Trust Company; Notice of Filing of Proposed Rule Changes Relating to the Structure and Composition of the Board of Directors

April 14, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 9, 1998, the Midwest Clearing Corporation (''MCC'') and the Midwest Securities Trust Company (MSTC) filed with the Securities and Exchange Commission (''Commission'') and on February 25, 1998, amended the proposed rule changes, as described in Items I, II, and III below, which items have been prepared primarily by MCC and MSTC. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes will amend MCC's and MSTC's by-laws relating to the structure and composition of their board of directors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filing with the Commission, MCC and MSTC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. MCC and MSTC have 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 Changes

The proposed rule changes will amend MCC's and MSTC's by-laws in order to reflect the cessation of their securities clearing and depository

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

services [3] and to streamline the structure and composition of their board of directors in order to remain consistent with the changes recently made by the Chicago Stock Exchange, Incorporated (''CHX'').[4]

The proposed rule changes will reduce the number of directors from 27 to 24 and will realign the classes for both MCC and MSTC. The directors will still be divided into three classes, but the size and composition will be adjusted as follows. At the 1998 annual election, class I will be reduced by two directors. At the 1999 annual election, class II will be reduced by four directors. At the 2000 annual election, class III will be reduced by one director and class II will be increased by one director. The board of directors will also be increased by three additional nonindustry [5] directors by the 1999 annual election to serve for staggered terms so as to balance the classes as determined by the nominating committee.[6] The result of the reduction of board members and the realignment of the classes will be fifty percent representation of nonindustry directors on MCC's and MSTC's board of directors.

MCC and MSTC believe that the proposed rule changes are consistent with Section 17A of the Act because the changes to the structure and composition of their board of directors should promote an enhanced governance structure and thereby will help protect investors and the public interest.[7]

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC and MSTC do not believe that the proposed rule changes will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

No written comments relating to the proposed rule changes have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes 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 MCC and MSTC consent, the Commission will:

(A) By order approve such proposed rule changes or

(B) Institute proceedings to determine whether the rule changes 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 changes are 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 rule changes that are filed with the Commission, and all written communications relating to the rule changes 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 in Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal office of MCC and MSTC. All submissions should refer to the File Nos. SR–MCC–98–01 and SR–MSTC–98–01 and should be submitted by May 13, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10605 Filed 4–21–98; 8:45 am]

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[3] Securities Exchange Act Release No. 36684 (January 5, 1995), 61 FR 1195 [File Nos. SR–MCC–95–04, SR–MSTC–95–10] (order approving proposed rule changes relating to the withdrawal of the Chicago Stock Exchange, Incorporated [''CHX''] from the clearance and settlement and securities depository businesses, conducted principally through its subsidiaries, MCC and MSTC).

[4] Securities Exchange Act Release No. 39603 (January 30, 1998), 63 FR 5982 (order approving a proposed rule change relating to the structure and composition of CHX's board of governors). Historically, the MCC's and MSTC's board of directors have been the same as the CHX's board of governors.

[5] In an amendment to the proposed rule changes, MCC and MSTC reference the definition of nonindustry as defined by the CHX's constitution. *Id.*

[6] Class I will consist of seven directors, class II will consist of seven directors, and class III will consist of eight directors.

[7] 15 U.S.C. 78q–1.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39865; File No. SR–NASD–98–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Extension of the Option Position Limit Hedge Exemption Pilot Program

April 14, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 21, 1998, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. NASD Regulation filed an amendment to the proposed rule change on March 23, 1998.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 2860(b)(3)(A)(vii)(c) of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), to extend, until December 31, 1998, the Association's pilot program for exemptions from equity option position limits for certain hedged positions (''hedge exemption pilot program''). Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Rule 2860. Options

* * * * *

(b)(3)(A)(vii) Equity Option Hedge Exemption

a. The following positions, where each option contract is ''hedged'' by 100

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 200.19b–4.

[3] *See* Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Commission, dated March 17, 1998 (''Amendment No. 1''). Amendment No. 1 shortens the requested extension by providing for an extension of the pilot until December 31, 1998, instead of December 31, 1999.

shares of stock or securities readily convertible into or economically equivalent to such stock, or, in the case of an adjusted option contract, the same number of shares represented by the adjusted contract, shall be exempted from established limits contained in (i) through (vi) above:

1. long call and short stock;
2. short call and long stock;
3. long put and long stock;
4. short put and short stock.

b. Except as provided under the OTC Collar Exemption contained in paragraph (b)(3)(A)(viii), in no event may the maximum allowable position, inclusive of options contracts hedged pursuant to the equity option position limit hedge exemption in subparagraph a. above, exceed three times the applicable position limit established in paragraph (b)(3)(A)(i)–(v).

c. The Equity Option Hedge Exemption is a pilot program authorized by the Commission through December 31, 199*8*[7].

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 9, 1990, the Commission approved the NASD's proposal to implement a pilot program pursuant to which certain fully hedged equity option positions would be automatically exempt from established position [4] and exercise [5] limits. On March 18, 1994, the Commission extended the NASD's hedge exemption pilot program through December 31, 1995.[6] On December 29, 1995, the Commission again extended the NASD's hedge exemption pilot program through December 31, 1997.[7] The proposed rule change herein would extend the hedge exemption pilot program for an additional one year, or through December 31, 1998.

The NASD's hedge exemption provides for an automatic exemption from equity option position limits for accounts that have established one of the four most commonly used hedged positions [8] and where each option contract is either (i) hedged by 100 shares of stock, (ii) hedged by securities that are readily convertible into, or economically equivalent to, such stock,[9] or (iii) in the case of an adjusted options contract, hedged by the number of shares represented by the adjusted contract.

Under the NASD's hedge exemption, the largest options position (combining hedged and unhedged positions) that may be established may not exceed three times the basic position limits, *i.e.*, 13,500, 22,500, 31,500, 60,000, or 75,000 contracts, depending on the basic position limit of the underlying security. The exercise limit for options positions established pursuant to the hedge exemption are commensurate with the position limits that may be established pursuant to the hedge exemption. Thus, for example, if the position limit for an option is 25,000 contracts and an investor has established a position of 75,000 contracts pursuant to the hedge exemption, the investor may exercise all 75,000 contracts during five consecutive business days.

The proposed rule change to extend the effective date of the pilot program is necessary to enable market participants to continue to avail themselves of the hedge exemption and to create parity and consistency with the other self-regulatory organizations which have in effect an equity hedge exemption.[10] The proposed rule change extends the effective date until December 31, 1998.

2. Statutory Basis

NASD Regulation believes the proposed rule change is consistent with Section 15A(b)(6) of the Act.[11] Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism of a free and open market and a national system and, in general, to protect investors and the public interest. Specifically, the NASD believes that extending the effectiveness of the hedge exemption pilot program may increase the depth and liquidity of the options markets by permitting investors to hedge greater amounts of stock than would otherwise be permitted under NASD rules. Extending the effectiveness also will promote consistency among the rules of the NASD and the other options self-regulatory organizations. The NASD notes that the higher position limits currently available by virtue of the hedge exemption have not resulted in the disruptions of the underlying stock market. However, the NASD will continue to monitor the market effects, if any, from the hedge exemption to ensure that members are complying with all applicable requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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[4] Position limits impose a ceiling on the number of options contracts in each class on the same side of the market, *i.e.*, aggregating long calls and short puts and long puts and short calls, that can be held or written by an investor or group of investors acting in concert. Rule 2860(b)(3)(A) currently provides that equity option position limits are 4,500, 7,500, 10,500, 20,000, and 25,000 contracts, depending on the trading volume and number of outstanding shares of the underlying stock.

[5] Exercise limits restrict the number of options contracts that an investor or group of investors acting in concert can exercise within five consecutive business days. Under NASD Rules, exercise limits correspond to position limits, such that investors in options classes on the same side of the market are allowed to exercise, during any five consecutive business days, only the number of options contracts set forth as the applicable position limit for those options classes. *See* NASD rule 2860(b)(3).

[6] Exchange Act Release No. 33783 (March 18, 1994), 59 FR 14229 (March 25, 1994).

[7] Exchange Act Release No. 36657 (December 29, 1995), 61 FR 434 (January 5, 1996).

[8] The four exempted hedge positions are: (1) long stock and short calls; (2) long stock and long puts; (3) short stock and long calls; and (4) short stock and short puts.

[9] The Commission notes that NASD Regulation determines on a case-by-case basis whether an instrument that is being used as the basis for the underlying hedged positions is readily convertible into, or economically equivalent to, the security underlying the corresponding option position. In this regard, NASD Regulation generally finds that an instrument that is not presently convertible into a security, but which will be at a future date, is not a ''convertible'' security for purposes of the hedge exemption. In addition, NASD Regulation notes that if a convertible security used to hedge an option position is called for redemption by the issuer, the security would have to be converted into the underlying security immediately or the corresponding option position would have to be reduced accordingly.

[10] *See, e.g.*, American Stock Exchange Rule 904; Chicago Board Options Exchange Rule 4.11; Philadelphia Stock Exchange Rule 1001; Pacific Stock Exchange Rule 6.8.

[11] 15 U.S.C. § 78*o*–3.

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. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, with the requirements of Section 15A(b)(6). Specifically, the Commission believes that the proposed extension of the NASD's equity option position limit hedge exemption pilot program will accommodate the needs of investors and market participants while at the same time furthering investor protection and the public interest.[12]

The Commission finds good cause to approve the proposed rule change, as amended prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register.** Specifically, by accelerating the approval of the NASD's rule proposal, the operation of the hedge exemption pilot program, which as been in place since 1990, will continue on an uninterrupted basis until December 31, 1998. The Commission previously extend the effectiveness of the equity option hedge exemption pilot program on an accelerated basis on two prior occasions.[13] The Commission believes that Amendment No. 1 improves the proposed rule change by shortening the extension of the pilot program only until December 31, 1998, instead of December 31, 1999. An extension until December 31, 1998 will give NASD Regulation sufficient time to consider the operation of the equity option hedge exemption program without allowing the program to drag on for another two years on a pilot basis.[14] The Commission believes that good cause exists to accelerate approval of the proposed rule change, as amended, because expressly continuing the hedge exemption pilot program by rule will reduce the potential for confusion about the status of such exemption, which expired on December 31, 1997, and will promote consistency among the options markets all of which are a similar exemption. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested person 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NASD–98–02 and should be submitted by May 13, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NASD–98–02) is approved on a pilot basis until December 31, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10600 Filed 4–21–98; 8:45 am]

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[12] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] *See* Exchange Act Release Nos. 36657 (December 29, 1995), 61 FR 434 (January 5, 1996) (accelerated approval extending effectiveness of hedge exemption pilot program through December 31, 1997); 33783 (March 18, 1994), 59 FR 14229 (March 25, 1994) (accelerated approval extending effectiveness of hedge exemption pilot program through December 31, 1995).

[14] The Commission notes that NASD Regulation initially requested that the equity option hedge exemption pilot program be extended until December 31, 1999. At the Commission's request, the proposed rule change was amended to shorten the requested extension only until December 31, 1998. Given that the equity option hedge exemption program has been running on a pilot basis for eight years, the Commission recommends that NASD Regulation either take steps to adopt the program on a permanent basis in the near future or eliminate it.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39875; File No. SR–PCX–98–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to LMM Book Pilot Program Expansion to Allow Book Staffing by Employees of the LMM

April 15, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 23, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[3]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to expand its Lead Market Maker (''LMM'') Book Pilot Program by allowing qualified LMMs to manage their own employees in operating the options public limit order book under the pilot program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On April 13, 1998, the PCX submitted a letter, in response to Commission staff questions, providing a brief explanation of its proposed method for admitting employees to participate in the LMM Program and concerning its proposed surveillance of the LMM Program employees and operations. *See* Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Marie D'Aguanno Ito, Special Counsel, Division of Market Regulation, Commission, dated April 13, 1998.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On October 11, 1997, the Commission approved an Exchange proposal to adopt a one-year pilot program under which a limited number of LMMs would be able to assume operational responsibility for the options public limit order book (''Book'') in certain option issues.[4] On September 22, 1997, the Commission approved an Exchange proposal to extend the program for one year, so that it is currently set to expire on October 12, 1998.[5]

Under the pilot program, approved LMMs manage the Book function, take responsibility for trading disputes and errors, set rates for Book execution, and pay the Exchange a fee for systems and services.[6] Only multiple-listed option issues are currently eligible to be traded under the pilot program.[7] Initially, the program was limited by allowing no more than three LMMs to participate in the program and no more than 40 option symbols to be used. But on April 1, 1997, the Commission approved an Exchange proposal to expand the program so that up to nine LMMs may participate and up to 150 option symbols may be used.[8]

The Exchange is now proposing to further expand the program by allowing LMMs to manage their own employees in operating the Book. Currently, the Exchange permits LMMs who are participating in the pilot program to use Exchange personnel to assist the LMM in performing the OBO function, and, in return, the Exchange charges the LMM a staffing charge for such use of Exchange personnel.[9] LMMs who manage their own employees would continue to set their own rates for Book executions, but would no longer be required to pay the Exchange a staffing charge (except under unusual circumstances).

Under the pilot program, Exchange staff currently assist LMMs in performing Order Book Official (''OBO'') functions, pursuant to Rules 6.51 through 6.59.[10] These functions include the OMO's duty to assist in the maintenance of a fair, orderly and competitive market.[11] LMMs running the Book will continue to be required to report to an Options Floor Official any unusual activity, transactions or price changes or other unusual market conditions or circumstances that are detrimental to the maintenance of a fair, orderly and competitive market.[12] LMMs who operate the Book will also continue to be required to disclose to members, upon request, the price and number of contracts that are bid below or that are offered above the Book information displayed, pursuant to Rule 6.55.[13]

In the event of unusual market circumstances, the Exchange will make Exchange staff available to assist the LMMs in performing their OBO functions on a temporary basis, and will charge such LMMs a reasonable fee for such services. In this regard, the Exchange intends to file with the Commission a proposal to establish those temporary staffing charges.

The Exchange believes that allowing LMMs to hire their own employees to operate the Book will have no negative impact on the Exchange's oversight and regulation of activities on the Options Trading Floor. LMMs who operate the Book will continue to be subject to higher capital requirements than other LMMs or Market Makers.[14] The Exchange will continue to employ Exchange staff to monitor the operations of all LMMs. Exchange staff will also continue to prepare all Unusual Activity Reports that are forwarded to the Surveillance Department for review. Finally, Floor Officials will continue to monitor the activities of LMMs, including those activities that are brought to the attention of Floor Officials by members of the trading crowd, who serve a self-policing function.

The Exchange believes that the proposed change will make the Exchange LMM Program more competitive because it will provide LMMs with the same flexibility currently held by options specialists at other exchanges, and DPMs at the Chicago Board Options Exchange.

The Exchange believes the proposed rule change is consistent with Section 6(b)[15] of the Act, in general, and furthers the objectives of Section 6(b)(5),[16] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

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 self-regulatory organization 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 change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[4] *See* Exchange Act Release No. 37810 (October 11, 1996), 61 FR 54481 (October 18, 1996) (approving File No. SR–PSE–96–09).

[5] *See* Exchange Act Release No. 39106 (September 22, 1997), 62 FR 51172 (September 30, 1997).

[6] *See* Exchange Act Release No. 37874 (October 28, 1996), 61 FR 56597 (November 1, 1996) (approving SR–PSE–96–38, establishing a staffing charge for LMMs who participate in the pilot program).

[7] *See* Exchange Act Release No. 38273 (February 12, 1997), 62 FR 7489 (February 19, 1997).

[8] *See* Exchange Act Release No. 38462 (April 1, 1997), 62 FR 16886 (April 8, 1997).

[9] *See* Exchange Act Release No. 37874, *supra.*

[10] *See* PCX Rule 6.82(h)(1)(a).

[11] *See* PCX Rule 6.53.

[12] *See* PCX Rule 6.54.

[13] *See* PCX Rule 6.57.

[14] *See* PCX Rule 6.82, Commentary .05 (requiring that LMMs who run the Book to maintain ''minimum net capital,'' as provided in SEC Rule 15c3–1, and also to maintain a cash or liquid asset position of at least $500,000, plus $25,000 for each issue over 5 issues for which they perform the function of an OBO).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

available for inspection and copying in the Commission's public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–02 and should be submitted by May 13, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10607 Filed 4–21–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 30, 1998 [FR 63, page 4687].

DATES: Comments must be submitted on or before May 22, 1998.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

United States Coast Guard (USCG)

Title: Boating Statistics Questionnaire.

OMB No.: 2115–0618

Type of Request: Extension of a currently approved collection.

Affected Public: Recreational Boaters, Federal and State Officials, Safety Professional Boating Organizations and Boating Industry Representatives.

Abstract: The U.S. Coast Guard publishes a report, Boating Statistics annually on recreational boating accidents. The report is distributed to approximately 7,000 people. The Coast Guard will conduct a survey to determine customer's information needs and measure their satisfaction with the Boating Statistics report.

Need: Under 46 U.S.C. 6102(b), the Coast Guard is authorized to collect, analyze, and annually publish statistical information on recreational boating accidents.

Annual Estimated Burden Hours: 320.

Addresses: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention USCG Desk Officer. Comments are invited on: The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; 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; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on April 16, 1998.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–10732 Filed 4–21–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Agency and Public Scoping for Cal Black Memorial Airport Glen Canyon National Recreation Area, Utah Supplemental Environmental Impact Statement

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice of public and agency scoping.

SUMMARY: The Northwest Mountain Region of the Federal Aviation Administration (FAA) as lead and the Bureau of Land Management (BLM) and National Park Service (NPS) as cooperating agencies announce that the FAA intends to prepare a Supplemental Environmental Impact Statement (EIS) to address issues arising from the 1993 10th Circuit U.S. Court of Appeals Decision concerning the closure of Halls Crossing Airport and the development of Cal Black Memorial Airport. To ensure that all significant issues related to the action are identified, additional scoping comments are requested.

DATE AND ADDRESS FOR COMMENTS: Scoping was conducted in 1990 concerning the development of this replacement airport and the transfer of land from the BLM to San Juan County. Subsequent to the 1993, 10th Circuit Court Decision additional scoping was conducted in 1995 and 1997. Additional scoping is being conducted prior to initiating the Draft Supplemental EIS. The FAA has prepared a scoping document that is available by contacting the FAA or by accessing the Internet site at ''http:/www.airportnetwork.com/U96''.

Send comments to, or seek additional information from, the responsible Federal official: Mr. Craig Sparks, Denver Airports District Office, Federal Aviation Administration, 26805 East 68th Street, Suite 224, Denver, Colorado 80249–6361. To be considered, written comments must be received on or before May 18, 1998. Comments may also be submitted through the project web site, which may be accessed at: ''http:/www.airportnetwork.com/U96''.

SUPPLEMENTARY INFORMATION: Halls Crossing Airport was located within the boundary of the Glen Canyon National Recreation Area, a unit of the NPS. Due to safety issues with this airport, an EIS was undertaken concerning the development of a replacement airport. In 1990, the FAA issued a Draft and Final Environmental Impact Statement for the development of a replacement Airport, in cooperation with the BLM and NPS. In August 1990, the FAA issued a record of decision approving the development of Cal Black Memorial Airport and conveying the land from BLM to San Juan County. In reaching its approval, the FAA determined that no significant impacts would result from the new airport to the recreational experience of visitors to the recreational area.

In 1990, the National Parks and Conservation Association (NPCA), et al brought suit against the FAA concerning the adequacy of the EIS and the adequacy of the BLM Plan Amendment and land transfer process. In its July 7, 1993, decision, the U.S. Court of Appeals, 10th Circuit, remanded the EIS decision back to the FAA for further environmental analysis of aircraft noise impacts to the recreational use of public lands and the BLM's plan amendment and transfer of land.

[17] 17 CFR 200.30–3(a)(12).

Thus, the purpose of the Supplemental Environmental Impact Statement is to address the requirements of the U.S. Court of Appeals findings. The scope of the EIS will include: (1) The identification of a threshold of significant aircraft noise impact, (2) the measurement of actual aircraft noise levels, (3) the survey of visitors to the Glen Canyon National Recreational Area, (4) the evaluation of existing and future aircraft noise levels; and (5) if significant impacts are identified, the evaluation of alternative means of mitigating the significant impact. In addition, the Supplemental EIS will review the BLM plan amendment and transfer of land issues.

The National Park Service and Bureau of Land Management will continue to serve as cooperating agencies in preparing the Supplemental EIS.

Issued in Renton, Washington on April 15, 1998.

David A. Field,

Manager, Planning, Programming, and Capacity Branch, Northwest Mountain Region.

[FR Doc. 98–10682 Filed 4–21–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 193; Terrain and Airport Databases

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 193 meeting to be held May 12–14, 1998, starting at 9:00 a.m. on May 12. The meeting will be held at RTCA, Suite 1020, 1140 Connecticut Avenue, NW., Washington, DC 20036.

This new Special Committee (SC)–193 has been established to identify industry requirements for terrain, obstacles, and airport information to support current and future airborne and ground systems which store and use this information in databases. SC–193 will work cooperatively with EUROCAE Working Group 44 to achieve its objective. The committee will initially establish two working groups: (1) Industry Requirements for Terrain and Obstacle Information for Aeronautical Use; (2) Industry Requirements for Airport Mapping Information.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Review/Approval of Meeting Agenda; (3) Establish Structure and Organization of the Committee and Working Groups; (4) Review Proposed Terms of Reference; (5) Presentations: a. 3–D Cockpit Terrain Displays; b. Highway in the Sky; c. Terrain Accuracy Considerations; (6) Identify Goals, Develop Work Program, and Determine Milestones; (7) Prepare a recommendation on whether SC–193/WG–44 will be a joint committee (common terms of reference and joint meetings); (8) Prepare a recommendation of whether jointly to develop a GCAS document; (9) Assign Tasks; (10) Date and Location of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington DC, 20036; (202) 833–9339 (phone), (202) 833–9434 (fax), or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 16, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–10681 Filed 4–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (98–01–C–00–ROA) to impose and use the revenue from a passenger facility charge (PFC) at the Roanoke Regional Airport, Roanoke, VA

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 Roanoke Regional 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 May 22, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Terry Page, Manager, Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia 22046.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Jacqueline L. Shuck, Manager of the Roanoke Regional Airport, at the following address: Roanoke Regional Airport, 5202 Aviation Drive, Roanoke, Virginia 24012–1148.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Roanoke regional Airport Commission under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Terru Page, Manager, Washington Airports District Office, 101 West Broad Street, Suite 300 falls Church, Virginia 22046 (Tel. 703–285–2305). 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 Roanoke Regional 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 24, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Roanoke Regional Airport Commission was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 5, 1998.

The following is a brief overview of the application.

Application number: 98–01–C–00–ROA.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 1998.

Proposed charge expiration date: May 1, 2006.

Total estimated PFC revenue: $7,253,654.

Brief description of proposed projects:

PFC fund will be used to reimburse the Roanoke Regional Airport Commission for the local share of the completed AIP funded projects listed below:

—Construct Perimeter Road
—Install Ramp Lighting and Runway Pull Boxes
—Construct General Aviation Apron, Taxiway and Access
—Obstruction Removal Runway 6 and Runway 15
—Acquire ARFF Vehicle and Radios

—Acquire Snow Removal Equipment
—Acquire Handicap Passenger Lifting Device
—Construct Heliport Improvements
—Install Airport Signage And New Electrical Vault
—Update Airport Master Plan
—Upgrade Airport Security System
—Develop Cargo Ramp
—Construct Aircraft De-Icing Facility
—Construct relocated portion of Taxiway G
—Install New Terminal Main Entrance Door System
—Runway Tunnel Rehabilitation Runway 24
—Construct Airport Maintenance Facility PFC will also be used as the local share of the following future AIP funded projects:
—Construct Lower Regional Holdroom and Escalator
—Demolish Building 6 for Airport Development
—Demolish Building 1 for Airport Development and Part 77 Obstruction Clearance
—Purchase Land for RPZ
—PPFC Program Formulation and Annual Administrative Cost

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 On Demand Air Taxis filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Roanoke Regional Airport Commission.

Issued in Jamaica, New York on April 10, 1998.

Thomas Felix,

Planning & Programming Branch, Airports Division, Eastern Region.

[FR Doc. 98–10676 Filed 4–21–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waivers of Compliance

In accordance with Part 211.9 and 211.41 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for waivers of compliance with certain requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the reliefs being requested, and the petitioner's arguments in favor of relief.

Central Montana Rail, Incorporated

[FRA Docket Number LI–97–7]

Central Montana Rail, Incorporated (CMR) seeks a permanent waiver of compliance with certain provisions of the Locomotive Safety Standards (49 CFR 229). CMR is seeking relief from the requirements of Section 229.125(d) that requires, effective December 31, 1997, each lead locomotive operating at speeds over 20 mph over one or more public highway-rail crossings shall be equipped with operative auxiliary lights.

CMR operates six diesel-electric locomotives over 87 miles of track and states that equipping the locomotives would cause an undue financial burden. The CMR indicates they haul less than 2,000 cars annually at a maximum speed of 25 mph, over one state highway-rail crossing, all other crossings are located on county or private roads. The railroad feels that because of their remote location, low speed, and traffic volume on affected roads, the waiver would not jeopardize the safety of the railroad operation.

The Kansas City Southern Railroad

[FRA Docket Number LI–97–9]

The Kansas City Southern Railroad (KCS) seeks a waiver of compliance with certain provisions of the Locomotive Safety Standards (49 CFR Part 229). KCS is seeking permanent waiver of compliance from the requirements of Section 229.73(b) that requires ''the maximum variation in the diameter between any two wheel sets in a three powered-axle truck may not exceed ¾ inch, except when shims are used at the journal box springs to compensate for wheel diameter variation, the maximum variation may exceed 1¼ inch''.

KCS operates 165 six axle locomotives. The railroad states they change approximately 96 wheel sets a year to remain in compliance with this requirement, at a cost of $265,000.00, and 1,152 hours of locomotive down time.

Interested parties are invited to participate in these proceedings by submitting written reviews, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Numbers LI–97–7 and LI–97–9, and must be submitted in triplicate to the Docket Clerk, Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days from the publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at FRA's offices at 1120 Vermont Avenue, N.W., Room 7051, Washington, D.C. 20005.

Issued in Washington, D.C., on April 15, 1998.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Programs Development.

[FR Doc. 98–10698 Filed 4–21–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Safety Performance Standards and Research and Development Programs Meetings

AGENCY: National Highway Traffic Safety Administration.

ACTION: Notice of NHTSA industry meeting.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's vehicle regulatory program.

DATES: The Agency's regular, quarterly public meeting relating to its vehicle regulatory program will be held on June 16, 1998, beginning at 9:45 a.m. and ending at approximately 12:30 p.m., at the Clarion Inn Hotel, Wickham Road, in Romulus, MI. Questions relating to the vehicle regulatory program must be submitted in writing with a diskette (Wordperfect 6.0-6.1) by Friday, May 29, 1998, to the address shown below or by e-mail. If sufficient time is available, questions received after May 29 may be answered at the meeting. The individual, group or company

submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by May 29, 1998, and the issues to be discussed, will be posted on NHTSA's web site (www.nhtsa.dot.gov) by June 11, 1998, and will be available at the meeting. The next NHTSA vehicle regulatory program meeting will take place on Thursday, September 17, 1998 at the Tysons Westpark Hotel, 8401 Westpark Drive, McLean, VA.

ADDRESSES: Questions for the June 16, NHTSA Technical Industry Meeting, relating to the agency's vehicle regulatory program, should be submitted to Delia Lopez, NPS-01, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW., Washington, DC 20590, Fax Number 202–366–4329, e-mail dlopez@nhtsa.dot.gov. The meeting will be held at the Clarion Inn Hotel, 9191 Wickham Road, in Romulus, MI.

FOR FURTHER INFORMATION CONTACT: Delia Lopez, (202) 366–1810.

SUPPLEMENTARY INFORMATION: NHTSA holds a regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory program. Questions on aspects of the agency's research and development activities that related directly to ongoing regulatory actions should be submitted, as in the past, to the agency's Safety Performance Standards Office. The purpose of this meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. Transcripts of these meetings will be available for public inspection in the DOT Docket in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page, (length has varied from 100 to 150 pages) upon request to DOT Docket, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. The DOT Docket is open to the public from 10:00 a.m. to 5:00 p.m. Questions to be answered at the quarterly meeting should be organized by categories to help us process the questions into an agenda form more efficiently. Sample format:

I. RULEMAKING.
  A. Crash avoidance
  B. Crashworthiness
  C. Other Rulemakings
II. CONSUMER INFORMATION
III. MISCELLANEOUS

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of ''auxiliary aids'' (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Delia Lopez on (202) 366–1810, by COB June 11, 1998.

Issued: April 17, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–10675 Filed 4–21–98; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–3638; Notice 1]

Pipeline Safety: Liquefied Natural Gas Facilities Petition for Waiver; Exxon Company, USA

Exxon Corporation has petitioned the Research and Special Programs Administration (RSPA) for a waiver from compliance with certain provisions of 49 CFR part 193 for its proposed Liquefied Natural Gas (LNG) storage tanks at its existing LaBarge, Wyoming, gas processing operation. The existing operation includes two parallel Nitrogen Rejection Units and a small liquefied natural gas (LNG) truck loading facility. Exxon is proposing to install two used 55,000 gallon LNG storage tanks (vessel nos. 5477 and 5516). According to Exxon, these tanks were in LNG service for 19 years without problems. The tanks were designed, built, tested, and registered in accordance with the requirements of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section VIII, Division 1.

Exxon states that as a part of the post fabrication procedures of the ASME Code, the longitudinal and circumferential butt welds of vessel number 5477 were spot checked by radiographic methods. The longitudinal and circumferential butt welds of vessel number 5516 were 100 percent radiographically tested at the time of manufacture. The ASME Code does not apply to any piping beyond the first weld.

Exxon requests a waiver from compliance with certain sections of Part 193 and proposes to ensure equivalent safety through compliance with the National Fire Protection Association (NAPA) Standard 59A. The specific sections of Part 193 for which Exxon seeks a waiver are:

(1) *§ 193.2321 (a)—Nondestructive tests.* This section requires that 100 percent of circumferential butt welded pipe joints in cryogenic piping and 30 percent of circumferential butt welded pipe joints in the non-cryogenic piping be nondestructively tested.

Exxon is requesting a waiver for vessels 5477 and 5516 of the requirements of § 193.2321 (a)—Nondestructive tests, based on the following:

- Calculated value of the pressure induced hoop stresses for the inner vessel nozzles and interconnecting piping are less than the 20 percent of the specified minimum yield stress (SMYS) for the piping material which is recognized as acceptable under NAPA 59A. To support this allegation Exxon has submitted stress calculations.
- NAPA 59A—Standard of the Production, Storage and Handling of Liquefied Natural Gas (LNG), section 6–6—Inspection and Testing of Pipe, Paragraph 6–6.3.2, requires all circumferential butt welds to be nondestructively tested, except that liquid drain and vapor vent piping with an operating pressure that produces a hoop stress of less than 20 percent of SMYS need not be nondestructively tested, provided it has been inspected visually in accordance with the ASME standard B31.3—Chemical Plant and Petroleum Refinery, section 344.2.

RSPA believes that safety will not be compromised by waiving the requirements of § 193.2321(a) for non-cryogenic piping with operating pressures that produce hoop stresses of less than 20 percent SMYS, if that piping complies with standard NAPA 59A, Section 6–6.3.2. Therefore, RSPA is proposing to grant the waiver from § 193.2321(a).

(2) *§ 193.2321 (e)—Nondestructive tests.* This section requires 100 percent nondestructive tests of both longitudinal and circumferential butt welds in metal shells of storage tanks that are subject to cryogenic temperatures and are under pressure to be radiographically tested.

Exxon requests a waiver of the requirements of § 193.2321 (e)—Nondestructive tests, for vessel number 5477 based on the following reasons:

- The tank was designed, manufactured, tested and registered to the requirements of the ASME Boiler and Pressure Vessel Code. Section VIII Division 1 of the ASME Code is an accepted standard to which cryogenic pressure vessels are built throughout the world.
- Safety in this case is not compromised because the storage tank at the Exxon facility is small, less than 70,000 gallons, shop fabricated and built to the ASME Code.
- Public safety is not the issue because the facility is very remote.

• The use of a weld joint efficiency factor of 85 percent and spot radiographic testing result in an inner vessel of thicker material than one built with a weld joint efficiency factor of 100 percent and 100 percent radiograph testing, substantially reducing the stress in the welds.

• The tank meets NAPA 59A requirements under Section 4–2, Metal Containers, paragraph 4–2.2.2., which states that the inner tank must be welded construction in accordance with the ASME Code, Section VIII, and must be ASME-stamped and registered with the National Board of Boiler and Pressure Vessels Inspectors (NBBI) or other agency that registers pressure vessels.

RSPA agrees that safety will not be compromised by waiving the requirements of § 193.2321(e) for smaller pressure vessels (less than 70,000 gallons) that are designed and built to the ASME Code, Section VIII (greater than 15 psig). Tanks built to this code are shop-fabricated under strict quality control and are inspected and stamped by Authorized Inspectors of the NBBI. Storage tanks at the Exxon LaBarge gas processing facility are built to ASME Code, Section VIII, and have a capacity of 55,000 gallons (relatively small). Therefore, RSPA is proposing to grant the waiver from § 193.2321(e).

(3) *§ 193.2329(a)—Construction Records.* This section requires that an operator shall retain records of specifications, procedures and drawings consistent with this part, and section 193.2329(b) requires that an operator must retain records of results of tests, inspections and quality assurance programs required by this subpart.

Exxon states that the ASME-stamped nameplates and the ASME U–1 form constitute adequate records for vessel construction. However, Exxon requests a waiver of the requirements of Section 193.2329 because the vessels were built to the ASME Code as referenced in NAPA 59A. The operator further agrees to comply with the recordkeeping requirements in accordance with Sections 193.2329 (a) and (b).

RSPA agrees and proposes to grant a waiver from sections 193.2329 (a) and (b) for selected parts of the Exxon facility.

Except for the sections for which RSPA is proposing to grant a waiver, this LNG facility must meet all the requirements of Part 193. RSPA believes that the granting a waiver would not be inconsistent with pipeline safety, as long as Exxon follows the alternative provisions in the NAPA 59A.

Interested parties are invited to comment on the proposed waiver by submitting in duplicate such data, views, or arguments as they may desire. Comments should identify the Docket and Notice number (Docket no. RSPA–98–3638; Notice 1), and should be addressed to the Docket Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001. Alternatively, comments may be submitted via e-mail to ''ops.comments@rspa.dot.gov''.

All comments received before May 22, 1998 will be considered before final action is taken. Late filed comments will be considered so far as practicable. No public hearing is contemplated, but one may be held at a time and place set in a notice in the **Federal Register** if requested by an interested person desiring to comment at a public hearing and raising a genuine issue. All comments and other docketed material will be available for inspection and copying in room Plaza 401 between the hours of 10:00 a.m. and 5 p.m., Monday through Friday, except federal holidays.

Authority: 49 App. U.S.C. 2002(h) and 2015; and 49 CFR 1.53.

Issued in Washington, D.C. on April 16, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–10673 Filed 4–21–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33584]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) from Beaumont, TX, at or near milepost 0.07 to Silsbee, TX, at or near milepost 152.16, continuing through Cleveland, TX, at or near milepost 94.9 and Conroe, TX, at or near milepost 72.1, to Navasota, TX, at or near milepost 28.14, a distance of 144.32 miles. Further, BNSF has agreed that UP may enter or exit the trackage rights line at Cleveland and at Conroe.

The transaction is expected to be consummated on or shortly after April 13, 1998, the effective date of the exemption.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33584, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Joseph D. Anthofer, General Attorney, 1416 Dodge Street, #830, Omaha, NE 68179.

Decided: April 13, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–10527 Filed 4–21–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–531X]

Pioneer Valley Railroad Company, Inc.—Abandonment Exemption—In Hampden County, MA

On April 2, 1998, Pioneer Valley Railroad Company, Inc., filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Westfield Branch extending from milepost 0.0 to the end of the line at milepost 1.9, a total distance of 1.9 miles, in Westfield, Hampden County, MA. The line traverses U.S. Postal Service ZIP Code 01085. There are no stations on the line.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions specified in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 21, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than May 12, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–531X and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Thomas J. Litwiler, Oppenheimer Wolff and Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: April 15, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–10528 Filed 4–21–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 98–25

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 98–25, Election to Continue to Treat Trust as a United States Person.

DATES: Written comments should be received on or before June 22, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election to Continue to Treat Trust as a United States Person.

OMB Number: 1545–1600.

Notice Number: Notice 98–25.

Abstract: This notice provides the procedures and requirements for making the election to remain a domestic trust in accordance with section 1161 of the Taxpayer Relief Act of 1997. The information submitted by taxpayers will be used by the IRS to determine if a trust is a domestic trust or a foreign trust.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 250,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 16, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–10707 Filed 4–21–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8594

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8594, Asset Acquisition Statement.

DATES: Written comments should be received on or before June 22, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Asset Acquisition Statement.

OMB Number: 1545–1021.

Form Number: 8594.

Abstract: Internal Revenue Code section 1060 requires reporting to the IRS by the buyer and seller of the total consideration paid for assets in an applicable asset acquisition. The information required to be reported includes the amount allocated to goodwill or going concern value. Form 8594 is used to report this information.

Current Actions: New temporary regulations under Code sections 1060 and 338 clarified the rules for allocating assets acquired after February 13, 1997. As a result, Class V is being added to line 4 of Part II and to line 7 of Part III on Form 8594. Class V will consist of goodwill and going concern value (these were previously included in Class IV).

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and farms.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 11 hr., 38 min.

Estimated Total Annual Burden Hours: 232,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 15, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–10708 Filed 4–21–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 98–23

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 98–23, Taxation of Social Security Benefits Under United States-Canada Income Tax Treaty.

DATES: Written comments should be received on or before June 22, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Taxation of Social Security Benefits Under United States-Canada Income Tax Treaty.

OMB Number: 1545–1602.

Notice Number: Notice 98–23.

Abstract: This notice provides guidance regarding changes to the taxation of social security benefits under the United States-Canada income tax treaty and the availability of refunds in some cases for taxes paid on benefits received in 1996 and 1997.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 25,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 16, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–10709 Filed 4–21–98; 8:45 am]

BILLING CODE 4830–01–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 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects on the list specified below, to be included in the exhibit, ''Sir Edward Burne-Jones'' (See list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York City, New York, from on or about June 1, 1998, to on or about September 6, 1998, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

Dated: April 16, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–10672 Filed 4–21–98; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. Paul Manning, Assistant General Counsel, at 202/619–5997, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

Federal Register

Wednesday
April 22, 1998

Part II

Department of the Treasury

Fiscal Service

31 CFR Part 285

Barring Delinquent Debtors From Obtaining Federal Loans or Loan Insurance or Guarantees; Proposed Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510–AA71

Barring Delinquent Debtors From Obtaining Federal Loans or Loan Insurance or Guarantees

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Debt Collection Improvement Act of 1996 (DCIA) mandated a new eligibility requirement for persons seeking Federal financial assistance, namely that delinquent Federal debtors are ineligible for Federal direct and indirect loan assistance (other than disaster loans). This proposed rule defines when a debt is in delinquent status and when a delinquency is resolved for purposes of determining whether the DCIA bars a person from receiving financial assistance. In addition, this proposed rule prescribes when the Secretary of the Treasury may exempt a class of delinquent debts from affecting a debtor's loan eligibility. This proposed rule also sets forth factors for authorized agency officials to consider when deciding whether to waive the DCIA eligibility requirement.

DATES: Comments must be received on or before May 22, 1998.

ADDRESSES: All comments should be addressed to Gerry Isenberg, Financial Program Specialist, Debt Management Services, Financial Management Service, 401 14th Street SW, Room 151, Washington, D.C. 20227. A copy of this proposed rule is being made available for downloading from the Financial Management Service web site at the following address: http://www.fms.treas.gov.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, at (202) 874–6859; or Ellen Neubauer or Ronda Kent, Senior Attorneys, at (202) 874–6680.

SUPPLEMENTARY INFORMATION:

Background

Section 31001(j)(1) of the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134, 110 Stat. 1321–358 (Apr. 26, 1996), codified at 31 U.S.C. 3720B (section 3720B), provides that a person owing a delinquent nontax debt to the Federal Government is ineligible for Federal financial assistance in the form of a loan (other than a disaster loan) or loan insurance or guarantee. The head of an agency that administers a Federal financial assistance program may waive this provision. The waiver authority may be delegated only to the agency's Chief Financial Officer or Deputy Chief Financial Officer. In addition, the Secretary of the Treasury may exempt any class of debts from affecting a person's eligibility for receiving financial assistance.

The DCIA requires the Secretary of the Treasury to prescribe standards under which agencies will determine whether a person has an outstanding delinquent debt that would trigger the DCIA bar to Federal financial assistance. As the lead agency for the collection of nontax debt in the Federal Government, the Financial Management Service (FMS), a bureau of the Department of the Treasury, is responsible for promulgating the regulations governing this and other provisions of the DCIA. This proposed rule defines when a debt is in delinquent status and when the delinquency is resolved for purposes of determining whether the DCIA bars a person from receiving financial assistance. This proposed rule also prescribes standards under which a Treasury exemption may be granted and sets forth factors for an agency to consider when deciding whether an agency waiver is appropriate.

Section Analysis

(a) Definitions

The intent of section 3720B is to prevent persons owing delinquent nontax obligations to the Government from receiving Federal financial assistance. The definition of the term ''debt'' in paragraph (a)(3) is intended to cover all amounts owed to the United States, including debts administered by a third party as an agent for the Federal Government, and has the same meaning as set forth in 31 U.S.C. 3701(b)(1).

As stated in paragraph (a)(4), the term ''Federal financial assistance'' or ''financial assistance'' as defined in section 3720B means any Federal loan (other than a disaster loan), loan insurance, or loan guarantee. Although disaster loans are not covered by section 3720B and this proposed rule, nothing in this proposed rule is intended to suggest that a delinquent debtor is eligible for a disaster loan unless he or she meets all eligibility requirements under applicable law.

In paragraph (a)(7), the term *person* is defined to include all individuals and organizations, including state and local governments, but does not include Federal agencies. FMS requests comments on the extent to which foreign entities are barred from obtaining Federal financial assistance under the DCIA (31 U.S.C. 3720B).

(b) Purpose and Scope

The purpose and scope of this proposed rule are described in paragraph (b) of this section. Section 3720B and this proposed rule apply to persons owing delinquent nontax debt to the Government. This proposed rule sets forth the standards for determining whether a debt is in delinquent status for the purpose of barring a debtor from receiving Federal financial assistance as required by section 3720B. In addition, the proposed rule addresses when an agency waiver or Treasury exemption is appropriate. Nothing in this proposed rule is intended to define the term ''delinquent'' for purposes other than the application of section 3720B.

As stated in paragraph (b)(3), this proposed rule is not intended to replace agency policies or procedures for determining whether a person is eligible for financial assistance or for agency review of denials of such assistance. For example, although the DCIA bar does not apply to a person owing delinquent Federal tax debt, nothing in this proposed rule precludes an agency from denying financial assistance to such a person under other applicable eligibility requirements. The fact that a debtor has had debts discharged in bankruptcy also may be a factor that agencies consider in assessing creditworthiness although the DCIA and this proposed rule do not bar the extension of credit. Similarly, the granting of a waiver or an exemption under this section does not mean that a loan application must be approved. For example, a waiver of this rule by the head of an agency under the provisions of section 3720B does not prohibit the agency from denying credit to a person based on general creditworthiness requirements, such as repayment ability or failure to pay obligations when they become due.

As stated in paragraph (b)(4), this proposed rule does not confer any new rights or benefits on persons seeking Federal financial assistance. The DCIA mandated a new eligibility requirement for persons seeking financial assistance, namely that delinquent Federal debtors are ineligible for Federal direct and indirect loan assistance (other than disaster loans). Agencies are not required to add new review procedures for persons who do not qualify for or are denied financial assistance based on the DCIA eligibility requirement. Those persons who are denied financial assistance based on the DCIA requirement are entitled to the same

opportunities for review, if any, as those who are denied financial assistance based on other applicable eligibility requirements.

(c) General Rule

Paragraph (c) of this section states the general rule contained in the DCIA that a person is ineligible for a Federal direct loan (other than disaster loans), loan insurance or loan guarantee if that person owes a delinquent nontax debt to the Federal Government. The DCIA eligibility requirement applies to all persons seeking Federal financial assistance and owing an outstanding nontax debt in delinquent status, including, but not limited to, guarantors. The DCIA eligibility requirement applies to all Federal loans (other than disaster loans) including those loans for which creditworthiness or credit history is not otherwise a factor for eligibility purposes, e.g., student loans. Since there are many ways in which agencies may obtain delinquent debt information, this proposed rule does not mandate a particular method of collecting such information. Agencies may request delinquent debt information on loan applications, obtain credit reports, and use the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS) to determine whether a person seeking financial assistance owes a delinquent nontax debt to the Federal Government. For information about the CAIVRS program, agencies should contact the Director of Information Technology, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, DC 20410.

This proposed rule encourages persons seeking financial assistance to resolve their delinquent debt. Therefore, after a person's delinquency is resolved in accordance with the provisions of paragraph (e)(1) of this section, the DCIA and this proposed rule no longer provide a basis for denying financial assistance to that person. As noted above, a credit-granting agency may use other factors in determining whether to grant or deny credit based on other applicable eligibility requirements.

The DCIA authorizes the head of the agency to waive the application of the general rule. The head of the agency may delegate the waiver authority only to the Chief Financial Officer of the agency who may redelegate the authority only to the Deputy Chief Financial Officer. Paragraph (g) of this section, discussed below, prescribes the factors that authorized agency officials should consider when deciding whether to waive the DCIA requirement.

(d) Delinquent status

Paragraph (d) defines when a debt is in delinquent status for purposes of section 3720B. As noted above, this proposed rule does not define the term ''delinquent'' for any purpose other than the application of section 3720B.

As stated in paragraph (d)(2)(i), a debt is not in delinquent status if the creditor agency has released the person seeking Federal financial assistance from the obligation to pay the debt. A creditor agency may release a person from an obligation because the person has paid the debt in an amount acceptable to the creditor agency, the debt was determined not to be owed, or for other reasons. The release of an individual obligor does not mean that all obligors on the debt have been released. In addition, as stated in paragraph (d)(2)(i), a debt is not in delinquent status if an adjudication or determination has been made that the person does not owe or does not have to pay the debt.

As stated in paragraph (d)(2)(ii), a debt is not in delinquent status for purposes of this proposed rule if the debtor is the subject of a bankruptcy proceeding or has been discharged in bankruptcy. In this circumstance the debt is not in delinquent status so long as the debtor is current on any applicable court authorized repayment plan.

Nothing in this proposed rule is intended to deny persons seeking financial assistance the opportunity to contest a creditor agency's determination that a debt is owed. Therefore, as stated in paragraph (d)(2)(iii), for purposes of this proposed rule a debt is not considered to be in ''delinquent status'' if a timely-filed appeal challenging the creditor agency's determination that the debt exists or is delinquent is pending. The purpose of requiring that an appeal be filed timely is to prevent debtors from appealing an agency's determination solely to avoid the application of section 3720B. To the extent permissible, agencies should defer making a determination as to whether or not to extend credit until the appeal process is completed.

(e) Delinquency resolution

A person may remove the bar to financial assistance mandated by the DCIA by resolving a delinquency in accordance with the provisions of paragraph (e)(1). The debtor must resolve the debt with the creditor agency responsible for the collection of the debt or with the agency to which the creditor agency has referred the debt for collection. For purposes of this proposed rule, the debt is ''resolved'' if the debtor pays the debt in full, pays a compromise amount agreed to by the creditor agency, brings the debt current i.e., makes up all past due monthly payments, including interest, fees, and penalties, or enters into a written agreement with the creditor agency to pay the debt under terms acceptable to the creditor agency. The fact that the creditor agency has ceased its collection efforts for a reason other than one set forth in paragraph (e)(1) of this section does not mean that the delinquency has been resolved. For example, unless one of the provisions of paragraph (e)(1) apply, a delinquent nontax debt that has been written off the books of the creditor agency or reported to the Internal Revenue Service as discharged (i.e., cancelled) would not be deemed ''resolved.''

(f) Exemptions by the Secretary

Upon the written request and recommendation of the head of an agency, the Secretary of the Treasury may exempt any class of delinquent debt from affecting a debtor's eligibility for financial assistance based on Section 3720B. Paragraph (f)(2) specifies the information that an agency should provide when recommending an exemption. Generally, an exemption will not be granted unless compelling reasons justify the elimination of the bar to Federal financial assistance for a class of delinquent debtors. Paragraph (f)(3) contains the circumstances under which Treasury may grant an exemption.

(g) Waivers by the Agency

The DCIA authorizes the head of the agency, on a person by person basis, to grant a waiver of the DCIA eligibility requirement. The head of the agency may delegate the waiver authority only to the Chief Financial Officer of the agency who may redelegate the authority only to the Deputy Chief Financial Officer. Paragraph (g) prescribes factors that an agency official should consider when deciding whether to grant a waiver of the DCIA requirement that financial assistance be denied. A waiver will be granted only when compelling circumstances require.

(h) Effect of Denial of Federal Financial Assistance

Paragraph (h) states that nothing in this proposed rule precludes a person from obtaining Federal financial assistance after a delinquent debt has been resolved.

Regulatory Analysis

This proposed rule is not a significant regulatory action as defined in Executive Order 12866. It is hereby

certified that this rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the DCIA provides that entities owing delinquent debt to the Federal Government are ineligible for Federal direct and indirect loan assistance (other than disaster loans). This proposed rule provides definitions for purposes of determining whether the DCIA mandate applies. Therefore a regulatory flexibility analysis is not required.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Credit, Debt, Loan programs.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR Part 285 is proposed to be amended as follows:

1. The authority citation for Part 285 is proposed to be revised to read as follows:

Authority: 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3720A, 3720B, 3720D; E.O. 13019; 3 CFR, 1996 Comp., p. 216.

2. Section 285.13 is proposed to be added to Subpart B to read as follows:

§ 285.13 Barring delinquent debtors from obtaining federal loans or loan insurance or guarantees.

(a) *Definitions.* For purposes of this section:

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of the Federal Government, including government corporations.

Creditor agency means any Federal agency that is owed a debt.

Debt means any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States or an agency thereof by a person, including debt administered by a third party as an agent for the Federal Government.

Federal financial assistance or *financial assistance* means any Federal loan (other than a disaster loan), loan insurance, or loan guarantee.

FMS means the Financial Management Service, a bureau of the Department of the Treasury.

Nontax debt means any debt other than a debt under the Internal Revenue Code of 1986 (26 U.S.C.).

Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of entity other than a Federal agency.

Secretary means the Secretary of the Treasury.

(b) *Purpose and scope.* (1) This section prescribes standards for determining whether an outstanding nontax debt owed to the Federal Government is in delinquent status and whether such delinquency is resolved for the purpose of denying Federal financial assistance to a debtor. In addition, this section prescribes the circumstances under which the Secretary may exempt a class of debts from affecting a debtor's loan eligibility. This section also outlines the factors an agency should consider when determining whether waiver of the general rule in paragraph (c) of this section is appropriate.

(2) FMS may provide additional guidance in ''Managing Federal Receivables'' and other FMS publications concerning debt collection and debt management.

(3) Nothing in this section requires an agency to grant Federal financial assistance if denial otherwise is authorized by statute, regulation, or agency policies and procedures. For example, if an agency requires borrowers to have a satisfactory credit history, the agency may deny financial assistance even if a delinquent debt has been resolved.

(4) This section does not confer any new rights or benefits on persons seeking Federal financial assistance.

(5) This section applies to any person owing delinquent nontax debt and to any agency that administers a program that grants Federal financial assistance.

(c) *General rule.* As required by the provisions of 31 U.S.C. 3720B, a person owing an outstanding nontax debt that is in delinquent status shall not be eligible for Federal financial assistance. This eligibility requirement applies to all persons seeking Federal financial assistance and owing an outstanding nontax debt in delinquent status, including, but not limited to, guarantors. This eligibility requirement applies to all Federal financial assistance even if creditworthiness or credit history is not otherwise a factor for eligibility purposes, e.g., student loans. A person may be eligible for Federal financial assistance only after the delinquency is resolved in accordance with this section. An agency may waive this eligibility requirement in accordance with paragraph (g) of this section.

(d) *Delinquent status.* (1) Except as otherwise provided in paragraph (d)(2) of this section, a debt is in ''delinquent status'' for purposes of this section if the debt has not been paid by the payment due date or by the end of any grace period provided by statute, regulation, contract, or agreement. The payment due date is the date specified in the creditor agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency repayment agreement).

(2) For purposes of this section, a debt is not in delinquent status if:

(i) The person seeking Federal financial assistance has been released by the creditor agency from any obligation to pay the debt, or there has been an adjudication or determination that such person does not owe or does not have to pay the debt;

(ii) The debtor is the subject of, or has been discharged in, a bankruptcy proceeding, and if applicable, the person seeking Federal financial assistance is current on any court authorized repayment plan; or

(iii) The existence of the debt or the agency's determination that the debt is delinquent is being challenged under an ongoing administrative appeal or contested judicial proceeding and the appeal was filed by the debtor in a timely manner. Unless otherwise prohibited, an agency may defer making a determination as to whether or not to extend credit until the appeal process is completed.

(3) Unless the provisions of paragraph (d)(2) apply, a debt is in delinquent status even if the creditor agency has suspended or terminated collection activity with respect to such debt. For example, a delinquent nontax debt that has been written off the books of the creditor agency or reported to the Internal Revenue Service as discharged (i.e., canceled) is in delinquent status for purposes of this section.

(e) *Delinquency resolution.* (1) For purposes of this section, a person's delinquent debt is resolved only if the person:

(i) Pays or otherwise satisfies the delinquent debt in full;

(ii) Pays the delinquent debt in part if the creditor agency accepts such part payment as a compromise in lieu of payment in full;

(iii) Cures the delinquency under terms acceptable to the creditor agency in that the person pays any overdue payments, plus all interest, penalties, late charges, and administrative charges assessed by the creditor agency as a result of the delinquency; or

(iv) Enters into a written repayment agreement with the creditor agency to pay the debt, in whole or in part, under terms and conditions acceptable to the creditor agency.

(2) Unless the provisions of paragraph (e)(1) apply, a delinquent debt is not resolved even if the creditor agency has

suspended or terminated collection activity with respect to such debt. For example, a delinquent nontax debt that has been written off the books of the creditor agency or reported to the Internal Revenue Service as discharged (*i.e.*, cancelled) would not be ''resolved.''

(f) *Exemptions by the Secretary.* (1) Upon the written request and recommendation of an agency, the Secretary may exempt any class of debts from affecting a debtor's eligibility for Federal financial assistance based on the provisions of 31 U.S.C. 3720B and this section.

(2) The agency recommending an exemption for a class of debts will provide the Secretary with information about:

(i) The nature of the program under which the delinquencies have arisen;

(ii) The number, dollar amount, and age of the debts in the program for which exemption is recommended;

(iii) The reasons why an exemption is justified, including why the granting of financial assistance to persons owing the type of debt for which exemption is requested would not be contrary to the Government's goal to reduce losses by requiring proper screening of potential borrowers; and,

(iv) Other information the Secretary deems necessary to consider the exemption request.

(3) The Secretary may exempt a class of debts if exemption is in the best interests of the Federal Government.

(g) *Waivers by the agency.* (1) The head of an agency from which a person seeks to obtain Federal financial assistance may waive the eligibility requirement described in paragraph (c) of this section. Waivers shall be granted only on a person by person basis. The head of the agency may delegate the waiver authority only to the Chief Financial Officer of the agency. The Chief Financial Officer may redelegate the authority only to the Deputy Chief Financial Officer of the agency.

(2) The authorized agency official should balance the following factors when deciding whether to grant a waiver under paragraph (g)(1) of this section:

(i) Whether the denial of the financial assistance to the person would tend to interfere substantially with or defeat the purposes of the financial assistance program or otherwise would not be in the best interests of the Federal Government; and

(ii) Whether the agency's granting of the financial assistance to the person is contrary to the Government's goal to reduce losses from debt management activities by requiring proper screening of potential borrowers.

(3) When balancing the factors described in paragraph (d)(2) of this section, the authorized agency official should consider:

(i) The age, amount, and cause(s) of the delinquency and the likelihood that the person will resolve the delinquent debt; and

(ii) The amount of total debt, delinquent or otherwise, owed by the person and the person's credit history with respect to repayment of debt.

(4) Each agency shall retain a centralized record of the number and type of waivers granted under this section.

(h) *Effect of denial of Federal financial assistance.* Nothing contained in this section precludes a person who has been denied Federal financial assistance from obtaining such assistance after that person's delinquent debt has been resolved in accordance with paragraph (e)(1) of this section.

Dated: April 16, 1998.

Richard L. Gregg,

Commissioner.

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April 22, 1998

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 930

Tart Cherries Grown in the States of Michigan, et al.; Temporary Suspension of a Proviso for Exporting Juice and Juice Concentrate; Establishment of Rules and Regulations Concerning Exemptions From Certain Order Provisions; Establishment of Regulations for Handler Diversion; Issuance of Grower Diversion Certificates; Rules

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV97–930–4 FIR]

Tart Cherries Grown in the States of Michigan, et al.; Temporary Suspension of a Proviso for Exporting Juice and Juice Concentrate; Establishment of Rules and Regulations Concerning Exemptions From Certain Order Provisions; and Establishment of Regulations for Handler Diversion

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, with a change, the provisions of an interim final rule implementing provisions of the Federal tart cherry marketing order (order) by establishing regulations concerning handler diversion, including diversion credit for exempt uses, and by defining certain terms relating to exemptions. In addition, this rule temporarily suspends language in a provision of the order which results in allowing handlers to receive diversion credit for exporting juice and juice concentrate to eligible countries for the 1997–98 crop year only. Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement when volume regulation is in effect by diverting cherries or cherry products rather than by placing them in an inventory reserve.

EFFECTIVE DATE: May 22, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 720–5053, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930) regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

The tart cherry marketing order was recently promulgated and the Cherry Industry Administrative Board (Board) met March 12–13, June 26–27, and September 11–12, 1997, to establish, and recommend to the Secretary, rules and regulations to implement the order authorities, and to consider volume regulation for this crop year. On or about July 1 of each crop year the Board is required to review sales data, inventory data, crop forecasts and market conditions in order to establish an optimum supply volume which is then used in calculating a preliminary free market tonnage percentage. In the event that a restricted percentage is recommended and imposed, handler diversion is one method under the order that handlers can utilize to meet restricted percentage requirements. The Board established and announced the optimum supply level and preliminary free and restricted percentages for the 1997–98 crop year as required by the order. On September 11–12, 1997, the Board reviewed its marketing policy and previous recommendations, and recommended a 55 percent final free market tonnage and a restricted percentage of 45 percent for this crop year.

All handlers were notified of this recommendation pursuant to § 930.50(h) of the order. Pursuant to § 930.50, final percentages for volume regulation are required to be recommended to the Secretary by September 15. Whenever it is found by the Secretary that it would be appropriate to set free market tonnage and restricted percentages for cherries acquired by handlers, volume regulations would be issued through informal rulemaking.

This rule establishes procedures for handler diversion. Handler diversion is authorized under § 930.59 of the order and, when volume regulation is in effect, handlers may fulfill restricted percentage requirements by diverting cherries or cherry products. Volume regulation is intended to help the tart cherry industry stabilize supplies and prices in years of excess production. The volume regulation provisions of the order provide for a combination of processor owned inventory reserves and grower or handler diversion of excess tart cherries. Reserve cherries may be released for sale into commercial outlets when the current crop is not expected to fill demand. Under certain circumstances, such cherries may also be used for charity, experimental purposes, nonhuman use, and other approved purposes.

Section 930.59(b) of the order provides for the designation of allowable forms of handler diversion. These include: uses exempt under § 930.62; contribution to a Board approved food bank or other approved charitable organization; acquisition of grower diversion certificates that have been issued in accordance with § 930.58; or other uses, including diversion by destruction of the cherries at the handler's facilities.

A new § 930.159 is added to the rules and regulations concerning handler diversion. One method of diversion available to handlers is by destruction of cherries at the handler's facility. Disposal at the handler's facility will take place prior to placing the product into the processing line. This is to ensure that the product diverted is not simply an undesirable by-product of processing. Handlers electing to divert cherries or cherry products must first notify the Board and submit a plan for approval. Such notification and plan shall include an agreement that diversion will take place under the supervision of the USDA Processed Products Inspection Service or Board employee inspectors, and that the costs of such supervision are to be paid by the handler. USDA inspectors will

supervise diversion of cherry products at the current hourly rate of $41.00, which is subject to change, under USDA's inspection fee schedule (7 CFR § 54.42). Board employees will supervise diversion at the same rate. Diversion may also be accomplished by handlers donating cherries to charitable organizations, utilizing cherries in exempt outlets, or redeeming grower diversion certificates obtained from growers who have diverted cherries by non-harvest, and who have been issued diversion certificates by the Board in accordance with rules and regulations governing the issuance of grower diversion certificates in § 930.100. Diversion by means other than destruction of cherries at handlers' facilities would also be subject to supervision as found necessary by the Board. Fees would be charged as discussed above.

Once diversion is satisfactorily accomplished, handlers will receive diversion certificates stating the weight of cherries diverted. Such diversion certificates can be used to satisfy handlers' restricted percentage obligations. Cherries and cherry products which have been diverted shall not be subject to assessment.

A handler will have one crop year to fulfill the diversion plan which was submitted and approved by the Board. The details of the plan shall show, among other things, the name and address of the handler, the total product processed at-plant, cherries diverted at-plant, in-orchard diversion certificates redeemed, and anticipated donations to charitable outlets. A handler will also have one crop year to dispose of cherries or cherry products for exempt uses approved by the Board, unless granted a renewal. By February 5, 1998, for the 1997 crop year only, and November 1 for subsequent crop years, each handler must submit on Board Form No. 4 the details of how such handler will satisfy the restricted percentage obligation. The Board may extend this date in individual cases pursuant to a written request showing good cause why the plan cannot be provided by the due date. The November 1 date corresponds with the date that grower diversion certificates are no longer valid (for the 1997–98 crop year this date is February 5, 1998). Other reports detailing the inventory reserve summary were also due by February 5, 1998, for the 1997 crop year only, and November 1 for subsequent crop years. Any information obtained by the Board which is of a confidential and/or proprietary nature would be protected from disclosure pursuant to section 930.73 of the order.

Section 930.59(b) which specifies the diversion options for handlers, includes uses exempt under § 930.62. Section 930.62 provides that the Board, with the approval of the Secretary, may exempt from the provisions of §§ 930.41, 930.44, 930.51, 930.53, and 930.55 through 930.57 cherries which are diverted in accordance with § 930.59, which are used for new product and new market development, which are used for experimental purposes, or which are used for any other purpose designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries were utilized. One such use which may be designated as an exempt use and granted diversion credit is the exportation of cherries. Tart cherries used for exempt purposes are not subject to certain marketing order provisions. These provisions include assessment, quality control, volume regulation, and reserve provisions.

For the purposes of the regulation concerning exempt uses, the Board has recommended that certain terms be defined. Also, the Board recommended that handlers who use cherries or cherry products for approved exempt purposes receive diversion credit pursuant to section 930.59(b).

Thus, a new section 930.162 was added to the rules and regulations defining exempt use terms and authorizing exemptions under the marketing order. Terms defined include new product development, new market development, development of export markets, and experimental purposes.

The first term defined is ''new product development.'' New product development includes the production or processing of a tart cherry product using a technique not presently being utilized commercially in the tart cherry industry. For example, a handler may ask for an exemption for product such as ground meat in combination with raw tart cherries to form a leaner meat product. The Board determined that when a new product is commercially viable, which is defined as the time when total industry utilization for the product exceeds 2 percent of the five year average production of tart cherries, the exemption shall terminate. Therefore, the Board has recommended that when the utilization of the product exceeds 2 percent of the five year average production, the product has received consumer acceptance and should no longer be eligible for a new product development exemption.

The second term which is defined is ''new market development.'' Under the definition, new market development means the development of markets for cherry products which are not commercially established markets and which are not competitive with commercial outlets presently utilized by the tart cherry industry. For example, a handler may seek to establish sales of cherry preserves to India or China, currently undeveloped markets. The Board determined that a new market becomes commercially established when the total industry utilization in that market exceeds 2 percent of the five year average production of tart cherries.

The third term which is defined is ''development of export markets.'' This is defined as exports to countries other than Canada, Mexico and Japan, including the development of sales for new or different tart cherry products or the expansion of sales for existing tart cherry products. An example of development of sales for new or different tart cherry products could be a handler seeking to establish sales of dried cherries in Germany, which is primarily a hot pack market. Board members and meeting participants discussed the favorable export market this season. Handlers have exports to many countries, including Italy, France, Belgium, Germany and the Netherlands and have enjoyed a significant increase in volume of exports into these countries. Handlers have indicated that exports of tart cherry products have increased significantly over previous years' exports. Board members indicated that last year's exports totaled about 10 million pounds. This year, handlers are expected to experience the largest volume of exports on record, estimated at up to 50 million pounds. Handlers have been able to expand existing export markets and establish new markets for the future. Board members also commented that hot pack product (canned tart cherries) have been shipped to export markets that have never received such product before. Contributing to their success is the excellent quality of this year's crop. Growers and handlers have experienced high quality fruit due to favorable growing conditions for tart cherries this season. This high quality fruit has resulted in high quality products which are very competitive in export markets. The availability of such high quality cherry products increases the likelihood of maintaining such markets in future seasons. Handlers also have experienced a growth in IQF (Individually Quick Frozen) sales in the export market this season. If handlers are not able to use this option, more product might be destroyed to avoid the possibility of processing and storage costs associated

with placing cherries into an inventory reserve. Exports to Mexico, Canada, and Japan are not included in this exemption because, according to the Board, tart cherry markets are well established in those countries.

The fourth term which is defined is ''experimental purposes.'' Uses for experimental purposes include preliminary and/or developmental activities, such as a handler working with cereal companies to develop a cereal using dried cherries. Such experimental purposes should be intended to result in new products, new applications and/or new markets for existing tart cherry products. Any exemption for experimental purposes shall be limited in scope, duration, and volume which the applicant shall specify at the time a request for exemption is made. In no case shall an exemption for experimental purposes last longer than five years or exceed 100,000 pounds raw product equivalent per handler of tart cherries during the duration of the experiment. The Board has recommended that the five year or 100,000 pound raw product equivalent per handler limits are sufficient to determine whether such cherries for experimental purposes can be developed into new products or uses.

To qualify for an exemption under § 930.62, a handler must apply to the Board for a new exemption or for renewal of an existing exemption by November 1 for the next succeeding year. Handlers should have applied for an exemption through February 5, 1998, for the 1997 crop year only, and by November 1 for subsequent crop years. These dates were changed from the Board's recommendation of June 1 in order to provide handlers ample time to harvest and assess their crop each year. When applying to the Board for an exemption, the handler must detail the nature of the product or market, how it differs from current, existing products and/or markets and the estimated short and long term sales volume for the exemption. In addition, in order to obtain diversion credit for cherries used for exempt purposes, the application must also contain an agreement that the proposed exempt use diversion is to be carried out under the supervision of the Board, and that the cost of any such supervision that is needed is to be paid by the applicant. The fees for such USDA or Board supervision, as previously stated, will be the current hourly rate of $41.00, which is subject to change, under USDA's inspection fee schedule (7 CFR 54.42). The information which is provided will allow Board staff to assess the request for exemption and render a determination concerning its approval. Any information received by the Board which is of a confidential and/or proprietary nature would be protected from disclosure pursuant to § 930.73 of the order.

The Board discussed providing assistance to its staff with reviewing applications pertaining to exemptions. The Board recommended that a subcommittee be formed to assist staff members to ensure that exemptions are properly reviewed and granted. The Board suggested that a subcommittee of three persons, which could include the manager, a public member and one industry member who is not on the Board, be established. Handlers whose requests for exemption or renewal of exemption are denied would be able to appeal such denial to the Deputy Administrator, Fruit and Vegetable Programs.

Each handler that is granted an exemption must submit to the Board an annual progress report, due May 1 of each year. The progress report shall include the results of the exemption activity (comparison of intended activity with actual activity) for the year in its entirety, the volume of exempted fruit, an analysis of the success of the exemption program, and such other information the Board may request.

As previously discussed, the Board has recommended that exports to countries other than Canada, Mexico, and Japan be exempted pursuant to § 930.62. The Board has also recommended that diversion credit be granted for such exports. Handlers wishing to receive diversion credit for exports must provide to the Board on-board bill of lading documentation or other documentation to verify export before the Board will issue diversion credit.

The Board will grant diversion credit for exempted products after it has received the necessary information concerning the particular exemption and when it is satisfied that the handler requesting the diversion credit has satisfied all the requirements relevant to the exemption. The Board recommended for the 1997 season (July 1, 1997 through June 30, 1998) only, that handlers receive diversion credit for up to one million pounds of exempted products per handler for new market development and new product development. The Board believes this will provide adequate flexibility for individual handlers to obtain diversion credit for exempt uses this season, but recommended providing some restriction on the absolute volume of such allowable diversions until more experience with the program has been obtained. However, the one million pound limit for exempted products per handler does not apply to handlers desiring to receive diversion credit for exports. As stated previously, this is the first season this program is in effect and handlers have exported or contracted to export tart cherry products. Some of these handlers may have shipped in excess of the one million pound limit. Allowing full diversion credit for the amount of product shipped abroad, will prevent both growers and handlers from incurring financial losses. The Board is continuing to review the issue of what limits to impose on exempted products.

Handlers desiring to receive diversion credit for donations to charitable organizations should follow the requirements specified in the regulations. For contributions to qualify for diversion credit, the contributed product should be marked clearly ''NOT FOR RESALE''. The receiving organization must be approved by the Board as a qualified recipient of contributions of tart cherry products. Such organizations must be tax-exempt, must not sell the donated products and must be noncompetitive with other tart cherry industry sales outlets. Once products are donated to an organization, the Board must receive satisfactory documentation of the transaction. Handlers should provide the Board with information on how the product was used and the volume of product used.

Handlers desiring to receive diversion credit for cherries diverted under § 930.59, including uses exempt under § 930.62, but who fail to meet the terms and conditions in the regulation for such diversion would not receive diversion credit for the cherries or cherry products. Any cherries not properly diverted in accordance with Board Form No. 4 must be placed into the handler's secondary reserve if one has been established or the primary reserve if a secondary reserve has not been established. The primary reserve is the first reserve where handlers in volume regulated districts can place tart cherries or tart cherry products to hold from primary markets in order to meet restricted percentage obligations. The primary reserve is limited to a capacity of 50 million pounds. A secondary reserve is established only after the primary reserve has been filled to the 50 million pound capacity. The secondary reserve is where the balance of reserve cherries or cherry products are held. There is no maximum capacity for the secondary reserve. Both primary and secondary reserves are operated at the handler's expense and no cherries can be removed from the secondary reserve until the primary reserve has been depleted. Upon termination of an

exemption, any volume of tart cherry products that were exempted from order requirements but which were not utilized should be placed into the secondary inventory reserve if one has been established, or into the primary reserve. It is the handler's responsibility to fulfill the restricted percentage obligations established by volume regulation. A handler may fulfill the restricted percentage obligation by either transferring cherries from his/her own inventory, purchasing additional cherries or cherry products or obtaining diversion certificates from other handlers to meet such obligation.

In addition to the recommendation already discussed, the Board, at its March 1997 meeting, also recommended that the Department modify the optimum supply formula by deducting exports from the calculation. The Department is not proceeding with this recommendation since the order promulgation record indicates that average sales should include sales to all markets, including exports.

At its meeting in March 1997, when discussing exports, the Board also recommended that juice and juice concentrate, to countries other than Canada, Mexico, and Japan, receive diversion credit. During the production and processing of the crop, handlers have exported, or have contracted to export, tart cherry juice or juice concentrate for this season. Many of these exports were for the purpose of expanding existing markets or developing new markets. According to the Board, if diversion credit is not allowed for export juice or juice concentrate, some of these handlers could suffer substantial financial losses since they would have to pack or purchase additional cherries to place in their inventory reserves or default on contracts. These costs would likely be passed on to growers. Therefore, the Board recommended at its September 11–12, 1997, meeting that the proviso in § 930.59(b) of the order be suspended for this year only and that diversion credit for exports of juice and juice concentrate be allowed for the 1997–1998 crop year. The temporary suspension of the proviso for the 1997–98 crop year will allow handlers to receive diversion credit for juice and juice concentrate exported to countries other than Canada, Mexico and Japan.

New export sales of juice and juice concentrate this crop year are estimated to be in the range of 4–7 million pounds. While significant to the handlers making such sales, traditional sellers of juice and juice concentrate products in established domestic and export markets should not experience any undue increase in competition. This is because indications are that the bulk of the new export sales of juice and juice concentrate represent sales to new markets or expansion of existing markets. This suspension action is not intended to establish a precedent for future seasons. Its purpose is to correct any misunderstandings that have occurred in the industry about order operations concerning juice and juice concentrate, to prevent disorderly marketing conditions and unnecessary financial losses by handlers. Not proceeding with the suspension this season could result in disorderly marketing in the domestic market, since, in addition to the problems already mentioned, juice and juice concentrate intended for export would likely have to be sold domestically. This situation will be avoided in subsequent seasons since handlers should be fully aware of the order's restrictions.

The Regulatory Flexibility Act and Effects on Small Businesses

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

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

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 1,220 producers of tart cherries in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of tart cherries may be classified as small entities.

Section 930.59 of the tart cherry marketing order provides authority for handler diversion. Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirements which may be in effect in full or in part through diversion of cherries or cherry products in a program approved by the Board, rather than placing cherries in an inventory reserve. Handlers can divert by destruction of the cherries at the handler's facility, making charitable donations, and using cherries or cherry products for exempt purposes, or by redeeming grower diversion certificates obtained from growers who have diverted cherries by non-harvest, and who have been issued diversion certificates by the Board. Once diversion is satisfactorily accomplished, handlers will receive a diversion certificate stating the weight of cherries diverted. Such diversion certificates can be used to satisfy the handler's restricted percentage obligation. This enables handlers to either place cherries into an inventory reserve or select the diversion option most advantageous to their particular business operation. Costs for supervision of such actions will take place under the supervision of the USDA Processed Products Inspection Service or Board employee inspectors, and that the costs of such supervision is to be paid by the handler. USDA inspectors will supervise diversion of cherry products at the current hourly rate of $41.00, which is subject to change, under USDA's inspection fee schedule (7 CFR § 54.42). Board employees will supervise diversion at the same rate. Diversion may also be accomplished by handlers donating cherries to charitable organizations, utilizing cherries in exempt outlets, or redeeming grower diversion certificates obtained from growers who have diverted cherries by non-harvest, and who have been issued diversion certificates by the Board in accordance with rules and regulations governing the issuance of grower diversion certificates in § 930.100. Diversion by means other than destruction of cherries at handlers' facilities would also be subject to supervision as found necessary by the Board. Fees would be charged as discussed above. Providing such options allows handlers to minimize processing and storage costs associated with

meeting restricted percentage obligations. Such cost savings may also be passed on to growers and consumers. Thus, providing these options accomplishes the purposes of the order and the Act.

The Board also recommended granting handlers diversion credit for cherries used for exempt purposes under § 930.62. Those purposes include cherries used for new product development, for the development of export markets, for experimental purposes, and the export of cherries and cherry products, including juice or juice concentrate, to approved countries.

In order to provide for juice and juice concentrate as a diversion outlet, the Board recommended that the proviso under § 930.59(b) of the order be suspended. Therefore, this rule temporarily suspends language in the proviso under § 930.59(b) of the order. The suspension would temporarily remove a prohibition against allowing diversion credit for juice and juice concentrate for this crop year only. However, the Board would only grant diversion credit for juice or juice concentrate exported to eligible countries. The Board recommended this suspension be used to correct any misunderstandings that have occurred in the industry about order operations concerning juice and juice concentrate, to prevent disorderly marketing conditions and unnecessary financial losses by handlers.

The temporary suspension of the juice and juice concentrate proviso was discussed at the most recent Board meeting. It was the Board's view that if the proviso is not suspended, affected handlers will have to expend additional funds to meet their restricted obligations by placing products that they could have sold in export markets into an inventory reserve or at-plant divert. The costs of these actions would likely be passed on to growers.

New export sales of juice and juice concentrate this crop year are estimated to be in the range of 4–7 million pounds. While significant to the handlers making such sales, traditional sellers of juice and juice concentrate products in established domestic and export markets should not experience any undue increase in competition this season. This is because indications are that the bulk of the new export sales of juice and juice concentrate represent sales to new markets or expansion of existing markets, rather than an increase in competition among sellers for previously developed markets. As previously stated, handlers have indicated that exports of tart cherry products have increased significantly over previous years' exports. Board members indicated that last year's exports totaled about 10 million pounds. This year, handlers are expected to experience the largest volume of exports on record, estimated at up to 50 million pounds. Handlers have been able to expand existing export markets and establish new markets for the future. Board members also commented that hot pack product (canned tart cherries) have been shipped to export markets that have never received such product before. Contributing to their success is the excellent quality of this year's crop. Growers and handlers have experienced high quality fruit due to favorable growing conditions for tart cherries this season. This high quality fruit has resulted in high quality products which are very competitive in export markets. The availability of such high quality cherry products increases the likelihood of maintaining such markets in future seasons. Not proceeding with the suspension this season could result in disorderly marketing in the domestic market.

The impact of this rule would be beneficial to growers and handlers. Authorizing various diversion outlets and allowing diversion credit for exempt uses means handlers will not be required to divert excess cherries at their plants. Instead, fruit can be processed into a usable form, thereby promoting the development of new products and the expansion of new markets for tart cherries. Authorizing exemptions for various uses of tart cherries should also promote such market development and expansion, as well as making cherries available for charitable purposes. Suspending an order provision for this season only will allow handlers to take advantage of export markets and obtain diversion credit for such exports, increasing the utilization of this season's crop and grower and handler returns.

The Board considered alternatives to these recommendations. With respect to handler diversion and diversion credit for exempt uses, if handlers who are subject to volume regulation are unable to receive diversion credit, they would have to divert cherries by other means or place cherries in an inventory reserve which may not be desirable because of storage costs. For example, the Board discussed not granting handlers diversion credit for at-plant diversion. However, the Board felt that providing such a diversion option increased handler flexibility to process and pack the best cherries available during a year when volume regulation is in effect and to reduce the costs of processing and storing reserve cherries.

The Board also discussed not granting exemptions, and diversion credit for such exemptions, for exports to eligible countries (including juice and juice concentrate), other exempt uses, and charitable donations. However, the Board felt this would not be in the best interest of the industry or the public. As previously discussed, the Board expressed that not allowing the export and other exemptions would have a detrimental effect on the market this season if free and restricted percentages are imposed. Without such exemptions and diversion credits for export sales, new market development and other specified uses, about 50 million pounds of cherries would not be removed from the domestic market this season, depressing grower returns for all cherries. The marketing order was designed to increase grower returns by stabilizing supplies with demand as well as stabilizing prices and creating a more orderly and predictable marketing environment. Expanding markets and developing new products is key to meeting this marketing order's goals.

Not granting exemptions and diversion credit for exports to countries other than Canada, Mexico, and Japan was also discussed at Board meetings. However, the Board expressed that this recommendation is very important to creating stable conditions in the export marketplace this season and would encourage future market growth. The Board further stated that such action will improve returns to growers because of the tremendous growth in the export market this season.

This rule imposes certain reporting and recordkeeping requirements on tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules which duplicate, overlap or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements imposed by the order have been previously approved by OMB and assigned OMB Number 0581–0177. This includes the requirements contained in this regulation (i.e. progress reports, applications).

The components of the Handler Reserve Plan and Final Pack Report

which handlers must submit to utilize at-plant and exempt use diversion and the requirements for other reports related to handler diversion and handlers meeting their restricted percentage obligations (i.e., Inventory Reserve Summary, Cherries Acquired from Producers, Handler Reserve Plan and Final Pack Report, and Inventory Location Report) have received approval by OMB. It was anticipated that as many as 45 handlers might be regulated if volume regulations are established. Many reports are submitted a single time each season, while some are submitted more frequently. In addition, the bulk of the information handlers must report is obtained during the normal course of their business operations. It would take handlers approximately 15 minutes per report to complete for a total of 60 minutes per handler and approximately 2,700 minutes annually for the estimated 45 handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Board's meetings were publicized throughout the tart cherry industry and all interested persons were invited to attend them and participate in Board deliberations. Like all Board meetings, the March, June, and September 1997, meetings were public meetings and all entities, both large and small, were able to express their views on these issues. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations. The Board's Diversion Subcommittee met on March 12, 1997, and discussed handler diversion in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views. A majority of these entities expressed that, in their opinion, the recommendations made by the Board would have a positive impact on both small and large entities. Finally, interested persons were invited to submit information on the regulatory and informational impacts of the action on small businesses.

The following discussion concerns comments raised about the initial regulatory flexibility analysis and statements made therein. A comment received from a tart cherry handler stated that the text of the interim final rule exhibits no detail of any analysis as required by the RFA. The commenter asserts that such analyses are required and that this industry includes both large and small entities. The commenter also states that this interim final rule should not be advanced as final until such analysis is completed, documented and published for comment. We disagree with this comment. Both the initial regulatory flexibility analysis published in the January 6, 1998, **Federal Register** (63 FR 399) and this final regulatory flexibility analysis are consistent with the provisions of the RFA. Accordingly, we are of the view that the Department has met the requirements of the RFA. Further, the comment offered no further explanation for this assertion but did go on to discuss part of the initial regulatory flexibility analysis as it relates to both large and small entities.

Second, the commenter stated that the regulatory flexibility analysis lacked an understanding that tart cherries produced in, for instance, Oregon and Washington are handled in a manner that they become a high quality puree or juice concentrate by intent. Tart cherries produced in other parts of the production area under the order enter the stream of commerce generally in another form. The commenter contends that it is the sort outs or culls from these other products that become puree and juice concentrate and that these products, puree and juice concentrate made with these sort outs or culls, are not equivalent commodities. The commenter believes that allowing a one-year period where these sort outs or culls can receive diversion credit will unfairly compete with someone else's primary market product. The commenter went on to state that prevention of this inequity was part of the reason the order was written as it was.

The Board made the recommendation to suspend the juice and juice concentrate provisions for one year only. The Department allowed the suspension of the juice and juice concentrate provisions on the basis that the bulk of the new export sales of juice and juice concentrate would probably represent sales to new markets or expansion of existing markets. It was expected that such shipments would not be in direct competition with juice and juice concentrate markets established by Oregon and Washington handlers. Present indications are that the bulk of sales of juice and juice concentrate are going to new export markets or are being used for the expansion of existing export markets and are thus not in direct competition with existing markets for juice and juice concentrate.

Third, the commenter disagreed with a statement in the regulatory flexibility analysis and was of the view that meetings are not widely publicized in advance and are not held in a location central to the production area. Meetings have been central only to those producers and handlers in the Michigan districts. The commenter stated that the Board does a poor job of publicizing Board meetings.

In regard to the commenter's statement, the Board also has to consider the cost of travel for all Board members since the Board pays travel expenses for all of its members. The first meetings held in December of 1996 and throughout 1997 were attended by all members and their alternates. A Board recommendation was passed that the start-up meetings be attended by the alternates so they would be involved and aware of Board activities. It would have resulted in considerable expense to the Board to hold the meetings outside of Michigan since 16 members and alternates are from the State of Michigan. The Board realizes the time spent in travel and has made a commitment to hold the June marketing policy meeting in Michigan and the September marketing policy meeting in a district outside of Michigan. The Board is also committed to holding meetings outside the Michigan districts to allow producers and handlers to attend the meetings and cut down on travel time for those not located in Michigan. In regard to the commenter's contention that the Board does a poor job of publicizing Board and subcommittee meetings, we disagree. The Board has and will continue to take appropriate action to provide the widest possible notice of upcoming meetings to all handlers and Board members and alternate Board members. The Board sends meeting notices to all Board members and several tart cherry industry organizations. In fact, the Board is currently developing a newsletter which will be distributed to all growers and handlers of record to further publicize upcoming Board meetings.

An interim final rule concerning this action was published in the **Federal Register** on January 6, 1998. Copies of the rule were mailed by the Board's staff to all Board members and cherry handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 30-day comment period which ended February 5, 1998. Two comments were received. One comment was received from a tart cherry association representing tart cherry growers and processors in the State of Oregon and the other from a handler.

The first commenter representing the tart cherry association also commented on the proposed rule published on January 21, 1998, in the **Federal Register** (63 FR 3048) that proposed final free and restricted percentages for the 1997–98 crop year. To the extent that the comment addressed or identified issues relating to the January 21, 1998, publication, that portion of the comment will be discussed, as appropriate, in the final action concerning that document which will be published separately from this action.

The first commenter stated that they objected to the use of export markets for disposal of tart cherries for exempt or diversion purposes. The commenter stated that the use of exports in this manner will create a two-tiered pricing system. Some exports have been cheaply priced even though domestic prices warrant a stronger approach. The commenter states further that this will draw down the domestic price, as well as the export price for those cherries not receiving diversion credit. The commenter believes that if the domestic market strengthens as a result of these activities, the industry may become over enthusiastic and begin planting and create a worse oversupply in the future. There must be well maintained compliance to ensure that tart cherry products exported and receive diversion credit are not returned to the domestic market.

In response to the commenter's statements, the Board has recommended that exports to certain countries receive diversion credit. The Board has indicated exports have increased due to the diversion credit option and short supplies in other countries. The Board will be able to analyze results of this year's activity to determine if such program worked. The Board will continue to monitor activities to ensure that exported cherries are not reexported into the domestic market.

The first commenter also commented that the Department rule soon on the identity and nature of CherrCo, Inc., a new entity in the tart cherry industry, as it relates to the marketing order. The Department is continuing to work with the Board on this issue. This issue will be addressed separately.

Finally, the first commenter noted that there is reference made to a limit for diversion credit of 1 million pounds of product per year. The commenter further states that in the interim final rule, the Board's intent that there be no limit on export credits at all needs to be properly reflected. The regulatory text inadvertently states that under § 930.159(f) that the one million pound exemption limitation for diversion credit does not apply to handlers exporting juice or juice concentrate. The one million pound limitation does not apply to any exports, not just juice and juice concentrate. The supplementary information of the interim final rule explains this limitation correctly. Therefore, this final rule corrects this error in the amendatory language as suggested by the commenter. Additionally, this commenter stated that they agree with the comments submitted by the second commenter discussed below.

The second commenter raised ten points in his comment, three of which related to the initial regulatory flexibility analysis and have been discussed previously in this document. First, the commenter stated that it is not equitable that cherries which have been authorized for diversion or exemption from restrictions are excused from assessment. All tonnage produced should be subject to assessment. A majority of the Board's budget is earmarked for compliance expenses. The compliance costs are generated in districts with the bulk of the diversions and exemptions. Handlers and producers in districts which are not subject to tonnage restrictions should not be penalized for maintaining production at moderate levels.

The Board, after its initial 1997–98 crop year, is reviewing the order and considering several amendment proposals to assist the order to operate more efficiently in future crop years. One proposal the Board is considering is that any cherries produced, which would be those diverted or exempted, be subject to assessments. Only those cherries that are diverted at the orchard would not be subject to assessments.

Secondly, the commenter stated that it is not equitable that diversion credits are issued in situations involving exemption. Based on its category of use, destruction or reserve, a cherry product should qualify either as a diversion or an exemption. The commenter asserted the two terms are not synonymous and stated that this confusion should be clarified with a re-publication for subsequent comment prior to the interim final rule becoming truly final. We disagree.

The terms used in this rule are not used synonymously. These terms are different because diversion credit is provided to growers who voluntarily divert their crop if such crop is of poor quality due to hail damage or some other climatic condition. Diversion credit is provided to handlers if such handlers, in order to meet their restricted percentage obligations, when volume regulations are implemented, by placing cherries in a primary inventory reserve or diverting cherries, or a combination of both. Whereas, tart cherries can be exempted from certain order provisions if they are diverted in accordance with the order by being used for new products or new market development or for experimental purposes or other uses designated by the Board. The Board has the authority to grant diversion credit under § 930.59 for products that are exempted under § 930.62. There is no reason to clarify this authority under the order, since the recommendations made by the Board are clearly authorized under marketing order provisions.

Thirdly, the commenter stated that the Board should not be allowed to deviate from the marketing order authorities, even for a season, because some participants in the industry did not clearly understand what they could and could not utilize as either diversionary or exempted products. The commenter further stated that it was clear during the promulgation that the order was to be very specific in the authorities that would be granted to the Board.

The Board may recommend suspensions of the order or provisions thereof. The Board felt that it would be in the best interests of the industry to suspend the order language with regard to juice and juice concentrate. This is a new order and difficult to administer in its first year of operation. The Board's recommendation will be used to correct any misunderstandings that have occurred in the industry about order operations concerning juice and juice concentrate and allow the industry to expand the export market for this season. As explained in the rule this suspension is for one year only. Accordingly, no change is made to the temporary suspension as a result of this comment.

Fourth, the commenter stated that it is simply untrue that interested parties have an opportunity to provide input concerning the recommendations of the Board to the Secretary. The commenter further stated that the record of Board meetings will also show that not all these recommendations were made unanimously as stated in the rule.

Since the meetings are public, interested persons have an opportunity to provide input on these actions. Also, during this informal rulemaking process, comments are solicited. Most of the actions discussed herein were recommended unanimously by the Board.

Fifth, the commenter stated that the Board needs to have an approved compliance plan prior to issuing supply

control regulations. The Board has approved a compliance plan at its January 29–30, 1998, meeting.

Sixth, the commenter believes it is a particularly serious matter that the Board appears to be functioning under the control of CherrCo, Inc., a new entity in the tart cherry industry. The Department is continuing to work with the Board on this issue. This issue will be addressed separately.

Finally, the commenter urges the Department to insist that the Board randomly conduct unannounced compliance inspections prior to next harvest to insure that reserves are maintained as certified and that required documentation is maintained properly by handlers.

The Board has the authority to inspect reserves and audit handlers as required. The Board will audit handlers, as appropriate, to ensure that proper inventory reserves are being maintained.

Accordingly, one change will be made to the rule as proposed, based on the comments received.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that finalizing the interim final rule, with a change, as published in the **Federal Register** (63 FR 399, January 6, 1998), will tend to effectuate the declared policy of the Act.

It is also found that, for the 1997–98 crop year only, the proviso under § 930.59(b), which prohibits handlers from receiving diversion credit for juice and juice concentrate, should be suspended since such proviso does not tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 930

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

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

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

Accordingly, the interim final rule amending 7 CFR part 930 which was published at 63 FR 399 on January 6, 1998, is adopted as a final rule with the following change:

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

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

Authority: 7 U.S.C. 601–674.

2. Paragraph (f) of § 930.159 is revised to read as follows:

§ 930.159 Handler diversion.

* * * * *

(f) *Exempt uses.* To receive diversion credit for cherries used for exempt purposes, handlers must meet the terms and conditions specified in § 930.162. Each handler may receive diversion credit for up to one million pounds of exempted products each crop year, except that, for the 1997 season only, the one million pound exemption limitation for diversion credit does not apply to handlers exporting tart cherry products.

Dated: April 16, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–10659 Filed 4–21–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV97–930–5 FIR]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Issuance of Grower Diversion Certificates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, with an appropriate modification to reflect a change in a certificate redemption date, an interim final rule establishing terms and conditions for the issuance of grower diversion certificates by the Cherry Industry Administrative Board (Board) under the marketing order for tart cherries. Handlers may use such certificates in order to satisfy their restricted percentage amounts when volume regulations are issued by the Secretary. Tart cherry handlers in Oregon, Pennsylvania, Washington and Wisconsin (Districts 5, 6, 8, and 9) are not subject to volume regulation at this time because these districts do not currently produce adequate tonnage to trigger such regulation under the order.

EFFECTIVE DATE: May 22, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090-6456; telephone (202) 720–2491; Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR Part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' This marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, preliminary free and restricted percentages for tart cherries acquired by handlers during the 1997 crop year were established by the Board during its June 26–27, 1997, meeting. Final free and restricted percentages were recommended by the Board to the Secretary during its September 11–12, 1997, meeting and a proposed rule setting the final free and restricted percentages for the 1997–98 crop year at 55 percent and 45 percent, respectively. Final action concerning the final free and restricted percentages is being published separately in the **Federal Register**. This finalization of an interim final rule provides for the issuance of diversion certificates to growers for cherries diverted during the 1997 crop year. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file

with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary will rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule finalizes an interim final rule which provided for the issuance of diversion certificates to growers in volume regulated districts under the tart cherry marketing order for the 1997 crop year (July 1997 through June 1998). The order became effective September 25, 1996, and the initial Board was appointed in December 1996. The Board held meetings in January, February, March and June 1997, to consider its start-up costs and establish rules and regulations to implement the order authorities. At its meetings, the Board unanimously recommended that the regulations be forwarded to the Department for appropriate action.

In discussions, during its meetings, concerning volume regulation for the 1997 crop year, the Board considered guidelines and procedures for grower diversion. Growers in the States which would be subject to volume regulation were sent information about the Board's discussions and recommendations. A majority of the growers (approximately 700 out of 1,220) indicated interest in the diversion program, and in the districts which would be subject to volume regulation, a number of them voluntarily chose to divert cherries based on information disseminated by the Board concerning its deliberations and recommendations. The Board, during its meetings, continued considering various provisions of the order, such as those pertaining to optimum supply, and making recommendations which included recommended guidelines for grower diversion.

The order in section 930.50 provides the method of establishing an optimum supply level of cherries for the crop year. The optimum supply consists of a free percentage amount which a handler may sell and a restricted percentage amount, when warranted, which will have to be withheld from the market. Based on the optimum supply level, the Board establishes preliminary free and restricted percentages. Preliminary percentages were established by the Board on July 2, 1997, pursuant to Section 930.50(b) of the order, using Department estimates of the upcoming crop. Preliminary free and restricted percentages of 66 and 34 percent, respectively, were announced to the industry in accordance with section 930.50(h) of the order. No later than September 15, after harvest and processing of the crop have been completed, the Board is required to compute, and recommend to the Secretary, final free and restricted percentages based on actual crop amounts. After receiving the Board's recommendation, the Secretary designates the final free and restricted percentages through the informal rulemaking process if the Secretary finds that designating such percentages would tend to effectuate the declared policy of the Act. For this season, the proposed free and restricted percentages are 55 percent and 45 percent, respectively, as published in the January 21, 1998, **Federal Register** (63 FR 3048). A final action concerning the final free and restricted percentages is being published separately in the **Federal Register**. The difference between any final free market tonnage percentage designated by the Secretary and 100 percent would be the final restricted percentage. A handler can satisfy restricted percentage obligations established by regulation by holding restricted percentage cherries in an inventory reserve that the handler maintains, by redeeming grower diversion certificates, or by diverting cherries.

Section 930.58 of the tart cherry marketing order provides authority for voluntary grower diversion. Growers can divert all or a portion of their cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Growers may be issued diversion certificates by the Board stating the weight of cherries diverted. The grower may then present the certificate to a handler in lieu of actual cherries. The handler can apply the weight of cherries represented by the certificate against the handler's restricted percentage amount.

The Board recommended rules and regulations specifying the guidelines for the grower diversion program. First, the Board recommended that any grower desiring to divert in the orchard would first need to apply to the Board. The application would include the name, address, phone number and a statement signed by the grower agreeing to abide by all the rules and regulations for diversion. In addition, the grower would be required to provide maps of such grower's orchard.

The Board recommended two types of in-orchard diversion for the 1997–98 crop year. These are random row diversion, in which orchard rows are randomly chosen by the Board, using a computer program, to be left unharvested, and whole block diversion, in which a whole definable orchard block is left unharvested. Trees below a certain age (in this rule, six years or less) would not qualify for diversion, since these trees are not yet in full production.

The Board recommended that all grower diversion certificates must be redeemed with handlers by November 1. After November 1, grower diversion certificates would not be valid. It was intended that diversion certificates be used within the same crop year that they were issued, as if a crop had been produced. The November 1 date would allow handlers adequate time to meet their restricted percentage amounts after final percentages had been established. However, due to the fact this is a new program in its first year of operation, the November 1 deadline was extended to February 5, 1998 (See the handler diversion regulation published January 6, 1998, 63 FR 399). A conforming modification is made in this rule by removing the reference to the November 1 deadline.

The Board also recommended guidelines concerning random row and whole block diversion and compliance procedures for growers to follow under the grower diversion program.

This crop year a number of growers voluntarily diverted cherries based on preliminary free and restricted percentages which had been announced by the Board and on recommendations concerning diversion which the Board made to the Secretary. One hundred twenty of them received diversion certificates. The interim rule and this finalization provides for the issuance of grower diversion certificates by the Board subject to certain specified terms and conditions. In order to receive a certificate, a grower must show, to the satisfaction of the Board, that cherries were in fact diverted. This may be accomplished in a number of ways. Information about the grower's production must be submitted to the Board. In addition, the grower must agree to allow the Board to confirm reported diversion figures by allowing a Board compliance officer to visit the grower's orchard.

After obtaining the necessary information concerning diversion by a grower, the Board would issue a diversion certificate. The diversion

certificate would be issued for an amount equal to the estimated volume of cherries diverted by the grower.

For random row diversion, such estimated volume is calculated by applying the percentage of the grower's production diverted to the actual average volume per acre of cherries produced and harvested. For example, Grower A farms 1,000 acres and elects to divert 20 percent of the harvestable acreage (200 acres). The grower harvests the remaining 800 acres and obtains 6,400,000 pounds of cherries, which represents a yield per acre of 8,000 pounds. Such grower would receive a diversion certificate for 1,600,000 pounds of cherries (8,000 lbs multiplied by the 20 percent of the total acreage diverted; in this instance, 200 acres).

For whole block diversion, the weight of a harvested sample of 5 percent of each block, provided by the grower, is used to calculate the total volume of diverted cherries to be credited on the diversion certificate. For example, Grower B farms 1,000 acres and elects to whole block divert a 200 acre block. If the 5 percent of the harvested trees in the block diverted yield 80,000 pounds of cherries, the grower receives a diversion certificate for 1,600,000 pounds (80,000 pounds divided by 5 percent (.05) yields 1,600,000 pounds). The rest of the block is unharvested.

After receiving a certificate from the Board, the grower may offer the certificate to a handler to be redeemed. Based upon the recommendations of the Board, guidelines and procedures for grower diversion for 1998 and subsequent seasons will be established through another rulemaking action.

The Regulatory Flexibility Act and Effects on Small Businesses

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

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

There are approximately 1,220 producers of tart cherries in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of tart cherry producers and handlers may be classified as small entities.

One comment was received concerning the regulatory flexibility analysis. The commenter argued that AMS has provided no economic analysis concerning the interim rule, did not consider any alternatives, and did not provide a pre-rule opportunity to comment. We disagree. An initial regulatory flexibility analysis was performed in the interim rule and alternatives considered were discussed. It was also explained why the rule was issued as an interim final.

Section 930.58(b) authorizes the Board to issue diversion certificates to growers in volume regulated districts under the tart cherry marketing order if cherries are diverted according to terms and conditions specified in the order, or according to such other terms and conditions that the Board, with the approval of the Secretary, may establish. The tart cherry marketing order was promulgated on September 25, 1996, and the Board met several times in 1997 to recommend rules and regulations to implement the order authorities. The Board is required under the order to review its marketing policy on or before July 1 and then make recommendations to the Secretary for volume regulation, if such regulation is deemed necessary. The Board met June 26–27, 1997, to review sales data, inventory data, crop forecasts and market conditions in order to establish an optimum supply volume which is then used in calculating a preliminary free market tonnage. The Board established and announced the optimum supply level and preliminary free and restricted percentages for the 1997–98 crop year as required by the order. On September 11–12, 1997, the Board reviewed its marketing policy and previous recommendations and recommended final free market tonnage and restricted tonnage percentages of 55 and 45 percent, respectively. A proposed rule setting these percentages for the 1997–98 crop year was published in the **Federal Register** on January 21, 1998, (63 FR 3048). Final action concerning the final free and restricted percentage is being published separately in the **Federal Register**.

The impact of this rule is beneficial to growers. Grower diversion is one of the methods under the order that a handler can utilize to meet any such handler's restricted percentage. Growers may voluntarily choose to divert because they have cherries that do not meet expected quality standards, or because they are unable to find a processor willing to process some or all of their cherries. Before choosing to divert, the grower will most likely evaluate the harvesting and other cultural costs that will be saved by diverting and locate a handler that will be willing to redeem such grower's diversion certificate.

The Board discussed alternatives to its recommendation to issue grower diversion certificates for the 1997 crop year. The Board considered not issuing grower diversion certificates for the 1997 crop year but believed this action would serve the economic interests of both growers and handlers.

The Board also discussed limiting the blocks to be diverted to no less than 5 acre blocks, but felt that this would have an adverse impact on small growers that produce on less than 5 acre blocks. Therefore, the Board recommended not restricting the size of orchard blocks which could be diverted.

This rule does not contain any reporting or recordkeeping requirements in addition to those already considered or approved during the order promulgation proceeding. The only written information requested from a grower choosing to divert cherries for 1997 is an orchard map and the grower's final production volume. Since growers maintain this information as part of their normal farming operations, it takes approximately 10 minutes to prepare a map and less than a minute to total the final production volume.

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

As with all Federal marketing order programs, reports and forms are

periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The Board's meetings were widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meetings and participate in Board deliberations. All Board meetings were open to the public and all entities, both large and small, were able to express their views on these issues. The Board itself is composed of 18 members, of which 17 members are growers and handlers and one represents the public. Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board.

An interim final rule concerning this action was issued by the Department on August 18, 1997, and published in the **Federal Register** (62 FR 44881) on August 25, 1997. Copies of the rule were mailed by the Board's staff to all Board members, and tart cherry handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register.

A 30-day comment period was provided to allow interested persons to respond to the interim final rule. One comment from a person representing an industry organization was received during the comment period in response to the rule.

In addition to that portion of the comment concerning the regulatory flexibility analysis, the commenter raised a variety of issues concerning and complaining about this rulemaking and the tart cherry program. We disagree with this comment. This rulemaking action is consistent with the Agricultural Marketing Agreement Act of 1937 and the tart cherry marketing order and other applicable law.

First, the commenter stated that the interim final rule violates the Administrative Procedure Act. The commenter stated that the Board recommended the proposal several months prior to the issuance of the rule, and the issuance is well after harvest. The commenter further stated that the Agricultural Marketing Service (AMS) based its decision making on this rule on additional information that AMS has kept secret, and that AMS has not demonstrated ''good cause'' for its failure to provide a 30 day delayed effective date.

The Board has worked diligently along with USDA in discussing and formulating rules and regulations to implement authorities under this new marketing order. It met January, February, March, June, and September of 1997, and recommended rulemaking actions at various meetings. However, since this is a new program, these recommendations needed to be discussed at more than one meeting, and in some instances, modified. Growers were aware of the procedures being recommended for participation in a grower diversion program. As a result, many of them were voluntarily diverting cherries with the anticipation that rules would be forthcoming and that they would be able to obtain diversion certificates. An interim final rule with an opportunity for comment (30-day comment period) was issued. The comments have been reviewed and are addressed in this rulemaking. With regard to the comment regarding ''secret'' information, there is no basis for such statement. AMS has, and will continue to conduct the tart cherry program as it does for all other marketing order programs with required and appropriate public promulgation. AMS considers all relevant information which may have a bearing on the tart cherry marketing order program conducted under the authority of the Agricultural Marketing Agreement Act of 1937.

Second, the commenter objected to the November 1, 1997, deadline for providing diversion certificates to the Board in order to meet reserve obligations. The commenter also stated that USDA has not acted on any of the percentage recommendations made at the June and September meetings. Final free and restricted percentages were proposed by the Secretary on January 21, 1998 (63 FR 3048). Final action concerning the final free and restricted percentage is being published separately in the **Federal Register**. Also, the November 1 deadline for handlers to redeem grower diversion certificates was extended to February 5, 1998, by the handler diversion regulation published on January 6, 1998 (63 FR 399).

Third, the commenter stated that growers were sent information, the content of which was not specified, about the 1997 diversion program. The commenter further stated that any such advance information highlights AMS's failure to follow the APA's mandatory procedures for reasoned decision making. Information pertaining to the grower diversion program being recommended by the Board was distributed by the Board. This was discussed in the interim final rule that was published concerning grower diversion. Further, the grower diversion program is voluntary. A number of growers chose to divert cherries in anticipation of receiving diversion certificates. Regulations concerning the program were adopted and issued as an interim final rule and are being made final in this action.

Fourth, the commenter stated that the rule disallowing cherries from trees six years or younger from the diversion program is entirely arbitrary; that the concept behind diversion is keeping pounds of marketable cherries off the market, and has nothing to do with trees. Allowing the use of trees which are not yet bearing cherries or which are just beginning to bear cherries in calculating diversion amounts would result in figures which are not representative of a grower's true production. Information used to arrive at the age of trees eligible for diversion came from record testimony and from the National Agricultural Statistics Service (NASS), which only counts trees in its statistical reports that are six years and older.

Fifth, the commenter stated that a key component of the Final Order implementing the marketing order was that the order not be used as a form of ''crop insurance'' for cherries which are not marketable, and that the interim rule contains no assurance that diverted cherries are marketable. The diversion program should not be and is not a crop insurance program for unmarketable cherries. The diversion program for the 1997–98 crop year provides that growers can divert all or a portion of their cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. To receive grower diversion certificates, growers must also agree to allow the Board to confirm that diversion of such cherries has actually taken place. Diverted production is measured based on the amount equal to the estimated volume of cherries diverted by the grower. The grower must agree to allow a Board compliance officer to visit the grower's orchard to ensure that diversion requirements are satisfied. The issue of unmarketable cherries will be further considered when diversion rules for the 1998–99 and the following crop years are drafted.

Sixth, the commenter stated that there is no sufficient guarantee of compliance and that the Board has not adopted a compliance plan as part of its annual marketing policy. The commenter also stated that the 5 percent sample size provided by the grower could be weighted with ''lead'' cherries therefore abusing the system. Grower diversion for the 1997–98 crop year was sampled and measured under the supervision of Board compliance staff. Therefore, before issuing certificates, the Board

should know whether diversion requirements are met. The Board has recommended an improved sampling method to be in place for the 1998–99 crop year and subsequent seasons. The Department is also continuing to work with the Board to further develop and refine the compliance plan for the tart cherry marketing order for future seasons.

Finally, the commenter questioned the composition of the Board and whether some members should be disqualified. The Board was properly nominated in accordance with USDA and order procedures, and selected on December 20, 1996. Concerns that have been raised about the composition of the Board and questions about the eligibility of certain members to serve on the Board are being reviewed by the Department and will be addressed separately.

Accordingly, no changes are made to the rule as drafted in the interim final rule, based on the comment received. However, as discussed, this rule does delete the certificate redemption date in § 930.100(a).

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that this final rule as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 930

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR 930 which was published at 62 FR 44881 on August 25, 1997, is adopted as a final rule with the following changes:

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

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

Authority: 7 U.S.C. 601–674.

2. In § 930.100, paragraph (a) is revised to read as follows:

§ 930.100 Grower diversion certificates.

(a) In accordance with paragraph (b) of this section, the Board may, for the 1997 crop year, issue diversion certificates to growers, in districts subject to volume regulation (Northwest Michigan, Central Michigan, New York, and Utah) who have voluntarily elected to divert in the orchard all or a portion of their 1997 tart cherry production which otherwise, upon delivery to handlers, would become restricted percentage cherries. Growers may offer the diversion certificate to handlers in lieu of delivering cherries.

* * * * *

Dated: April 16, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–10658 Filed 4–21–98; 8:45 am]

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April 22, 1998

Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56, 57, and 75

Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, and 75

RIN 1219–AB00

Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: MSHA is revising its safety standards for roof and rock bolts at metal and nonmetal mines and underground coal mines by updating the reference to the American Society for Testing and Materials (ASTM) standard for roof and rock bolts and accessories. The new reference reflects technological advances in the design of roof and rock bolts and support materials. It will improve the level of protection provided by the standards currently in use.

DATES: The final rule is effective June 22, 1998.

Compliance: Compliance is mandatory, April 22, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director; Office of Standards, Regulations, and Variances, MSHA; phone: 703–235–1910, fax: 703–235–5551.

SUPPLEMENTARY INFORMATION:

I. Background

On April 28, 1997 (62 FR 22998), MSHA published a proposed rule to revise its safety standards for roof and rock bolts at metal and nonmetal mines and underground coal mines by updating existing §§ 56.3203, 57.3203, and 75.204 by replacing the references to the ASTM standard for roof and rock bolts and accessories. The comment period was scheduled to close on June 27, 1997. Due to requests from the mining community, the comment period was extended to and closed on July 14, 1997.

MSHA participated in the development of ASTM F432–95 through active representation at meetings of the American Mining Congress (predecessor organization to the National Mining Association) Roof Support Group. That committee prepared the revised document for consideration by ASTM. The committee was open to all manufacturers of roof and rock bolts and accessories, and considered comments from all participants in developing the new specifications. MSHA Technical Support personnel conducted both laboratory and field studies which provided supporting data for the various changes. This rulemaking has been followed closely by the National Mining Association, the United Mine Workers of America, and the United Steelworkers of America.

MSHA is updating the standards because the Agency believes that ASTM F432–95 is more comprehensive than the references contained in existing standards, that it reflects advances in rock and roof bolt technology, and that it will provide better protection for miners than the standards currently in place. As discussed below, these revisions will not reduce the protection afforded miners by the MSHA standards currently in place.

A. Metal and Nonmetal Mines

On October 8, 1986, MSHA published a final rule (51 FR 36194) revising its safety standards for ground control at metal and nonmetal mines. This rulemaking included comprehensive rock bolt standards in Title 30 Code of Federal Regulations (30 CFR) §§ 56/57.3203 which addressed the quality of rock fixtures and their installation. Roof and rock bolts and accessories are an integral part of ground control systems and are used to prevent the fall of roof, face, and ribs. Accidents involving falls of roof in underground mines or falls of highwall in surface mines have resulted in injuries and fatalities.

These standards currently require that metal and nonmetal mine operators obtain a certification from the manufacturer that roof and rock bolts and accessories are manufactured and tested in accordance with the 1983 ASTM publication ''Standard Specification for Roof and Rock Bolts and Accessories'' (ASTM F432–83). The ASTM standard for roof and rock bolts and accessories is a consensus standard used throughout the United States. It contains specifications for the chemical, mechanical, and dimensional requirements for roof and rock bolts and accessories used for ground support systems.

The manufacturer's certification is made available to an authorized representative of the Secretary to attest to the appropriate testing and manufacture of the rock bolts and accessories. Requiring that the mine operator obtain a certification from the manufacturer assures mine operators that the material they use meets technical requirements established to promote safety.

B. Underground Coal Mines

MSHA published a final rule for roof support in underground coal mines on February 8, 1990 (55 FR 4592) revising paragraphs (a) and (b) of § 75.204. This standard references ASTM publication ''Standard Specification for Roof and Rock Bolts and Accessories'' (ASTM F432–88), which was the most recent revision available at that time. This standard also required mine operators to obtain a certification from the manufacturer that roof and rock bolts and accessories are manufactured and tested in accordance with ASTM F432–88. To comply with this rule, mine operators are required to provide the certification document, upon request, to an authorized representative of the Secretary to confirm that their roof and rock bolts are designed and tested in accordance with the ASTM standard.

This reference to the ASTM standard performs the same function as the reference to the 1983 ASTM standard for metal and nonmetal mining application. That is, the certificate assures mine operators that the material they use meets technical requirements established to promote safety.

II. Discussion

In promulgating this final rule, MSHA has addressed the comments received during the rulemaking process, and has developed practical requirements. Both costs and benefits were also considered.

MSHA has found that the existing certification requirement has been successful in maintaining compliance with requirements for roof and rock bolts and accessories. MSHA, therefore, is retaining the certification requirement and updating existing § 56.3203, 57.3203, and 75.204 by replacing the references to outdated ASTM F432–83 and ASTM F432–88 with a new reference to ASTM F432–95.

One commenter suggested that MSHA revise the paragraphs to state Make the certification available to an authorized representative of the Secretary and a miners' representative. The commenter further stated that although it may be assumed that ''miners' representatives'' have a right to the certification information, no such specified right is accorded under the rule. Short of such specified right, miners' representatives have had to demand certification information with threats of section 105(c) complaints against mine operators.

The Agency intends that the miners' representatives have access to the certification statements as stated in the preamble to the proposed rule (62 FR 22998).

* * * Mine operators currently are required to obtain a certification statement that the testing and manufacture of roof and rock bolts comply with the specified standard, and to keep a copy of this

certification statement so that it can be made available to miners' representatives and representatives of the Secretary of Labor (the Secretary) * * *

In response to the comment, §§ 56.3203(a)(2), 57.3203(a)(2), and 75.204(a)(2) have been revised to require the operator to ''make this certification available to an authorized representative of the Secretary and the representative of miners.''

A. New Products Addressed

ASTM F432–95 covers products not addressed by the current standards including grouting materials, large diameter bolts, thread deformed bars, and formable anchorage devices.

1. Grouting Materials

Grouting materials, which were not addressed by either ASTM F432–88 or ASTM F432–83, are extensively covered by ASTM F432–95. The term ''grouting materials'' is used in ASTM F432–95 to include any chemical materials (such as polyester, polyurethane, or epoxy resins) that are used to anchor mine roof bolts. While grouted bolts have been used successfully to support mine roofs since the 1970's, each manufacturer has a different method to describe proper application of grouting materials and their performance characteristics. This lack of standardization has caused confusion and occasional misapplication of a particular grout formulation and, therefore, has resulted in improperly grouted boreholes. Improperly grouted boreholes can result in poor bolt performance and, potentially, an inadequately supported roof. A survey of MSHA field personnel revealed that improper borehole grouting has been a contributing factor in roof fall accidents. Under ASTM F432–95, there are specific requirements regarding strength, cure rate, cartridge volume, and labeling that will standardize the production and application of grouting materials and reduce the likelihood that grouted bolts will be improperly installed.

The majority of commenters were in support of this provision. However, one commenter was concerned that standardization of grout cure rates could be hazardous. The commenter also stated that some mines need bolt lengths ranging from 5 feet to 20 feet and that flexibility in grout cure rates is vital. The commenter further suggested that it is far more important that the operator be trained to use the materials properly than to attempt to standardize the products.

The Agency does not believe that the standardization of grout cure rates by ASTM F432–95 will cause a safety hazard or alter the variety of grouting materials available to the mining industry. Rather, it provides a classification system by which performance characteristics of current and future grout formulations can be grouped and identified, and enables the user to select the proper formulation for a particular application. Therefore, the provision remains as proposed.

2. Large Diameter Bolts

Similarly, large diameter bolts, ranging in size from 1⅛ inch to 1½ inch, are now addressed by ASTM F432–95. MSHA field personnel report that these large diameter bolts are growing in popularity and are being used in areas of adverse roof conditions where smaller diameter bolts would fail. ASTM F432–95 provides standard strength and thread tolerance limits that ensure minimum performance levels and the interchangeability of components produced by different manufacturers. Compatibility is essential in ensuring that components acquired from different sources function properly when used together, such as mechanical anchors from one manufacturer and bolts from another, and provide an adequate margin of safety.

The majority of commenters supported this requirement. One commenter supported the use of large diameter bolts, but was concerned that in-mine tests will still be necessary because conditions vary from mine to mine.

The inclusion of large diameter bolts in ASTM F432–95 does not exempt those bolts from the plan approval process; any bolting system must be approved as suitable for the ground conditions of a particular mine. It does, however, ensure that large diameter bolts meeting those specifications are compatible with other components (expansion anchors, nuts, etc.) and will function properly, essentially removing that aspect of the evaluation (which is often time consuming) from the approval process.

3. Thread Deformed Bars and Formable Anchorage Devices

Two new technologies, thread deformed bars and formable anchorage devices, are also addressed by ASTM F432–95. These bolting systems were not in use at the time ASTM F432–83 and ASTM F432–88 were adopted. Their effectiveness has been demonstrated at a number of mines, however, and this has led MSHA to approve their use in roof control plans. ASTM F432–95 provides specific manufacturing, strength, and identification requirements for these products to ensure that minimum performance levels are met and that reliable products are available to the mine operator. Updating the roof control standards which reference the ASTM specifications covering these systems will reduce the time required by mine operators to receive approval to use these devices in the roof control plan, and will eliminate the need for repetitive and time consuming underground tests.

One commenter was confused as to whether fixtures and accessories addressed under ASTM F432–95 will have to be approved individually under the roof control plan, or will unilaterally be approved for inclusion in roof control plans without submitting each plan separately. The commenter referred to the statement in the preamble to the proposal (62 FR 23000) which noted that:

> Updating the roof control standards which reference the ASTM specifications covering these systems would reduce the time required by mine operators to receive approval to use these devices in the roof control plan, and eliminate the need for repetitive and time consuming underground tests.

Section 75.220 requires each mine operator to develop and follow a roof control plan approved by the District Manager. If the roof bolts and accessories are not addressed under ASTM F432–95, the operator will have to perform tests to show that they meet the requirements of 75.204(b). The inclusion in the roof control plan of a particular product that meets the specifications in ASTM F432–95 relieves the mine operator of having to perform tests to show that these items meet the requirements of the standard and, thus, reduce the time involved in the roof control plan approval process. Meeting the specifications of ASTM F432–95 also assures the mine operator and MSHA that the manufactured product will function as designed.

B. Additional Safety Benefits

ASTM F432–95 provides a number of additional safety benefits, including strength standards for couplers, tolerances for external and internal threads, dimensions for hardened washers, and bolt grading and identification systems. The Agency did not receive any comments regarding these additional safety features.

C. Existing Inventory

This final rule will allow mine operators to use inventories of roof support components meeting the design criteria of ASTM F432–83 and ASTM

F432–88 for up to 1 year from the effective date of this rule. After that year, only roof support components meeting ASTM F432–95 will be permitted to be installed. This 1-year period will not result in a diminution of safety to miners and will allow mine operators, including small mines and seasonal operations, to exhaust existing supplies of roof support materials on site. It also will allow miners who use roof support materials to become sufficiently trained in the use of roof bolts and accessories that meet the requirements of ASTM F432–95. The Agency is allowing mine operators to start using components meeting the ASTM F432–95 standard upon the effective date of this final rule.

In response to this provision, the majority of the commenters believed that 1 year was a sufficient amount of time to allow operators to exhaust their inventories. However, one commenter is concerned that the 1-year time period is not long enough. The commenter stated that a better approach would be to require new production of bolts to meet ASTM F432–95 by a certain date, then each mine would achieve compliance when they replace inventory no matter what the time frame.

An inventory of roof bolt manufacturers conducted in April and May of 1995 indicated that all manufacturers could consume present tooling, exhaust products meeting current specifications, and produce and make available to mine operators quantities of roof support materials meeting ASTM F432–95 within a 6-month time period. Contact with several coal mine operators at that time indicated that an additional 6–12 months would enable them to exhaust inventories of existing ASTM F432–88 products. While ASTM F432–88 products are quality products, there are conflicts with ASTM F432–95 that could cause confusion if not used within a specified time frame. For instance, the bolt head identification markings of F432–95 are substantially different from those of F432–88 and F432–83. Long term usage of bolts covered by both specifications could lead to the mis-identification of bolt properties (grade and diameter) and the inadvertant mis-application of the bolting system. Similarly, the equivalent length requirements of F432–95 may produce resin cartridges with different volumes than those currently marketed. In situations where the shelf life would be extended beyond 1 year, the potential existence of two cartridge sizes could result in confusion and improper borehole grouting. The 1-year time frame will minimize the period of time that mine operators must closely monitor the use of products covered by two specifications and yet will provide a reasonable amount of time to exhaust inventories of F432–83 and F432–88 products.

Another commenter stated that the 1-year time period puts technology too far off in the future. The commenter further stated that MSHA should stipulate provisions for operators opting to use the new ASTM standard voluntarily, i.e., must notify the appropriate District Manager and can no longer use roof bolts manufactured under ASTM F432–83 or ASTM F432–88.

The primary thrust of ASTM F432–95 is the introduction and coverage of technology not addressed by ASTM F432–83 and/or ASTM F432–88. The minimum performance requirements of previously addressed components generally remain unchanged. Roof support components meeting ASTM F432–83 and ASTM F432–88 are quality items that have been safely and effectively used. While MSHA is not aware of any manufacturer currently producing roof support components to the ASTM F432–83 standard (manufacturers voluntarily adopted the upgraded ASTM F432–88 standard), extending the use of products meeting both ASTM F432–83 and ASTM F432–88 for up to a year will pose no safety concern.

For underground coal mines, any bolting system must be approved by the District Manager as suitable for the ground conditions of a particular mine. Therefore, operators will stipulate in the roof control plan if the roof and rock bolts and accessories meet the specifications of ASTM F432–88 or ASTM F432–95, or were tested by the operator and shown to be effective. Additionally, the final rule states that an operator may continue to use roof and rock bolt accessories that meet the specifications of ASTM F432–88 until 1 year after the effective date of this final rule.

Underground metal and nonmetal mine operators are not required to submit a roof control plan to the MSHA District Manager. However, the incorporation of ASTM F432–95 into § 56.3203 and 57.3203 will ensure that roof and rock bolts and accessories will be of high quality and manufactured to the same specifications as those used in underground coal mines.

MSHA also believes that the 1-year time period gives sufficient time for roof bolt manufacturers to consume present tooling, exhaust inventories of products meeting current specifications, and produce and make available to mine operators quantities of roof bolts meeting the design criteria of ASTM F432–95. MSHA did not receive any comments in response to the amount of time needed to produce roof bolts meeting the design criteria of ASTM F432–95.

III. Paperwork Reduction Act

On August 29, 1995, the Office of Management and Budget (OMB) published a final rule in the **Federal Register** (60 FR 44978) implementing the new Paperwork Reduction Act of 1995 (PRA 95). Consistent with PRA 95, these OMB rules expanded the definition of ''information'' to clarify that a ''certification'' would involve the collection of ''information'' if the Agency used it to monitor compliance. Mine operators currently are required to obtain a certification statement that the testing and manufacture of roof and rock bolts comply with the specified standard, and to keep a copy of this certification statement so that it can be made available to miners' representatives and representatives of the Secretary of Labor (the Secretary). Although the final rule does not change this requirement, it is now considered an information collection burden because of the expanded definition of ''information'' under PRA 95. The burden hours and costs associated with roof bolt certifications, therefore, do not reflect any increase for the mining industry.

One commenter stated that MSHA's cost estimates were greatly underestimated. This commenter pointed out that the cost estimates were based on each mine using one roof support type and one roof support supplier. Some companies use multiple types of roof bolts which are distributed by different suppliers. The burden of providing a certification could be 3 to 6 times more than MSHA estimates depending on the geographic location and geology of the mine. The commenter further stated that the cost estimates did not include the cost of initial filing of documents and quarterly locating and copying for inspectors. New testing, identification, and other manufacturing costs created by the new ASTM standard will not be absorbed by the manufacturers; they will be passed along to mine operators.

A second commenter supported MSHA's estimates stating that MSHA has reasonably and logically established the burden of hours and costs associated with roof bolt certifications by close comparison to that which has been collected as required under the current standards.

In response to these comments MSHA has increased the estimated number of

times that mine operators would have to file or retrieve certifications. These revised estimates reflect the obtaining and filing of certifications from more than one manufacturer or supplier and the retrieval of certifications to show to an authorized representative during an inspection.

Description: Sections 56.3203(a)(1), 57.3203(a)(1), and 75.204(a)(1) require the mine operator to obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM F432–95. Agency experience has shown that major roof and rock bolt manufacturers routinely provide a certification to mine operators at the time of the initial contract and update the certification annually. Smaller manufacturers provide a certification at the time of initial contract and upon request from the mine operator. MSHA estimates that it takes the mine operator about 3 minutes to obtain a signature and file the certification form, and that underground mines use an average of four different manufacturers or suppliers and surface mines use two.

Sections 56.3203(a)(2), 57.3203(a)(2), and 75.204(a)(2) require that the certification be made available to an authorized representative of the Secretary and to a miner's representative. MSHA estimates that it takes about 3 minutes per inspection to show the certifications to the authorized representative and the miner's representative. Underground mines are inspected four times per year and surface mines are inspected twice per year.

Description of Respondents: The respondents are mine operators. MSHA estimates that this provision annually affects about 233 surface metal and nonmetal mines; 243 underground metal and nonmetal mines; and 888 underground coal mines.

Information Collection Burden: The total estimated annual information collection burden for surface metal and nonmetal mines is about 47 hours at an estimated annual cost of about $1,680. The total estimated annual information collection burden for underground metal and nonmetal mines is about 97 hours at an estimated annual cost of about $3,500. The total estimated annual information collection burden for underground coal mines is about 355 hours at an estimated annual cost of about $14,920. The burden hours and costs associated with roof bolt certifications do not reflect any increase for the mining industry because mine operators currently are required to perform these activities.

The following chart summarizes MSHA's estimates by section.

Regulation in 30 CFR	Number of respondents	Hours per response	Number of responses	Number of responses per respondent	Annual costs	Total hours per regulation
56.3203(a)(1)	233	0.05	932	4	$ 1,680	47
57.3203(a)(1)	243	0.05	1,944	8	3,500	97
75.204(a)(1)	888	0.05	7,104	8	14,920	355
Total	1,364	0.05	9,980		20,100	499

The information collection requirements contained in this rule were submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 and have been approved under OMB Control Number 1219–0121.

IV. Executive Order 12866 and Regulatory Flexibility Act

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of regulations. MSHA estimates that the cost impact of the final rule is essentially the same as under the existing rule. The primary benefit of the final rule is that it provides for advancements in roof bolt technology and, therefore, will increase safety protection for miners. MSHA has determined that this final rule does not meet the criteria of a significant regulatory action and, therefore, has not prepared a separate analysis of costs and benefits. The analysis contained in this preamble meets MSHA's responsibilities under Executive Order 12866 and the Regulatory Flexibility Act.

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. Under the RFA, MSHA must use the Small Business Administration (SBA) definition for a small mine of 500 or fewer employees or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA traditionally has considered small mines to be those with fewer than 20 employees. For the purposes of the RFA and this certification, MSHA has analyzed the impact of the final rule on all mines, on those with fewer than 20 employees, and on those with fewer than 500 employees, and has concluded that the cost impact on the mining industry is negligible.

Regulatory Flexibility Certification

In accordance with § 605 of the RFA, MSHA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. No small governmental jurisdictions or nonprofit organizations are affected.

Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, MSHA must include in the final rule a factual basis for this certification. The Agency also must publish the regulatory flexibility certification in the **Federal Register**, along with its factual basis.

Factual Basis for Certification

MSHA used a qualitative approach in concluding that the final rule will not have a significant economic impact on a substantial number of small entities. In the preamble to the proposed rule, MSHA stated that the cost of purchasing roof and rock bolts and accessories would not increase significantly as a result of the requirement that they meet the new ASTM specification (ASTM F432–95). Additionally, MSHA stated that the new ASTM standard incorporates technological advances that are currently available and being used by the mining industry. One commenter stated that the costs of the new testing, identification, and other manufacturing costs created by the new ASTM standard will not be absorbed by the manufacturers; it will be passed along to mines.

In preparing the proposed rule, MSHA had determined that roof bolt manufacturers routinely change dies and other machining parts because of wear. The Agency concluded that, because of the 1-year phase in period, changing dies and other machine parts to accommodate the new ASTM specification would not pose an additional cost on manufacturers.

The largest cost under the final rule is due to the increase of resin volume in cartridges. The result would be that the resin manufacturer may increase the cost of resin cartridges to mine operators comparable to the increased volume of resin. MSHA believes that any increased cost to mine operators for resin cartridges would be offset by this increased resin volume. MSHA estimates that the total cost increase, if passed on to mine operators, would represent less that one percent of their cost for roof and rock bolts and accessories.

V. Unfunded Mandates Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million.

VI. Executive Order 13045

In accordance with Executive Order 13045, protection of children from environmental health risks and safety risks, MSHA has evaluated the environmental health or safety effects of the final rule on children. The Agency has determined that the final rule will have no effects on children.

List of Subjects

30 CFR Parts 56 and 57

Mine safety and health, Surface mining, Underground mining.

30 CFR Part 75

Coal, Mine safety and health, Underground mining.

Dated: April 16, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

For the reasons set out in the preamble, chapter I of title 30 of the Code of Federal Regulations is amended as follows:

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

2. Section 56.3203 is amended by revising the introductory text of paragraph (a), paragraph (a)(1), paragraph (a)(2), and the introductory text of paragraph (b) to read as follows:

§ 56.3203 Rock fixtures.

(a) For rock bolts and accessories addressed in ASTM F432–95, ''Standard Specification for Roof and Rock Bolts and Accessories,'' the mine operator shall—

(1) Obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM F432–95; and

(2) Make this certification available to an authorized representative of the Secretary and to the representative of miners.

(b) Fixtures and accessories not addressed in ASTM F432–95 may be used for ground support provided they—

* * * * *

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

3. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

4. Section 57.3203 is amended by revising the introductory text of paragraph (a), paragraph (a)(1), paragraph (a)(2), and the introductory text of paragraph (b) to read as follows:

§ 57.3203 Rock fixtures.

(a) For rock bolts and accessories addressed in ASTM F432–95, ''Standard Specification for Roof and Rock Bolts and Accessories,'' the mine operator shall—

(1) Obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM F432–95; and

(2) Make this certification available to an authorized representative of the Secretary and to the representative of miners.

(b) Fixtures and accessories not addressed in ASTM F432–95 may be used for ground support provided they'

* * * * *

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

5. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

6. Section 75.204 is amended by revising the introductory text of paragraph (a), paragraph (a)(1), paragraph (a)(2), and the introductory text of paragraph (b) to read as follows:

§ 75.204 Roof bolting.

(a) For roof bolts and accessories addressed in ASTM F432–95, ''Standard Specification for Roof and Rock Bolts and Accessories,'' the mine operator shall—

(1) Obtain a manufacturer's certification that the material was manufactured and tested in accordance with the specifications of ASTM F432–95; and

(2) Make this certification available to an authorized representative of the Secretary and to the representative of miners.

(b) Roof bolts and accessories not addressed in ASTM F432–95 may be used, provided that the use of such materials is approved by the District Manager based on—

* * * * *

[FR Doc. 98–10690 Filed 4–21–98; 8:45 am]

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Federal Register

Wednesday
April 22, 1998

Part V

Department of Labor

Mine Safety and Health Administration

30 CFR Part 100

Criteria and Procedures for Proposed Assessment of Civil Penalties; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 100

RIN 1219–AA49

Criteria and Procedures for Proposed Assessment of Civil Penalties

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule revises the Mine Safety and Health Administration's (MSHA's) existing civil penalty assessment amounts under part 100. The rule also adds a new provision which codifies the civil penalty amounts that may be assessed under §§ 110(a), 110(b), and 110(g) of the Federal Mine Safety and Health Act of 1977 (Mine Act). These changes are made as a result of a mandate by Congress in the Debt Collection Improvement Act of 1996, which requires that all civil penalties be increased by up to 10 percent, and that they be adjusted at least once every 4 years thereafter according to the formula specified in the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act).

EFFECTIVE DATE: This final rule is effective June 22, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director; Office of Standards, Regulations, and Variances, MSHA; 703–235–1910.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

Under §§ 105(a) and 110 of the Mine Act, MSHA is required to assess a civil penalty for each violation of the Mine Act and the mandatory safety and health standards promulgated by the Agency. The Mine Act originally provided in 1977 that the penalty for each violation would not exceed $10,000, and that the maximum penalty for failure to correct a violation cited under § 104(a) within the period permitted for its correction would not exceed $1,000 for each day that the violation continued to exist. Miners who willfully violated the mandatory safety standards relating to smoking or the carrying of smoking materials would be assessed a civil penalty of not more than $250 for each occurrence of such violation.

MSHA promulgated its first regulations relating to civil penalty assessments under the Mine Act on May 30, 1978 (43 FR 23514). This rule included a penalty conversion table for regular assessments based on the six criteria enumerated in 30 CFR 100.3(a). On May 21, 1982 (47 FR 22286), MSHA promulgated a rule that revised its regular assessment civil penalty table, further defined the criteria for issuing special assessments, and created a $20 single penalty assessment for those violations that were not reasonably likely to result in reasonably serious injury or illness and which were abated in a timely manner. There was no provision in either rule relating to civil penalties assessed for failing to abate violations of the Mine Act or for smoking or carrying smoking materials, as these penalty amounts were set by the Mine Act.

On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 (Budget Act), Pub. L. 101–508, was signed into law. Section 3102 of the Budget Act amended the Mine Act and raised the maximum MSHA civil penalty per violation from $10,000 to $50,000. The $1,000 per day civil penalty for failure to correct a violation under § 104(a) was raised to $5,000 per day. The miner smoking penalty remained at $250. Following the passage of the Budget Act, MSHA published a final rule on January 24, 1992 (57 FR 2968), as amended December 21, 1992 (57 FR 60690), which implemented the penalty increases prescribed by the Budget Act and accounted for inflation since 1982. A new civil penalty conversion table was published and the $20 single penalty assessment was also raised to $50.

Also in 1990, Congress passed Pub. L. 101–410, the Inflation Adjustment Act. On April 26, 1996, the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (OCRAA), Pub. L. 104–131, was passed. Chapter 10 of the OCRAA, titled as the ''Debt Collection Improvement Act of 1996'' (DCIA), modifies the Inflation Adjustment Act and requires that the head of each agency adjust by regulation each civil monetary penalty provided for by law within its jurisdiction pursuant to the inflation adjustment described under § 5 of the DCIA. The first adjustment of a civil penalty may not exceed 10 percent of the existing penalty. The revised civil penalties will apply only to those violations occurring after the date the final rule takes effect.

On September 8, 1997, MSHA published a proposed rule in the **Federal Register** (62 FR 47330) notifying the public of the Agency's mandate to increase civil penalties by an amount not to exceed 10 percent of the existing penalty amounts. The rulemaking record closed on November 7, 1997. No requests for public hearings were received. This final rule is based on consideration of the entire rulemaking record, including all written comments received.

II. Discussion and Summary of the Final Rule

A. General Discussion

In passing the DCIA, Congress demonstrated its concern that civil penalties be adjusted to produce desired results. MSHA is increasing its civil penalties in order to comply with Congress' mandate that agencies make inflation adjustments in their civil penalties.

Under § 5 of the Inflation Adjustment Act, civil penalties are to be increased by a cost-of-living adjustment. The statute defines ''cost-of-living adjustment'' as the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalties was last set or adjusted. The term ''Consumer Price Index'' (CPI) means the Consumer Price Index for all-urban consumers published by the Department of Labor.

In order to determine the current cost-of-living adjustment for MSHA's civil penalties, MSHA made the following calculations:

480.2 (the CPI for the month of June 1997, the calendar year preceding the current adjustment)
419.9 (the CPI for the month of June 1992, the calendar year in which the MSHA civil penalties were last adjusted)
480.2/419.9 = 1.14 (inflation adjustment factor)
1.14 * $100 (a hypothetical penalty assessment) = $114 (new assessment amount with full inflation adjustment)

But using the maximum inflation adjustment (10%) permitted by the DCIA, this hypothetical penalty assessment would be $110 (1.10 * $100)

In order to determine the current cost-of-living adjustment for the miner smoking penalty, MSHA made the following calculations:

480.2 (the CPI for the month of June 1997, the calendar year preceding the current adjustment)
195.3 (the CPI for the month of June 1978, the calendar year in which the civil penalty was last adjusted)
480.2/195.3 = 2.5 (inflation adjustment factor)
2.50 * $250 (the smoking penalty assessment) = $625 (new assessment amount with full inflation adjustment)

But using the maximum inflation adjustment (10%) permitted by the

DCIA, penalty assessment would be $275 (1.10 * $250)

One commenter generally agreed with the provisions of the proposed rule and supported the increase of monetary penalties. The commenter also suggested that the Agency quickly and efficiently implement the provisions of the proposed rule.

Another commenter stated that the proposed rule and the resulting increase in monetary penalties are excessive, especially for small companies. The adjustments contained in the final rule are Congressionally mandated and, therefore, agencies have no discretion to consider lower increases in penalties for small businesses. However, one criterion considered by MSHA when assessing civil penalties by the regular formula under 30 CFR 100.3(a)(1) is the size of the mine and the size of the controlling entity. A second criterion considered by MSHA is the mine operator's ability to continue in business. MSHA begins with the assumption that the civil penalty will not affect a mine operator's ability to continue in business. The burden is on the mine operator to demonstrate financial hardship. MSHA then reviews any financial documentation submitted by the mine operator and makes a determination as to whether the proposed penalty should be adjusted.

Two commenters suggested that MSHA modify part 100 to allow for penalty offsets or credits for those coal companies that maintain mine rescue teams. The commenters added that companies which continue to maintain mine rescue teams are at a competitive disadvantage with other coal companies. These commenters suggested that the Agency is presently considering crediting mining companies with mine rescue teams by automatically reducing their assessed civil penalties. Therefore, these commenters requested that MSHA extend the comment period or leave the rulemaking record open while this issue is being considered. One of the commenters also added that civil penalties could, and should, be used in part to fund some state agency mine rescue teams. While the Agency recognizes the importance of mine rescue teams and the significant role they play in ensuring miners' health and safety, the issue is beyond the scope of this rulemaking. Moreover, MSHA is presently not considering reducing civil penalties assessed to mining companies with mine rescue teams. MSHA does, however, plan to continue to provide funding through its State Grants program. Portions of this MSHA funding program are used by some states for maintaining mine rescue teams.

B. Section-by-Section Analysis

The following section-by-section analysis explains the final rule and its effect on existing standards.

Section 100.3 Determination of Penalty Amount; Regular Assessment

Paragraph (a) of this section is amended to codify § 110(a) of the Mine Act. This revision also reflects the increase of the maximum civil penalty from $50,000 to $55,000 per violation. Existing paragraph (g) of this standard includes a revised penalty conversion table in which points assigned for each criterion enumerated in this section are totaled and a correlating civil penalty is determined. Current penalties range from $60 to $50,000. New paragraph (g) reflects the 10 percent maximum penalty increase prescribed by the DCIA, and civil penalties have been adjusted accordingly. Civil penalties in the final table range from $66 to $55,000.

Section 100.4 Determination of Penalty; Single Penalty Assessment

The single penalty assessment under the final rule is increased from the existing $50 to $55, which reflects a 10 percent maximum increase.

Section 100.5 Determination of Penalty; Special Assessment

This section pertains to violations which are of such a nature or seriousness that MSHA cannot determine an appropriate penalty using the regular assessment formula or the single assessment provision. The special assessment penalty is determined by experienced Agency mine safety and health specialists, based on the facts and circumstances of each case. Prior to a special assessment, Agency field personnel review certain categories of violations for special assessment.

This section also addresses penalties which may be assessed daily to an operator for failure to correct a violation within the period permitted for its correction. The existing maximum daily civil penalty is increased from $5,000 to $5,500.

Finally, this section addresses penalties which MSHA may assess miners who willfully violate mandatory safety standards relating to the use or carrying of smoking materials underground. This current penalty of $250 is increased in the final rule to $275.

III. Executive Order 12866

In accordance with Executive Order 12866, MSHA has prepared a Regulatory Impact Analysis (RIA) of the estimated costs and benefits associated with the revisions of the criteria and procedures for proposed assessment of civil penalties.

The RIA containing this analysis is available from MSHA. The Agency estimates that the final rule will result in increased costs to the mining industry of about $2.6 million annually.

Based upon the RIA, MSHA has determined that this rule is not an economically significant regulatory action pursuant to § 3(f)(1) of Executive Order 12866.

IV. Paperwork Reduction Act

This final rule contains no information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

V. Regulatory Flexibility Act

In accordance with § 605 of the Regulatory Flexibility Act (RFA), MSHA certifies that the civil penalty rule does not have a significant economic impact on a substantial number of small entities. This final regulation does no more than codify existing law and mechanically increase certain civil money penalties to account for inflation, pursuant to specific directions set forth in the Federal Civil Penalties Inflation Adjustment Act, as amended. The statute specifies the procedure for calculating the adjusted civil money penalties and does not allow the Department to vary the calculation to minimize the effect on small entities. Moreover, the actual amount of the increase in penalties would not meet the threshold set forth in the Regulatory Flexibility Act. MSHA discusses its quantitative analysis warranting this conclusion below.

In the past, MSHA considered small mines to be mines with fewer than 20 employees. However, for the purposes of the RFA and this certification, MSHA has also evaluated the impact of the final rule on mines with 500 employees or fewer. About 350 small governmental jurisdictions may be affected. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, MSHA must include in the final rule a factual basis for this certification. The Agency is publishing the regulatory flexibility certification statement in the **Federal Register**, along with the factual basis. The Agency has provided the Small Business Administration (SBA) Office of

Advocacy a copy of the certification statement.

MSHA will also mail a copy of the final rule, including the preamble and certification statement, to mine operators and miners' representatives. The final rule will also be available on MSHA's Website.

Factual basis for certification. MSHA explains below the Agency's quantitative approach in reaching its conclusion on the impact of the statutory provisions, as implemented by the rule. The Agency performed its analysis separately for two groups of mines: coal mines and metal/nonmetal mining operations.

Under the SBREFA amendments to the RFA, MSHA must use the SBA definition for a small mine of 500 employees or fewer or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. The alternative definition could be the Agency's traditional definition of ''fewer than 20 miners,'' or some other definition. As reflected in the certification, MSHA analyzed the costs of this final rule for small and large mines using both the traditional Agency definition and SBA's definition, as required by RFA. The Agency compared the costs of the final rule for small mines in each sector to the revenues for each sector for every size category analyzed. In each case, the results indicated that the costs as a percent of revenue are less than 1 percent.

One commenter stated that the SBA defines the small business entity for Standard Industrial Code (SIC) 3241 as those employing 750 persons or less. SIC code 3241 includes establishments primarily engaged in manufacturing hydraulic cement, including portland cement. The commenter stated that of the 45 manufacturers of portland cement, nine qualified as small entities under this SBA definition. The commenter also requested that MSHA use this definition in all proposed rules. MSHA recognizes this SBA definition for businesses engaged in this type of mining. In this instance, however, the mandate by Congress in the DCIA to increase civil penalties applies across the board to all mine operators. Therefore, although some manufacturers of portland cement would be considered small mines under the SBA definition, they are still covered by the final rule.

The following table summarizes the results of the analysis.

MINES: COSTS COMPARED TO REVENUES

	Number of mines	Estimated cost of final rule	Estimated revenue (millions)	Estimated cost per mine	Cost as % of revenue
COAL MINES:					
Small <20	1617	$1,149,957	$836	$711	0.14
Large >=20	1044	742,459	18,672	711	0.004
Small= <500	2650	1,884,593	18,689	711	0.01
Large >500	11	7,823	819	711	0.001
All Mines	2661	1,892,416	19,508	711	.01
M/NM MINES:					
Small <20	9238	584,462	11,929	63	0.005
Large >=20	1543	97,558	26,071	63	0.000
Small= <500	10,751	680,185	32,134	63	0.002
Large >500	29	1,835	5,866	63	0.000
All Mines	10,780	682,020	38,000	63	0.002

In determining revenues for coal mines, MSHA multiplied coal production data (in tons) for mines in specific size categories (reported to MSHA quarterly) by the average price per ton for coal as determined in the *Coal Industry Annual 1996.* (Published by the Department of Energy's Energy Information Administration.) MSHA obtained revenue data for metal and nonmetal mines from the *Mineral Commodities Summaries 1996.* (Published by the U.S. Department of the Interior.)

VI. Unfunded Mandates

The Unfunded Mandates Reform Act was enacted in 1995. While much of the Act is designed to assist the Congress in determining whether its actions will impose costly new mandates on State, local, and tribal governments, the Act also includes requirements to assist Federal agencies to make this same determination with respect to regulatory actions.

MSHA has determined that, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, this final rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. Moreover, the Agency has determined that for purposes of § 203 of that Act, this final rule does not significantly or uniquely affect these entities.

Analysis. Based on the analysis in the Agency's Final Regulatory Impact Statement, the cost of this final rule is estimated to be about $2.6 million. Accordingly, there is no need for further analysis under § 202 of the Unfunded Mandates Reform Act.

MSHA has concluded that small governmental entities are not significantly or uniquely impacted by the final rule. The final rule will impact about 2,700 coal operations and 10,800 metal and nonmetal mining operations of which approximately 350 sand and gravel or crushed stone operations are run by state, local, or tribal governments for the construction and repair of highways and roads. Of these entities, only those which are assessed a civil penalty will incur additional costs related to this final rule. These costs, however, would be minimal. Notwithstanding this conclusion, MSHA will mail a copy of the final rule to these 350 entities.

VII. Executive Order 13045

In accordance with Executive Order 13045, MSHA has evaluated the environmental health or safety effects of the rule on children. The Agency has determined that the final rule will have no effects on children.

List of Subjects in 30 CFR Part 100

Mine safety and health, Penalties.

Dated: April 15, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Part 100, subchapter P, chapter I, title 30 of the Code of Federal Regulations is amended as follows:

PART 100—CRITERIA AND PROCEDURES FOR PROPOSED ASSESSMENT OF CIVIL PENALTIES

1. The authority citation for part 100 continues to read as follows:

Authority: 30 U.S.C. 815, 820, 957.

2. Section 100.3 is amended by revising the introductory text of paragraph (a) and revising paragraph (g) to read as follows:

§ 100.3 Determination of penalty amount; regular assessment.

(a) *General.* The operator of any mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of the Mine Act, shall be assessed a civil penalty of not more than $55,000. Each occurrence of a violation of a mandatory safety or health standard may constitute a separate offense. The amount of the civil penalty proposed shall be based upon the formula set forth in this section. The formula is based on the general criteria described in sections 105(b) and 110(i) of the Mine Act. These criteria are:

* * * * *

(g) *Penalty conversion table.* The following penalty conversion table shall be used to convert the accumulation of penalty points to the appropriate proposed monetary assessment.

PENALTY CONVERSION TABLE

Points	Penalty ($)
20 or fewer	66
21	73
22	79
23	86
24	92
25	99
26	109
27	119
28	129
29	139
30	149
31	162
32	175
33	188
34	201
35	215

PENALTY CONVERSION TABLE—Continued

Points	Penalty ($)
36	231
37	248
38	264
39	281
40	297
41	321
42	347
43	371
44	396
45	420
46	453
47	486
48	570
49	679
50	796
51	936
52	1,086
53	1,247
54	1,419
55	1,603
56	1,815
57	2,041
58	2,279
59	2,531
60	2,796
61	3,098
62	3,416
63	3,748
64	4,096
65	4,400
66	4,620
67	4,840
68	5,060
69	5,280
70	5,500
71	5,775
72	6,050
73	6,325
74	6,600
75	6,875
76	7,150
77	7,700
78	8,250
79	8,800
80	9,350
81	10,450
82	11,550
83	12,650
84	13,750
85	14,850
86	16,500
87	18,700
88	20,900
89	23,100
90	25,300
91	27,500
92	30,250
93	33,000
94	35,750
95	38,500
96	41,250
97	44,000
98	46,750
99	49,500

PENALTY CONVERSION TABLE—Continued

Points	Penalty ($)
100	55,000

* * * * *

3. Section 100.4 is amended by revising paragraph (a) to read as follows:

§ 100.4 Determination of penalty; single penalty assessment.

(a) An assessment of $55 may be imposed as the civil penalty where the violation is not reasonably likely to result in a reasonably serious injury or illness (non-S&S) and is abated within the time set by the inspector.

(1) If the violation is not abated within the time set by the inspector, the violation will not be eligible for the $55 single penalty and will be processed through either the regular assessment provision (§ 100.3) or special assessment provision (§ 100.5).

(2) If the violation meets the criteria for excessive history under § 100.4(b), the violation will not be eligible for the $55 single penalty and will be processed through the regular assessment provision (§ 100.3).

* * * * *

4. Section 100.5 is amended by redesignating paragraphs (a) through (h) as paragraphs (a)(1) through (8); redesignating the introductory text as paragraph (a) and the concluding text as paragraph (b); and by adding new paragraphs (c) and (d) to read as follows:

§ 100.5 Determination of penalty; special assessment.

* * * * *

(c) Any operator who fails to correct a violation for which a citation has been issued under Sec. 104(a) of the Act within the period permitted for its correction may be assessed a civil penalty of not more than $5,500 for each day during which such failure or violation continues.

(d) Any miner who willfully violates the mandatory safety standards relating to smoking or the carrying of smoking materials, matches, or lighters shall be subject to a civil penalty which shall not be more than $275 for each occurrence of such violation.

[FR Doc. 98–10688 Filed 4–21–98; 8:45 am]

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federal register

Wednesday
April 22, 1998

Part VI

Environmental Protection Agency

40 CFR Parts 141 and 142

Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–6001–4]

RIN–2040–AC27

Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability with request for comments.

SUMMARY: On April 12, 1996, the Environmental Protection Agency (EPA) published proposed minor revisions to the National Primary Drinking Water Regulations (NPDWRS) for Lead and Copper (61 FR 16348). EPA is providing additional information that the Agency is considering for public review and comment. The Agency also is soliciting comment on several additional options that EPA is considering for adoption into the final regulatory revisions.

DATES: Written comments should be postmarked or delivered by hand by June 22, 1998.

ADDRESSES: Send written comments to the Lead and Copper Rule Comment Clerk, Water Docket (MC–4101), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Please submit an original and three copies of your comments and enclosures (including references). If you wish to hand-deliver your comments, please call the Docket at (202) 260–3027 between 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays, to obtain the room number for the Docket. Please see Supplementary Information under the heading ''Additional Information for Commenters'' for detailed filing instructions, including electronic submissions.

The record for this rulemaking has been established under docket name National Primary Drinking Water Regulations for Lead and Copper. The record includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays at the Water Docket, 401 M Street, SW, Washington, DC 20460. For access to the Docket materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, toll free 1–800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. Eastern Time. For technical inquiries, contact Judy Lebowich, Standards and Risk Management Division, Office of Ground Water and Drinking Water, EPA (MC–4607), 401 M Street SW, Washington, DC 20460; telephone (202) 260–7595. Please see Supplementary Information under the heading ''Additional Data and Analyses'' for information on obtaining access to the references cited in this Notice at EPA Regional Office locations.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by the Lead and Copper Minor Revisions Rule are public water systems that are classified as either community water systems (CWSs) or non-transient non-community water systems (NTNCWSs). Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Privately-owned CWSs and NTNCWSs.
State, Tribal, and Local Governments.	Publicly-owned CWSs and NTNCWSs.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the Lead and Copper Minor Revisions Rule. This table lists the types of entities that EPA is now aware could potentially be regulated by the Lead and Copper Minor Revisions Rule. Transient non-community water systems (TNCWSs) may also be regulated by the Lead and Copper Rule in the future depending on EPA's assessment of the data referenced in this notice pertaining to the short-term health effects of lead in drinking water at TNCWSs and the public comments received in response to today's notice. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by the Lead and Copper Minor Revisions Rule, you should carefully examine the applicability criteria in §§ 141.3 and 141.80(a) of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of the Lead and Copper Minor Revisions Rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Additional Information for Commenters

To ensure that EPA can read, understand and therefore properly respond to your comments, the Agency requests that commenters follow the following format: Type or print comments in ink, and cite, where possible, the paragraph(s) in this Notice to which each comment refers. Please use a separate paragraph for each issue discussed and limit your comments to the issues addressed in today's Notice.

If you want EPA to acknowledge receipt of your comments, enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments also may be submitted electronically to ow-docket@epamail.epa.gov. Electronic comments must be submitted as a WordPerfect 5.1, WordPerfect 6.1, or ASCII file avoiding the use of special characters and forms of encryption and must be transmitted by midnight June 22, 1998. Electronic comments must be identified by the docket name, number, or title of the **Federal Register**. Comments and data also will be accepted on disks in WordPerfect 5.1, WordPerfect 6.1, or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Abbreviations Used in This Document

(b)(1) system—a small or medium-sized water system that is deemed to have optimized corrosion control pursuant to 40 CFR 141.81(b)(1)

(b)(2) system—a water system that is deemed to have optimized corrosion control pursuant to 40 CFR 141.81(b)(2)

(b)(3) system—a water system that is deemed to have optimized corrosion control pursuant to 40 CFR 141.81(b)(3)

D/DBP—disinfectants and disinfection byproducts

LCR—Lead and Copper Rule

NPDWRs—National Primary Drinking Water Regulations

NTNCWS—non-transient non-community water system

OWQP—value or range for a water quality parameter that has been designated by the State as representing optimal corrosion control

SDWIS—Safe Drinking Water Information System

TNCWS—transient non-community water system

WQP—water quality parameter

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A. Additional Data and Analyses

On April 12, 1996, the Environmental Protection Agency (EPA) published proposed minor revisions to the NPDWRs for Lead and Copper (61 FR 16348). EPA is making available for public review and comment additional data and analyses associated with two of the topics discussed in that proposal: (1) The continued exclusion of TNCWSs from coverage under the LCR; and (2) the requirement for water systems subject to reduced monitoring under the rule to collect tap water samples for lead and copper during the months of June through September.

The new data and analyses are cited below. In addition to being available for review by anyone in the LCR Docket, EPA has a limited number of copies available to provide to requesters. A single set of materials pertaining to each of the above topics may be ordered free-of-charge, while supplies last, by calling the Safe Drinking Water Hotline at 1–800–426–4791 and providing the following document information.

- EPA Publication #EPA 815–B–97–003. December 1997. Information Pertaining to Lead in Drinking Water at Transient Non-Community Water Systems. (This document contains all of the materials cited below under the heading of *Exclusion of TNCWSs.*)
- EPA Publication #EPA 815–B–97–004. December 1997. The Effect of Temperature on Corrosion Control. (This document contains all of the materials cited below under the heading of *Timing of Monitoring for Systems Subject to Reduced Lead and Copper Tap Monitoring.*)

These materials also are available for viewing at the following Regional locations.

I. John F. Kennedy Federal Building, One Congress Street, Boston, MA 02203–001. Contact: Ellie Kwong, Phone: (617) 565-3604.
II. 260 Broadway, New York, NY 10007–1866. Contact: Taj Khan, Phone: (212) 637–3826.
III. 841 Chestnut Building, Philadelphia, PA 19107. Contact: Ed Hotham, Phone: (215) 566–5778.
IV. AFC-Tower 9th Floor, 61 Forsyth Street, SW, Atlanta, GA 30303. Contact: Region 4 Library, Phone: (404) 562–8190.
V. 77 West Jackson Boulevard, Chicago, IL 60604–3507. Contact: Miguel Del Toral, Phone: (312) 886–5253.
VI. Fountain Place, 12th Floor, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202–2733. Contact: Dave Reazin, Phone: (214) 665–7501.
VII. 726 Minnesota Avenue, Kansas City, KS 66101. Contact: Elizabeth Murtagh-Yaw, Phone: (913) 551–7440.
VIII. 999 18th Street Suite 500, Denver, CO 80202–2466. Contact: Marty Swickard, Phone: (303) 312–7021.
IX. 75 Hawthorne Street, San Francisco, CA 94105. Contact: Roger Yates, Phone: (415) 744–1843.
X. 1200 Sixth Avenue, Seattle, WA 98101. Contact: Region 10 Library, Phone: (206) 553–1289.

1. Exclusion of TNCWSs

In the preamble to the April 12, 1996, proposal, EPA indicated that the Agency was in the process of collecting additional data relevant to the exclusion of TNCWSs from coverage under the LCR and that the Agency would make that data available for public review and comment prior to the promulgation of a final rule. EPA is providing the following additional information pertaining to the short-term health effects of lead and the likely occurrence of high levels of lead in drinking water at TNCWSs for public review and comment in fulfillment of that commitment. Based upon review of these documents, which are listed below, the Agency continues to support the position articulated in the proposed minor revisions (61 FR 16349 first column) that the exclusion of this category of public water systems from coverage under the LCR should be maintained. EPA solicits comment on whether the data cited below should alter this position.

Agency for Toxic Substances and Disease Registry (ATSDR), 1992. Toxicological Profile for Lead. U.S. Department of Health and Human Services, Public Health Services, Atlanta, GA. TP-92/12. Pages 9, 65, 66, 98, and 99.
Giridhar, J. and Isom, G.E. 1990. Interaction of Lead Acetate with Atrial Natriuretic Factor in Rats. *Life Science*, 46(8):569–576.
Hindmarsh, J.T. 1986. The Porphyrias: Recent Advances. *Clinical Chemistry*, 32(7):1255–1263.
Karmakar, N., Saxena, R., and Anand, S. 1986. Histopathological Changes Induced in Rat Tissues by Oral Intake of Lead Acetate. *Environmental Research*, 41(1):23–28.
Khan, A.J., Patel, U., Rafeeq, M., Myerson, A., Kumar, K., and Evans, H.E. January 1983. Reversible Acute Renal Failure in Lead Poisoning. *Journal of Pediatrics*, 102(1):147–149.
Nakhoul, F., Kayne, L.E. Brautbar, N., Hu, N., McDonough, A., Eggena, P., Golub, M.S., Berger, M. Chang, C., Jamgotchian, N., and Lee, D.B.N. 1992. Rapid Hypertensinogenic Effect of Lead: Studies in Spontaneously Hypertensive Rat. *Toxicol In. Health*, 8(1–2):89–102.
U.S. Environmental Protection Agency. December 1995. A Survey Study of Lead in Drinking Water Supplied by Transient Water Systems. Prepared by R.P. Maas, S.C. Patch, D.M. Morgan, and G.M. Brown, Environmental Quality Institute, The University of North Carolina at Ashville. Technical Report # 95–019.
U.S. Environmental Protection Agency. March 20, 1996. Note from Jeff Cohen to Judy Lebowich and Connie Bosma entitled: Analysis of UNC-Ashville Survey of Lead at Transient Systems.
U.S. Environmental Protection Agency. November 3, 1997. Effects from Short-Term Lead Exposure. Health and Ecological Criteria Division, Office of Science and Technology, Office of Water.

EPA solicits public comment on these data as well as any additional data relevant to the continued exclusion of transients from coverage under the rule that commenters may wish to submit.

2. Timing of Monitoring for Systems Subject to Reduced Lead and Copper Tap Monitoring.

In the April 12, 1996, notice, EPA proposed a revision to § 141.86(d)(4)(iv) that would allow seasonal NTNCWSs subject to reduced monitoring that do not operate between the months of June and September to collect lead and copper tap water samples during their warmest months of operation. Several commenters suggested that all water systems be allowed greater flexibility in the timing of collection of lead and copper tap water samples on the basis that the ambient outdoor temperature is not the only variable that may significantly affect tap water levels of lead and copper. The Agency agrees that it may be appropriate to provide such flexibility and is providing for public review and comment the following documents which present data and analyses pertaining to the effect of temperature on lead and copper leaching.

Colling, J.H., Croll, B.T., Whincup, P.A.E., and Harward, C. June 1992. Plumbosolvency Effects and Control in Hard Waters. *Journal IWEM*, 6(3):259–268.
Dodrill, D.M., and Edwards, M. July 1995. Corrosion Control on the Basis of Utility Experience. *Journal AWWA*, 74–85.
Edwards, M., Schock, M.R., and Meyer, T.E. March 1996. Alkalinity, pH, and Copper Corrosion By-Products Release. *Journal AWWA*, 81–94.
Rezania, L.W. and Anderl, W.H. 1996. Copper Corrosion and Iron Removal Plants. Conference Paper. Section of Drinking Water Protection, Minnesota Department of Health.
U.S. Environmental Protection Agency. An Evaluation of the Secondary Effects of Enhanced Coagulation, With Emphasis on Corrosion Control. Conference Paper prepared by D.A. Lytle, M.R. Schock, and R.J. Miltner, Treatment and Technology

Evaluation Branch, Water Supply and Water Resources Division, National Risk Management Research Laboratory.

U.S. Environmental Protection Agency. December 19, 1996. Memo from Michael R. Schock, Treatment and Technology Branch, Water Supply and Water Resources Division, National Risk Management Research Laboratory, to Jeffrey B. Kempic of the Office of Ground Water and Drinking Water, entitled: Seasonal Monitoring Revision. (**Note:** References 5, 6, and 7 cited in the memo are not provided for public review and comment. The Agency is not factoring the data contained in these studies into its decision making.)

Wagner, I. June 18–22, 1988. Effects of Inhibitors on Corrosion Rate and Metal Uptake. Proceedings of American Water Works Conference.

In light of the data presented in the documents cited above, the Agency is considering allowing any water system subject to reduced monitoring to collect lead and copper tap water samples during the months of normal operation when lead levels are likely to be the highest, or as otherwise designated by the State, instead of prescribing the specific months during which reduced monitoring may occur. EPA recognizes that it will be difficult in many cases to predict beforehand whether a given water chemistry coupled with physical factors will cause the highest values at a particular time. There may be instances, however, where monitoring data from similar systems or prior monitoring or survey experience at a particular system is available that would suggest when the most appropriate monitoring time(s) will occur. In the absence of such data, the Agency believes it could still be appropriate to provide States and systems flexibility to decide when to schedule sample collection within the monitoring period.

EPA recognizes that water systems already monitoring for lead and copper at the tap on an annual or triennial frequency may feel locked in to collecting samples during the months of June through September in order either to avoid collecting samples sooner than they otherwise would have to or to avoid a monitoring violation for not sampling on time. For example, assume a water system is monitoring triennially and last collected samples during the months of June through September 1997. If it were determined that it would be more appropriate for the system to collect samples during the months of December through March, it might be assumed that the system would need to collect the next round of samples six months early (December 1999 through March 2000) in order to avoid incurring a monitoring violation for not collecting the next round of samples by September 2000.

This assumption, however, is not necessarily accurate. If this option is promulgated, it is not the Agency's intent to force systems already on a reduced monitoring schedule to continue to collect samples during the summer months if some other sample collection time makes more sense. In such cases, EPA believes it may be appropriate to give States the discretion to determine the need for, and timing of, a transitional monitoring period. For example, in the situation described above, the State may determine that it would be better to extend the schedule to March 2001 for that one round of monitoring. Such a decision may be appropriate in those instances where the current monitoring period would end before system could collect samples in the new time frame and the State has determined, based on the system's consistently low tap water lead and copper levels, that extending the one monitoring period is unlikely to result in an increased risk to public health.

EPA solicits public comment on these data, the appropriateness of revising the requirements for the collection of samples under reduced monitoring as discussed above, and whether there is a need for the rule to explicitly provide States the flexibility to establish a transitional monitoring period.

B. Additional Regulatory Options EPA is Considering

The Agency is soliciting public comment on two additional regulatory options being considered in conjunction with requirements pertaining to the maintenance of optimal corrosion control treatment, a new regulatory option regarding notification of residents of buildings served by lead service lines where only a portion of the service line is to be replaced, and two additional regulatory options being considered in conjunction with State reporting requirements. These options are described below.

1. Requirement that Systems Operate Optimal Corrosion Control Treatment

Section 141.80(d) requires all water systems to install and operate optimal corrosion control treatment. The method by which a system demonstrates compliance with this requirement depends on its size and the results of initial monitoring. The four basic pathways are summarized below.

(1) A small or medium-size system may be deemed to have optimized corrosion control if it can demonstrate for two consecutive 6-month monitoring periods that it does not exceed either the lead or the copper action level pursuant to § 141.81(b)(1). This demonstration can be made whether or not treatment is actually physically present. Such systems demonstrate ongoing compliance with the requirement to operate and maintain optimal corrosion control through annual or once-every-three-year (triennial) monitoring for lead and copper at the tap.

(2) A system may demonstrate to the State's satisfaction, pursuant to § 141.81(b)(2), that it has already completed activities equivalent to the rule's corrosion control treatment steps. The State must designate OWQPs for such a system which then demonstrates compliance through routine WQP monitoring.[1]

(3) A system may demonstrate to the State's satisfaction, pursuant to § 141.81(b)(3), that very little corrosion is occurring in the distribution system.[2] In some cases, a system may be deemed to have optimized corrosion control even if no corrosion control treatment is physically present. In other cases, a system may be deemed to have optimized corrosion control if it had previously installed corrosion control treatment prior to conducting initial lead and copper tap monitoring. Currently, such systems are not required to do any routine monitoring; however, EPA proposed on April 12, 1996, to require these (b)(3) systems to monitor for lead and copper at the tap no less frequently than triennially.

(4) A system may complete the corrosion control treatment steps specified in § 141.81(d) for large systems or § 141.81(e) for small and medium-size systems. As a part of this process, the system is required to install the optimal corrosion control treatment designated by the State[3] and to complete two rounds of follow-up monitoring. Unless the system meets the criteria of § 141.81(b)(1) based on the results of the follow-up monitoring, the State then designates OWQPs; the system demonstrates it is maintaining optimal corrosion control through routine monitoring of these WQPs.

While EPA does not require the designation of OWQPs or routine WQP monitoring for (b)(1) systems or for (b)(3) systems, the Agency believes it is essential that the State requires these utilities to implement appropriate process control mechanisms to assure proper and consistent operation of any corrosion control treatment that is in place at the time the system is deemed to be optimized that is or subsequently

[1] Note: EPA proposed on April 12, 1996, to clarify this requirement for routine WQP monitoring.

[2] Section 141.81(b)(3) does not currently include any conditions pertaining to copper. EPA proposed on April 12, 1996, to also require systems to meet the copper action level to be eligible for the a (b)(3) exception of installing optimal corrosion control treatment.

[3] In many cases, ''installation of optimal corrosion control treatment'' will require the physical installation of a new treatment process. In other cases, ''installation'' may be achieved through adjustment to existing treatment process(es) already in place. In a few instances, the State may determine that optimal corrosion control already exists and that no further treatment changes are necessary.

installed. These process control mechanisms may involve some WQP monitoring but, in some instances, may be in the form of daily logs or other information routinely provided to the State (or available to the State upon request). The Agency believes it is more appropriate to give States the flexibility to define the specific process control requirements than to prescribe these requirements in a national regulation, since most States routinely require certain treatment and operational control verifications as a condition of a system's operating permit.

EPA is concerned, however, that a (b)(1) system or a (b)(3) system may misinterpret the absence of specific Federal process control requirements as meaning that it has a license to ''turn off,'' or depart from, optimal corrosion control treatment in the absence of required monitoring under the LCR. EPA therefore is considering wording changes to the introductory paragraph of § 141.81(b) and to § 141.82(g) to clarify that all water systems are required to operate and maintain optimal corrosion control even if there are no specific Federal requirements for the system to monitor for WQPs.

Currently, the introductory paragraph of § 141.81(b) reads:

A system is deemed to have optimized corrosion control and is not required to complete the applicable corrosion control treatment steps identified in this section if the system satisfies one of the following criteria: * * *

EPA is considering revising it to read as follows:

A system is deemed to have optimized corrosion control and is not required to complete the applicable corrosion control treatment steps identified in this section if the system satisfies one of the criteria specified in paragraphs (b)(1) through (b)(3) of this section. All systems deemed to have optimized corrosion control under this paragraph shall continue to operate and maintain any optimal corrosion control treatment in place at the time the system is deemed to have optimized corrosion control and any requirements that the State determines appropriate to ensure such treatment is maintained.

The first sentence of § 141.82(g) currently reads:

All systems shall maintain water quality parameter values at or above minimum values or within ranges designated by the State under paragraph (f) of this section in each sample collected under § 141.87(d).

It would be revised to read as follows:

All systems optimizing corrosion control under this subpart shall continue to operate and maintain any such treatment, including maintaining water quality parameters at or above minimum values or within ranges designated by the State under paragraph (f) of this section, in each sample collected under § 141.87(d).

These wording revisions do not add any new requirements; rather they clarify EPA's original intent that systems deemed to have optimized corrosion control continue to maintain any treatment in place to ensure that lead and copper levels remain minimal. The Agency does not believe there will be any change in regulatory burden as a result of this clarification.

EPA solicits public comment on this clarification.

2. Monitoring for WQPs After the Installation of Corrosion Control Treatment

Water systems subject to routine WQP monitoring requirements must collect WQP samples at each entry point to the distribution system once every two weeks (biweekly). Although EPA did not request public comment on the issue of compliance with OWQPs, several commenters expressed concern that the current approach for determining water system compliance with OWQPs could trigger inappropriate violations and recommended that EPA change the approach. After reviewing these comments, EPA is considering a regulatory change to modify the definition of what constitutes a WQP violation.

Under the current regulation, any system that has an excursion from the State-designated OWQP range is allowed to take a confirmation sample within three days. Section 141.82(g) defines an OWQP violation as follows:

* * * If the water quality parameter value of any sample is below the minimum value or outside the range designated by the State, then the system is out of compliance with this paragraph. As specified in § 141.87(d), the system may take a confirmation sample for any water quality parameter value no later than 3 days after the first sample. If a confirmation sample is taken, the result must be averaged with the first sampling result and the average must be used for any compliance determinations under this paragraph. States have discretion to delete results of obvious sampling errors from this calculation.

Some systems, especially large surface water systems, conduct WQP monitoring more frequently than required by the LCR in order to maintain effective process control. Because § 141.87(f) requires that these ''diagnostic'' monitoring results also be considered, § 141.87(f) can complicate OWQP compliance determinations. Section 141.87(f) reads as follows:

Additional monitoring by systems. The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the State in making any determinations (i.e., determining concentrations of water quality parameters) under this section or § 141.82.

Since § 141.82 describes OWQP compliance, any ''diagnostic'' monitoring results also must be factored into the compliance determination.

The current regulatory language requires that even a minor excursion from the State-designated OWQPs be identified as a violation, even when it may not reflect a problem in the operation of treatment or be of any public health concern. Rather than assigning a violation to a situation which may not be a public health concern, EPA is considering modifying the confirmation sample approach in the existing rule by eliminating the language in §§ 141.82(g) and 141.87(d) on confirmation samples and replacing it with a provision allowing a repeat sample that would need to be taken within three days. Instead of basing compliance on the average of the original and confirmation samples, compliance would be determined based solely on the results of the repeat sample, if one is collected, or on the results of the first sample if a repeat sample is not collected. This would preclude an attempt by a system to overcompensate with a treatment correction (that might adversely impact other treatment processes) just to ensure that the average of the two samples would be within an acceptable range.

The revised regulatory provisions EPA is considering also provide better process control than the current regulation. EPA is concerned that the averaging approach in the current rule could allow systems that are not adequately controlling some WQPs to remain in compliance. The following example illustrates the concern. A State sets a WQP pH range of 7.3–7.8 for a system that uses a caustic feed pump at the wellhead or at the end of a water plant feeding into the system. If the pump is not well controlled, it is possible that the pH can be 6.9 one day and 8.4 three days later when the confirmation sample is taken. Under the procedure in the current rule, the average (7.65) is within the range, but adequate process control is not being maintained. Variability in pH values can commonly occur with lime feed treatment at many small and some medium-sized treatment plants. The goal of OWQP monitoring is to ensure good process control. The current approach, however, has the potential to reward poor process control, as seen in this example.

Under the new option EPA is considering, the third and fourth sentences in § 141.82(g) would be revised to read as follows:

As specified in § 141.87(d), the system may take a repeat sample for any water quality parameter value no later than 3 days after the first sample. If a repeat sample is taken, compliance determination under this paragraph will be based solely on the results of the repeat sample; if a repeat sample is not taken, compliance determination under this paragraph will be based on the results of the first sample.

The third and fourth sentences in § 141.87(d) would be revised to read as follows:

The system may take a repeat sample for any water quality parameter value no later than 3 days after the first sample. If a repeat sample is taken, any compliance determination under § 141.82(g) must be based solely on the results of the repeat sample; if a repeat sample is not taken, the result of the first sample must be used for an compliance determination under § 141.82(g).

This approach parallels the repeat sampling approach in the Total Coliform Rule and is one of the reasons for changing the terminology from ''confirmation samples'' to ''repeat samples.'' Another reason for changing the terminology is to avoid confusion with confirmation samples under the NPDWRs for organic and inorganic chemicals where averaging of results is still required.

EPA does not believe that it is necessary to change § 141.87(f) as a part of this option. That is, systems and States would continue to be required to factor the results of any monitoring conducted in addition to the minimum requirements of § 141.87 into the compliance determination.

There is no increase in burden to implement this option since both the current rule and this option allow a second sample to be taken. This option would only change how the results from the second sample are used to determine compliance.

EPA solicits public comment on this new approach.

3. Notification of Residents of Buildings Served by Partially-Replaced Lead Service Lines

In the April 12, 1996, notice, EPA proposed changes to the rule's lead service line replacement requirements at § 141.84(d). While some provisions within § 141.84(d) pertaining to partial lead service line replacement were proposed to be changed, no revision was proposed to the notification requirements associated with partial lead service line replacement. As proposed, § 141.84(d) contains the following requirements:

* * * In cases where the system does not replace the entire lead service line, the system shall notify the user served by the line that the system will replace the portion of the service line [that is under the system's control] and shall offer to replace the building owner's portion of the line, but is not required to bear the cost of replacing the building owner's portion of the line. For buildings where only a portion of the lead service line is replaced, the water system shall inform the resident(s) that the system will collect a first flush tap water sample after partial replacement of the service line is completed if the resident(s) so desire. In cases where the resident(s) accept the offer, the system shall collect the sample and report the results to the resident(s) within 14 days following partial lead service line replacement.

Upon further consideration, EPA believes that this language is somewhat ambiguous as to who is to be notified in those instances where the property owner and the resident are not the same (e.g., apartment buildings). The Agency also believes the requirement to take a follow-up sample upon resident request could place an undue burden on the water system in those instances where a line serves a large multifamily residence because the system could be required to take numerous follow-up samples. EPA does not believe that a large number of samples is required to determine the immediate effect of the partial replacement. Finally, EPA is concerned that the time frame specified for the sample collection and reporting of the results may not provide an adequate level of public health protection.

In order to address these concerns, EPA is considering the following revision to § 141.84(d).

(1) Replacing the word ''user'' in the first sentence of the requirement cited above with the word ''owner'' to clarify that the offer to replace the privately-owned portion of the line should be made to the property owner.

(2) Adding a requirement that the water system provide a notice to the resident(s) of the building(s) served by the line at least 45 days before commencing with partial lead service line replacement. The purpose of such notice would be to inform the actual consumer(s) of the tap water affected by the lead service line that they may experience a temporary increase of lead levels in their drinking water due to material disturbances in the construction process and to provide them with guidance about the measures they can take to minimize their exposure to lead. The Agency feels that 45 days is a sufficient amount of time for the recipients to study the guidance provided by the water supplier, to familiarize themselves with the potential ramifications associated with the partial lead service line replacement, and to plan and implement appropriate measures to avoid exposure to lead.

(3) Replacing the requirement for a resident-requested follow-up sample within 14 days of completing the partial replacement with the following requirement:

* * * The water system shall inform the resident(s) that the system will collect one tap water sample representative of the water in the service line for analysis of lead content as prescribed under § 141.86(b)(3) within 24 hours after the completion of the partial replacement of the service line. The system shall collect the sample and report the results of the analysis to the owner and the resident(s) served by the line within three days of receiving the results.

The Agency feels that the affected parties should be provided with the test results as quickly as possible so they can implement appropriate measures commensurate with the findings as soon as they can to minimize their exposure. In addition, unnecessary expenses and further concerns will be alleviated in those instances where the analytical results indicate no increase in lead levels resulting from the partial replacement.

(4) Adding the following provision to provide for some flexibility in the method of delivery of the required notification(s):

The water system shall provide the required information to the residents of individual dwellings by mail or by other methods approved by the State. In instances where multifamily dwellings are served by the line, the water supplier shall have the option to post the information at a conspicuous location.

In order to facilitate State determination of compliance with the requirement to collect a follow-up sample after partial replacement of a lead service line, EPA believes it is appropriate that the results from the follow-up sample also be reported to the State, in addition to being maintained in the system's files as required by § 141.91. The Agency does not believe that it is essential that the results be provided to the State within three days of receiving the results, however. Instead, EPA is considering an option that would require the water system to provide the results to the State within the first ten days of the month following the month in which the system receives the results. In this way, the reporting of the results to the State can be combined with other regularly submitted data to

the State so that any increased burden associated with this additional system reporting requirement is kept to a minimum. If the Agency decides to add this reporting requirement, it will be codified as a new § 141.90(e)(4).[4]

EPA requests public comment on the above provisions pertaining to notification associated with partial lead service line replacement, including comments on potential burden implications.

4. State Reporting Requirements

EPA is considering and requests public comment on the following two revisions affecting State reporting of data to EPA.

(a) Clarify the Manner of Reporting

Paragraphs (a) and (b) of § 142.15 explicitly provide authority to the Administrator of EPA to specify the format of reporting for violation, follow-up actions, and inventory data. Section 142.15(c)(4), which defines 90th percentile and milestone reporting for the LCR, is silent concerning the format of that reporting. As a result, some States have questioned whether EPA has the authority to require that the LCR 90th percentile and milestone data be reported in a prescribed format. EPA requests public comment on whether the Agency should clarify in the introductory text of § 142.15(c)(4), that ''States shall report to EPA by * * *, in a format prescribed by the Administrator, the following information * * *.''

(b) Data to be Reported

In light of the comments received on State reporting requirements and careful internal deliberations, EPA is considering restructuring the State reporting requirements for the LCR. EPA has been guided by several principles during these deliberations and has sought to achieve a balance between the information required to oversee rule implementation and the need to reduce the reporting burden to the maximum extent possible without jeopardizing public health or protection of the environment. EPA is considering an option that would reduce the number of milestones that States would be required to report to the Agency. This option would in no way change the information the States are required to keep in State files or data systems—only the information which would be reported on a regular basis to EPA. A more complete explanation of EPA's rationale and guiding principles follows.

First, implementation of the LCR is, and will remain, a high priority for the EPA due to the significant health effects of lead, especially on children. The State reporting requirements reflect this priority in that they go beyond requirements for other drinking water regulations (that is, beyond reporting violation and follow-up actions to the Agency). In addition, as noted above, the State record keeping requirements would not be changed by this revision. EPA expects States to maintain the required information in their files. EPA intends to periodically audit these files as part of its review of State performance. EPA may ask States in the future to provide the Agency additional detailed information on implementation of the LCR, for example, a one-time report on systems for which the State has designated OWQPs or maximum permissible source water levels. EPA believes that this approach will be less burdensome overall to the States, yet will provide the Agency the information it needs to oversee implementation of this priority rule.

Second, EPA has sought to simplify the reporting requirements. The LCR is one of the most complex drinking water regulations. The rule's implementation period may be as long as 25 years from the time the Agency promulgated the rule for systems which are triggered into lead service line replacement requirements. Compliance with many key treatment technique requirements is based on the system meeting prescribed milestones, with several years potentially elapsing between milestones. Moreover, States have significant discretion in the determination of system-specific requirements such as what constitutes optimal corrosion control. Finally, a system may be in compliance with the rule's requirements, yet still have high levels of lead or copper at the tap.

As a result of these complexities, EPA imposed State reporting requirements that were intended to provide information on compliance with all of the interim milestones in order to oversee rule implementation, to respond to inquiries from the public and others, and to target compliance assistance and enforcement efforts. EPA believes these activities still must be accomplished for this priority rule, however, the Agency is seeking to simplify the State reporting requirements, while retaining sufficient information in the national data base to provide a degree of oversight and to answer some basic questions. Some have suggested that EPA eliminate all milestone reporting. EPA disagrees with the appropriateness of doing so. Due primarily to the structure and requirements of the rule, EPA believes strongly that the Agency continues to need more information about the status of LCR implementation than can be derived simply from violation and follow-up action data.

Therefore, EPA is considering an option that would eliminate the requirement for States to report completion of several of the interim milestones but would provide better information than the currently required milestone reporting for a few key activities. Under this new option, States would be required to report the following key elements.

(1) The 90th percentile lead values for all PWSs that exceed the lead action level, the 90th percentile lead values (even where the lead action level is not exceeded) for all large and medium-size systems, and the 90th percentile copper values for all PWSs that exceed the copper action level. Note that it is a data sharing ''goal'' for States to provide the 90th percentile lead values below the action level for small systems as well. EPA is not planning to require reporting of these values at this time due to the burden of reporting that data for the very large number of small systems.

(2) A ''deemed'' milestone indicating that the system has optimized corrosion control along with an indication of the basis upon which that determination was made (e.g., the system is deemed to be optimized pursuant to § 141,81 (b)(1), (b)(2), or (b)(3), the system is optimized as a result of installing corrosion control treatment, or the system is optimized on the basis of adjusting existing treatment).

(3) Systems required to replace lead service lines.

(4) A ''done'' milestone that indicates that the system has completed all applicable corrosion control, source water treatment and lead service line replacement requirements. Note that for many systems it may be possible to report this milestone at the same time as the ''deemed'' milestone.

This information, along with the quarterly violation and follow-up information, will provide EPA data on the status of rule implementation and will allow targeting of compliance and enforcement activities based on the violations which are reported. As noted above, additional information may be obtained through audits of State files or, if the need arises, through special one-time reports.

Given the deletion of many of the milestone reporting requirements, it will be critical that States report this more limited set of information completely and in a timely manner. EPA will be following up with States to ensure that this is occurring.

Table 1 compares the current State reporting requirements, the revisions

[4] On April 12, 1996, EPA proposed to delete the existing § 141.90(e)(4) since it would no longer be relevant if the rule is revised to remove the rebutable presumption that the water system controls the entire length of the service line.

proposed on April 12, 1996, and the new option EPA is considering. The table also provides a brief explanation of the Agency's rationale for the new option.

TABLE 1.—COMPARISON OF OPTIONS UNDER CONSIDERATION FOR STATE REPORTING REQUIREMENTS UNDER THE LEAD AND COPPER RULE

Requirement	Current requirement	4/12/96 proposal	New option	Rationale
Frequency of reporting for milestone & exceedance data.	Quarterly	Requested comment on reducing the frequency to semi-annual or annual but did not propose any changes.	Retain quarterly reporting.	90th percentile data used as part of determining significant non-compliers (SNC) which needs to be done quarterly to ensure timely & appropriate follow-up action.
90th percentile lead values.	Required for all lead action level (AL) exceedances; requested via guidance for all large/medium systems <= lead AL and for any small system that has exceeded the lead AL at some time in the past.	Require for all lead AL exceedances and for large/medium systems <= lead AL.	Require as proposed; make reporting of values <= lead AL for small systems a data sharing goal.	Used in calculation of SNC for some violations; needed to support environmental indicators and to demonstrate effectiveness of corrosion control treatment; data frequently requested by the public.
90th percentile copper values.	Required for all copper AL exceedances.	Retain current requirement.	Retain current requirement make reporting of values <= copper AL a data sharing goal.	Needed to support environmental indicators and to provide national view of occurrences of high copper levels at the tap.
Systems required to conduct corrosion control study [CCSR].	Required	Eliminate	Eliminate	See Note 1.
Systems that have completed corrosion control study [CCSC].	Required	Eliminate	Eliminate	See Note 2.
State designation of optimal corrosion control treatment (OCCT) to be installed [OTDE].	Required	Retain	Eliminate	See Note 1.
State designation of source water treatment (SOWT) to be installed [STDE].	Required	Retain	Eliminate	See Note 1.
Systems that have installed OCCT [OTIN].	Required	Eliminate	Redefine to indicate that system is optimized and the basis for considering it optimized. Require reporting for all systems.	Even though States are required to report a violation if the system fails to install the corrosion control treatment designated by the State, this milestone provides fundamental information on status of LCR implementation. In addition to indicating that system has installed corrosion control treatment, where required, it provides data on the basis by which other systems are considered to be optimized. This information is not readily available through other mechanisms.
Systems that have installed source water treatment [SOWT].	Required	Retain	Eliminate	See Note 2. If EPA needs to know how many systems installed source water treatment specifically to meet LCR requirements, this information could be requested through a one-time report.
Systems for which State has designated water quality (WQP) ranges [WQPS].	Required	Retain	Eliminate	See Note 1.

TABLE 1.—COMPARISON OF OPTIONS UNDER CONSIDERATION FOR STATE REPORTING REQUIREMENTS UNDER THE LEAD AND COPPER RULE—Continued

Requirement	Current requirement	4/12/96 proposal	New option	Rationale
Systems for which State has designated maximum permissible source water levels (MPLs) [MPLS].	Required	Eliminate	Eliminate	See Note 1.
Systems required to replace lead service lines [LSLR].	Required. Must also report any accelerated lead service line replacement schedule and annual compliance.	Revise to eliminate information about accelerated schedule and annual compliance.	Revise to eliminate information about accelerated schedule and annual compliance.	Basic milestone provides fundamental information about LCR implementation status. Without this milestone, there is no other way to readily determine which systems are required to do lead service line replacement. If system fails to meet an accelerated replacement schedule, the State is required to report a violation. If EPA needs to know that a system in violation of the lead service line replacement requirement is on an accelerated schedule, this information can be provided by the State on a case-specific basis. Data about annual compliance also redundant reporting since violation reporting required for systems failing to meet this milestone.
Systems that have completed all CCT, SOWT, and LSLR requirements.	None	None	Add Require reporting for all systems.	Provides fundamental information on status of LCR implementation.
WQP ranges designated by State as representing optimal corrosion control.	None	Comments requested but no requirement proposed.	Do not require	Ranges by themselves not meaningful unless also have significant other system-specific data.
MPLs designated by State as meeting source water treatment objectives.	None	Comments requested but no requirement proposed.	Do not require	Levels by themselves not meaningful unless also have significant other system-specific data.

NOTES:
1. State determination/decision. EPA need for this milestone is to ensure that States are making timely decisions; this need can be met through other mechanisms such as program evaluations and periodic data verifications, etc. As defined, there is no way to accurately interpret what the absence of a milestone means. (It could mean any one of the following: (a) the State did not make a determination/decision whether or not to require the activity; (b) the State made a determination/decision that the system is not required to perform the activity; or (c) the State made a determination/decision that the system is required to perform the activity but the State did not report this determination/decision to EPA.) Redefining the milestone and requiring it to be reported to EPA for every system that exceeds an AL adds unnecessary burden.
2. Redundant reporting since States are required to report a violation if the system fails to meet the milestone.

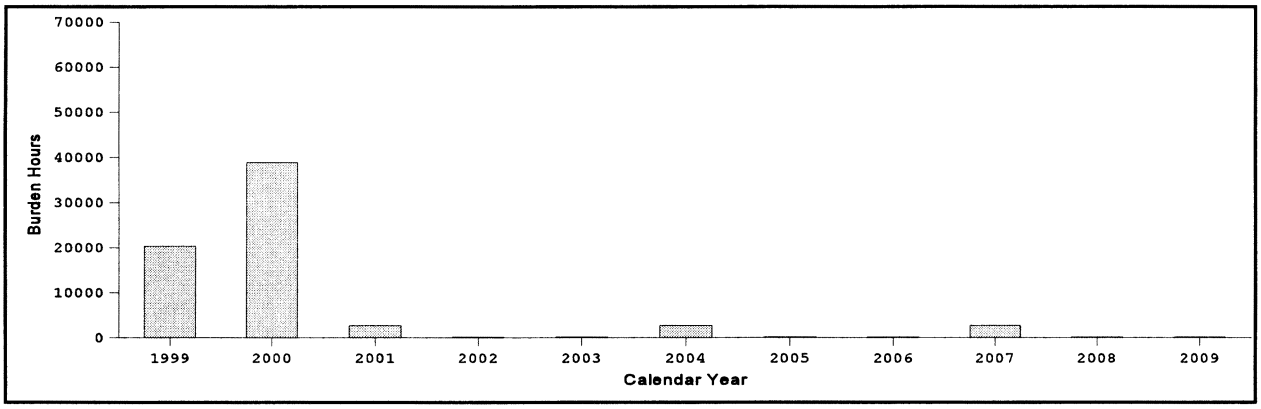
Under this new option, the reporting of the ''deemed'' and ''done'' milestones would be required for every system, including those that have achieved the milestone prior to the effective date of the revised State reporting requirements. EPA also recognizes that States may need time to adapt their internal data management systems to facilitate reporting under this new option. For these reasons, EPA plans to allow States at least 18 months from the date of promulgation of the LCR Minor Revisions Rule to submit data in accordance with the revised State reporting requirements. At the end of this transition period, however, EPA would expect all States to have submitted the ''deemed'' and ''done'' milestones for all systems which have completed the milestone(s).

Figure 1 shows the estimated change in national annual burden hours for the years 1999 through 2009[5] if this new option is implemented. The estimated additional burden in 1999 and 2000 is due primarily to the requirement to report the ''deemed'' and ''done'' milestones for all systems.[6] EPA estimates that States will need to report the ''deemed'' milestone for all systems and the ''done'' milestone for all systems except those triggered into lead service line replacement by the end of the 18-month transition period. The slight increases estimated for the years 2001, 2004, and 2007 are due to the reporting of all 90th percentile lead values for large and medium-size systems.

[5] 1998 through 2009 represents the remaining time in the original 18-year planning window for which burden/costs were estimated when the LCR was promulgated in 1991.

[6] Consistent with Agency policy, burden estimates are derived using a static inventory. Therefore, the estimates do not include any burden for new systems that might come into existence after the promulgation of the rule. The Agency also has used simplifying assumptions that all systems are in compliance with the rule's deadlines and that action level exceedances occurred during the first round of initial monitoring.

Figure 1
Estimated Annual National Change in State Burden
Associated with New State Reporting Requirements Option



NOTE: Slight increases of < 300 hour/year occur in 2000, 2002, 2003, 2005, 2006, 2008, and 2009.

EPA believes this new State reporting requirement option will significantly improve the Agency's ability to assess program progress toward the Rule's goals and, at the same time, minimize the necessity of requesting additional clarifying information from the States on a large number of systems on an ad hoc, quick turnaround, basis. EPA plans to use these data to demonstrate progress toward reducing the levels of lead and copper at the tap in several ways. In addition to computing compliance statistics, the Agency plans to utilize 90th percentile data for large and medium-size systems to characterize overall national changes in the levels of lead at the tap since these systems serve approximately 90% of the population that receives their drinking water from public water systems. Under the existing regulation, States are not required to report 90th percentile lead levels unless the system exceeds 0.015 mg/L. The Agency therefore cannot assess changes in 90th percentile levels below this level. The remaining milestones to be reported under this new option also will provide EPA a much better capability to reflect a system's actual implementation status.

Some of the milestones that EPA would eliminate from the State reporting requirements under the new option pertain to State decision-making. Under current reporting requirements, States report to EPA only when they determine that a system must complete certain actions, for example, install new treatment. The absence of a milestone does not necessarily imply that a State has failed to make a timely and appropriate determination, however, since there is no way to reflect the fact that the State determined that no treatment is needed. Rather than impose the significant burden of reporting each State decision for every system, the Agency plans to use other tools such as performance agreements, periodic program audits, and data verifications to ensure that States are meeting their primacy requirements satisfactorily. The explicit reporting of State-determination milestones to EPA would not eliminate the need for these tools, since they are needed if EPA and the public are to have confidence in the integrity of the data in the national data base. EPA believes that the benefits described above justify the added reporting burden.

EPA solicits comments on this new option, including the adequacy of the information that would be required to be reported on a routine basis. EPA requests that commenters who believe the information to be reported under this option is not adequate specify the additional information EPA should seek to obtain, how often, and in what manner (e.g., quarterly reports to the national data base, special one-time reports, etc.) EPA also solicits comments on the possibility of requiring a separate report or reports, by a date or dates certain, on certain milestones, for example, those systems for which the State has designated OWQPs or maximum permissible source water levels. EPA is especially looking for comments on the usefulness of such information as well as the burden of providing the information to EPA.

Finally, for the ''Done'' milestone, EPA requests comment on whether the Agency should require reporting for all systems or only for those systems that continue to exceed an action level after optimizing corrosion control.

While the preceding discussion describes EPA's current thinking concerning State reporting requirements, the Agency will carefully review all comments on this notice as well as prior comments on the proposed rulemaking in formulating the requirements contained in the final rulemaking.

C. Simultaneous Compliance Considerations: D/DBP Stage 1 Enhanced Coagulation Requirements and the LCR

On November 3, 1997, EPA published a Notice of Data Availability pertaining to the proposed rule for NPDWRs for Disinfectants and Disinfection Byproducts (62 FR 59388). In response to that Notice, the Agency received comments that express concern regarding utilities' ability to comply with the Stage 1 D/DBP enhanced coagulation requirements and LCR requirements simultaneously. Commenters stated that enhanced coagulation will lower the pH and alkalinity of the water during treatment. They indicated concern that the lower pH and alkalinity levels may place utilities in noncompliance with the LCR by causing violations of OWQPs and/or an exceedence of the lead or copper action levels. EPA is not aware of data that suggests that low pH and alkalinity levels cannot be adjusted upward

following enhanced coagulation to meet LCR compliance requirements. However, as discussed below, the Agency solicits further comment and data on this issue.

The LCR separates public water systems into three categories: large (> 50,000), medium-size (≤ 50,000 but > 3,300) and small (< 3,300). Small and medium-size systems that do not exceed the lead and copper action levels for two consecutive six-month monitoring periods are deemed to have optimized corrosion control. These systems do not have to operate under OWQPs. Optimal water quality control parameters consist of pH, alkalinity, calcium concentration, and phosphate and silicate corrosion inhibitors. They are designated by the State. Small and medium-size systems that continue to exceed an action level after installation of corrosion control treatment must operate under State-specified OWQPs. Large systems must operate under OWQPs specified by the State unless they are deemed to have optimized corrosion control pursuant to § 141.81(b)(3).

Maintenance of each OWQP mentioned above (except for calcium concentration) is directly related to meeting specified pH and alkalinity levels at the entry point to the distribution system and in tap samples to establish LCR compliance. In treatment trains that EPA is aware of, utilities have the technological capability to raise the pH (by adding caustic—NaOH, $Ca(OH)_2$) and alkalinity (by adding Na_2CO3 or $NaHCO_3$) of the water following enhanced coagulation and before it enters the distribution system. Although certain utilities may need to add chemical feed points to provide chemical adjustment, pH and alkalinity can be maintained at the values used prior to the implementation of enhanced coagulation. Systems that operate with pH and alkalinity OWQPs should be able to meet the State-prescribed values by providing pH and alkalinity adjustment prior to entry to the distribution system. Systems that operate without pH and alkalinity OWQPs can raise the pH and alkalinity to the levels they were at before enhanced coagulation by providing chemical adjustment prior to distribution system entry.

The goal of calcium carbonate stabilization is to precipitate a layer of $CaCO_3$ scale on the pipe wall to protect it from corrosion. As the pH of a water decreases, the concentration of bicarbonate increases and the concentration of carbonate, which combines with calcium to form the desired $CaCO_3$, decreases. At the lower pH used during enhanced coagulation, it will generally be more difficult to form calcium carbonate. However, post-coagulation pH adjustment will increase the pH and hence the concentration of carbonate available to form calcium carbonate scale. Systems that must meet a specific calcium concentration to remain in compliance with OWQPs should not experience an increase in LCR violations due to the practice of enhanced coagulation provided the pH is adjusted prior to distribution system entry and the calcium level in the water prior to and after implementation of enhanced coagulation remains the same.

EPA recognizes that the inorganic composition of the water may change slightly due to enhanced coagulation. For example, small amounts of anions and compounds that can affect corrosion rates (Cl, $SO_4^{-2)}$ may be removed or added to the water. The effect of these constituents is difficult to predict, but EPA believes they should be minimal for the great majority of systems due to the generally modest changes in the water's inorganic composition and because alkalinity and pH levels have a greater influence on corrosion rates. Increases in sulfate concentration due to increased alum addition during enhanced coagulation can actually lower the corrosion rates of lead pipe. EPA requests comment on whether changes in the inorganic matrix can be quantified to allow States to easily assess potential impacts to corrosion control.

EPA requests comment on how lowering the pH and alkalinity during enhanced coagulation may cause LCR compliance problems, given that both pH and alkalinity levels can be adjusted to meet OWQPs prior to entry to the distribution system. EPA also requests comment on whether decreasing the pH and alkalinity during enhanced coagulation, and then increasing it prior to distribution system entry, may increase exceedences of lead and copper action levels.

EPA is currently developing a simultaneous compliance guidance document working with stakeholders. The document will provide guidance to States and systems on maintaining compliance with other regulatory requirements (including the LCR) during and after the implementation of the Stage 1 D/DBP rule and the Interim Enhanced Surface Water Treatment Rule. EPA requests comment on what issues should be addressed in the guidance to mitigate concerns about simultaneous compliance with enhanced coagulation and LCR requirements. Further, the Agency requests comment on whether the proposed enhanced coagulation requirements and the existing LCR provisions that allow adjustment of corrosion control plans are flexible enough to address simultaneous compliance issues. Is additional regulatory language necessary to address this issue, or is guidance sufficient to mitigate potential compliance problems?

List of Subjects

40 CFR Part 141

Environmental protection, Chemicals, Indians-lands Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Administrative practice and procedure, Chemicals, Indians-lands, Reporting and recordkeeping requirements, Water supply.

Dated: April 16, 1998.

Dana D. Minerva,

Acting Assistant Administrator.

[FR Doc. 98–10713 Filed 4–21–98; 8:45 am]

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Federal Register

Wednesday
April 22, 1998

Part VII

The President

Proclamation 7084—National Crime Victims' Rights Week, 1998

Federal Register
Vol. 63, No. 77
Wednesday, April 22, 1998

Presidential Documents

Title 3—

The President

Proclamation 7084 of April 20, 1998

National Crime Victims' Rights Week, 1998

By the President of the United States of America

A Proclamation

Every day, thousands of Americans become victims of crime. Many suffer physical injury, and most experience emotional scars that may never fully heal. And all victims of crime, and their families and friends, often remain troubled by feelings of vulnerability and concerned about their personal safety.

Five years ago, my Administration made a commitment to take back our streets from criminals and to combat the crime and violence that affects so many Americans. With the Crime Act, the Brady Act, the Violence Against Women Act, and other tough legislation, we have put into action a comprehensive anticrime strategy that includes community policing, antigang programs, and strong penalties for criminals.

Our strategy is working. Crime rates across the country are at a 25-year low. Violent crimes and property crimes have decreased, and the murder rate is down dramatically. While we can take pride in this progress, we cannot afford to become complacent. We must build on the anticrime programs we have put into place if we are to win the war against crime.

As part of our continuing efforts, this year the Department of Justice is awarding more than $135 million in grants under the Violence Against Women program to help State and local authorities reduce domestic violence, stalking, and sexual assault. These funds will enable communities to train more police, hire prosecutors, and provide assistance to the victims of such crimes. Earlier this month, after thorough study, the Secretary of the Treasury concluded that we should ban more than 50 kinds of modified assault weapons because they accept large-capacity military magazines. By keeping these weapons off our streets and out of the hands of criminals, we will take another crucial step toward halting the scourge of gun violence that has taken such a tragic toll on America's children and families.

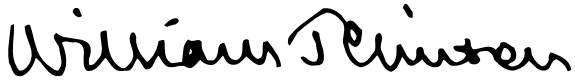
During National Crime Victims' Rights Week, we call to mind those whose lives have been so abruptly and often violently changed. This annual observance is also a powerful reminder of the extraordinary capacity of our citizens to face adversity and overcome it. Across America, victims of crime have refused to become victims of a criminal justice system that too often ignores or compromises their rights while protecting the rights of criminals.

With courage and determination, crime victims and their dedicated advocates have succeeded in winning constitutional amendments in 29 States that guarantee such fundamental rights as protection from further harm, which includes keeping victims and accused criminals in separate rooms during court proceedings; the right of victims to call upon law enforcement if they feel they are being harassed or intimidated in connection with a pending case; and the right to be notified of a convicted criminal's release from incarceration. And after decades of advocacy, a proposed Federal constitutional amendment for victims now lies before the Congress. We have the opportunity—and the responsibility—to amend the United States Constitution to ensure that the rights of victims are honored in every court throughout our Nation.

This year, our observance of National Crime Victims' Rights Week coincides with the anniversary of the 1995 bombing of the Alfred P. Murrah Federal Building in Oklahoma City. That tragedy brought home to an entire Nation the extraordinary suffering and grief that can be rendered by a single, senseless, criminal act. In remembering the many victims of this brutal crime, let us pledge to sustain our efforts to reduce violent crime, to provide comfort and support to its victims as they strive to rebuild their lives, and to keep victims' rights a primary concern in America's criminal justice system.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 19 through April 25, 1998, as National Crime Victims' Rights Week. I urge all Americans to remember crime victims and their families by working to reduce violence, to assist those harmed by crime, and to make our homes and communities safer places in which to live and raise our families.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of April, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.



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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Air quality implementation plans; approval and promulgation; various States:
- Pennsylvania; published 3-23-98
- Virginia; published 3-23-98

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- Project XL program; site-specific projects—
  - OSi Specialities, Inc., plant, Sisterville, WV; published 4-22-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Fenoxaprop-ethyl; published 4-22-98

Superfund program:
- Toxic chemical release reporting; community right-to-know—
  - List deletions; published 4-22-98

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
- Pennsylvania; published 4-22-98
- Texas; published 4-22-98

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Agricultural Marketing Service

Cotton classing, testing, and standards:
- Classification services to growers; 1998 user fees; comments due by 4-27-98; published 3-27-98

Cotton research and promotion order:
- Imported cotton and cotton content of imported products; supplemental assessment calculation; comments due by 4-30-98; published 3-31-98

Milk marketing orders:
- New England et al.; comments due by 4-30-98; published 3-13-98

Onions grown in—
- Texas; comments due by 4-27-98; published 2-24-98

Organic Foods Production Act:
- National organic program; establishment; comments due by 4-30-98; published 2-9-98

AGRICULTURE DEPARTMENT

Forest Service

National Forest System lands:
- Occupancy and use; mediation of grazing disputes; comments due by 4-28-98; published 2-27-98

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National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Pacific cod; comments due by 5-1-98; published 4-16-98
- Northeastern United States fisheries—
  - Atlantic sea scallop; comments due by 4-30-98; published 3-31-98

COMMODITY FUTURES TRADING COMMISSION

Commodity pool operators and commodity trading advisors:
- Disclosure documents; two part documents for commodity pools; comments due by 4-29-98; published 3-30-98

DEFENSE DEPARTMENT

Private organizations on DoD installations; comments due by 4-27-98; published 2-24-98

EDUCATION DEPARTMENT

Educational research and improvement:
- Standards for conduct and evaluation of activities; performance evaluation of recipients of grants, cooperative agreements, and contracts; comments due by 4-27-98; published 2-24-98

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:
- Gas cooktops, gas ovens, and electric non-self-cleaning ovens; energy conservation standards; comments due by 4-28-98; published 4-3-98

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Air pollutants, hazardous; national emission standards:
- Polymer and resin production facilities (Group IV); comments due by 4-30-98; published 3-31-98

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 4-29-98; published 3-30-98
- District of Columbia; comments due by 4-29-98; published 3-30-98
- Ohio; comments due by 4-29-98; published 3-30-98

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Ohio et al.; comments due by 4-27-98; published 3-26-98

Air quality implementation plans; approval and promulgation; various States:
- Oregon; comments due by 4-30-98; published 3-31-98

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- Technical admendments; comments due by 4-27-98; published 2-25-98

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- National primary drinking water regulations—
  - Disinfectants and disinfection byproducts; data availability; comments due by 4-30-98; published 3-31-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Norflurazon; comments due by 4-27-98; published 2-25-98
- Thiabendazole; comments due by 4-27-98; published 2-25-98

Superfund program—
- Toxic chemical release reporting; community right-to-know—
  - Dioxins, etc.; meeting; comments due by 4-28-98; published 4-6-98

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 4-29-98; published 3-30-98
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  - National priorities list update; comments due by 5-1-98; published 3-4-98

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- Health and safety data reporting requirements; comments due by 5-1-98; published 4-1-98

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- California; comments due by 4-27-98; published 3-13-98
- New York; comments due by 4-27-98; published 3-18-98
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- Loan Application Register modification and technical changes to regulation and reporting forms; comments due by 4-27-98; published 2-25-98

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- Margin regulations; periodic review; comments due by 5-1-98; published 4-3-98

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